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Asylum Information Database

Country Report: Hungary

Hungarian Helsinki Committee

2019
Update

ecre
European Council on Refugees and Exiles

Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2019, 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.

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Table of Contents

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
ECHR	European Convention on Human Rights
ECRI	European Committee against Racism and Intolerance
ECtHR	European Court of Human Rights
EMN	European Migration Network
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
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] The Hungarian Helsinki Committee (HHC) also published brief statistical overviews on a monthly basis, although their regularity has also become more limited.[2]

Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Humanitarian protection	Rejection*	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	468	234	22	31	7	650	3.1%	4.4%	0.9%	91.5%

Breakdown by countries of origin of the total numbers

Afghanistan	185	92	2	6	2	315	0.6%	1.8%	0.6%	96.9%
Iraq	157	68	0	1	0	260	0%	0.4%	0%	99.6%
Pakistan	27	27	6	1	0	4	54.5%	9.1%	0%	36.4%
Iran	22	7	4	0	1	21	15.4%	0%	3.8%	80.8%
Syria	20	7	1	2	2	12	5.9%	11.8%	11.8%	70.6%
Unknown	10	2	4	6	1	0	36.4%	54.5%	9.1%	0%
Ghana	6	1	0	0	0	5	0%	0%	0%	100%
Tadzhikistan	5	0	0	0	0	10	0%	0%	0%	100%
Palestine	5	6	0	0	0	0	0%	0%	0%	0%
Turkey	4	4	0	0	0	5	0%	0%	0%	100%
Tunisia	4	4	0	0	0	0	0%	0%	0%	0%

Source: Information provided by NGDAP on 3 February 2020.

*Rejection decisions include inadmissibility decisions

[1] Statistical reports of the former IAO may be found at: https://goo.gl/xgV1tN.
[2] Statistical overviews by the HHC may be found at: http://www.helsinki.hu/en/press-room/press-releases/.

Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
Total number of applicants	468	-
Men	264	56.4%
Women	204	43.6%
Children	237	50.6%
Unaccompanied children	10	2.1%

Source: Information provided by NGDAP on 3 February 2020.

Comparison between first instance and appeal decision rates: 2019

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	710	-	255	-
Positive decisions	60	8.5%	173	67.8%
• *Refugee status*	22	3.1%	:	:
• *Subsidiary protection*	31	4.4%	:	:
• *Humanitarian protection*	7	0.9%	:	:
Negative decisions	650	91.5%	:	22.4%

Source: Positive decisions at court level concern annulments of first instance decisions.

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/2SYNBA1 (EN)
Act LXXX of 2007 on Asylum	2007. évi LXXX. törvény a menedékjogról	Asylum Act	https://bit.ly/2SWTqhr (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/2TXuOCe (HU)
Act CL of 2016 on General Administrative Code	2016. évi CL. törvény az általános közigazgatási rendtartásról	GAC	https://bit.ly/2GAaSlO (EN)
Act LXXX of 2003 on Legal Aid	2003. évi LXXX. törvény a jogi segítségnyújtásról	Legal Aid Act	https://bit.ly/2TShrmJ (HU)
Act LV of 1993 on the Hungarian citizenship	1993. évi LV. törvény a magyar állampolgárságról	Citizenship Act	https://bit.ly/2GyGtVc (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/2V8bLFD (EN)

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/2EgqgBN (HU)
Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról	TCN Decree	https://bit.ly/2SMZ8TC (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/2GR496u (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/2X5C29r (HU)

Overview of the main changes since the previous report update

The report was previously updated in **March 2019**.

A quasi-state of exception has been introduced into Hungarian law in September 2015, entitled as 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. During his visit to Hungary, the UN Special Rapporteur on the human rights of migrants urged the government to immediately terminate this 'state of emergency'; he noted that he could not see a single migrant approaching Hungary from the Serbian side of the border, and deemed the extension unnecessary.[3]

Asylum procedure

- **State of crisis:** The state of crisis due to mass migration had been extended once again and is currently in effect until 7 September 2020. This means that asylum may still only be sought at the border (inside the transit zone) and that asylum seekers are continued to be held in the transit zones for the entire asylum procedure, without any legal basis for detention or judicial remedies. Police are still authorised to pushback across the border fence 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.

- **Determining authority**: On 1 July 2019, the Asylum and Immigration Office ceased to exist and the National Directorate-General for Aliens Policing (NDGAP) was established taking over the responsibility for asylum and aliens policing matters.[4] The Directorate continues to be under the supervision of the Ministry of Interior and having its own budget, but operating as a law enforcement body under the Police Act.[5] The IAO's transformation into a branch organisation of the Police meant that asylum officers needed to receive training and pass physical and psychological exams in order to be appointed as police officers. All these factors led to increased delays in decision-making and standstills in several cases.

- **Recognition rate:** 2019 is characterized by a very low recognition rate (rejection rate is 91.5%) and extremely lengthy procedures, during which the asylum seekers have to stay in the transit zone, which is *de facto* detention (see the data on average stay under Duration of detention). Most of the asylum applications were rejected at the first instance, then quashed at the appeal stage and returned to the first instance for new examination.

- **Pushbacks:** In 2019, 11,101 migrants 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.[6]

Reception conditions

- **Low occupancy of reception facilities**: The reception facilities are not efficiently used. This is shown by the visible discrepancy between the numbers of occupancy and the maximum capacity of reception facilities, as the majority of the asylum seekers are being detained in transit zone.

Detention of asylum seekers

3 FRA, *Migration: Key fundamental rights concerns, Quarterly bulletin 4*, 2019, http://bit.ly/30NBDe9.
4 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.
5 Act XXXIV of 1994 on the Police.
6 Information provided by the Police.

- **Transit zone:** Detention still remains a frequent practice rather than an exceptional measure in Hungary. The vast majority of the people are detained in the transit zones of Röszke and Tompa. The fact that asylum seekers inside the transit zones are deprived of their freedom of movement is confirmed by the UNWGAD, CPT, UNHRC, UN High Commissioner for Human Rights, UN Special Rapporteur on the human rights of migrants, European Commission and Commissioner on Human Rights of the Council of Europe. On 14 March 2017, the ECtHR in the Ilias and Ahmed v. Hungary case confirmed its established jurisprudence that confinement in the transit zones in Hungary amounted to unlawful detention and established the violation of article 5(1), of article 5(4) and of article 13 in conjunction with article 3 ECHR due to the lack of effective remedy to complain about the conditions of detention in the transit zone. However, in the Grand Chamber judgment of the ECtHR of November 2019 the ECtHR 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 ECHR. However, several reports and UN Treaty bodies, also published in 2019, keep reiterating the dire circumstances of deprivation of liberty in the transit zone and the HHC believes that the factual and legal situation since March 2017 is completely different than at the material time of Ilias and Ahmed case and therefore the findings of the Grand Chamber are not applicable.[7] Such understanding has been confirmed also by the Szeged Administrative and Labour Court (Szegedi Közigazgatási és Munkaügyi Bíróság), which on 18 December 2019 initiated two preliminary reference procedures before the CJEU,[8] which among others concern the qualification of the transit zone placement as deprivation of liberty. CJEU will give priority to these cases.

Content of international protection

- **Withdrawn integration services**: 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-governmental and church-based organisations provide the needed services aimed at integration such as housing, assistance with finding employment, learning Hungarian language or family reunification. Moreover, the Commissioner for Human Rights of the Council of Europe pointed out in her 2019 report that xenophobic rhetoric and attitudes also have a harmful effect on the integration of recognised refugees.[9]

7 HHC, *Findings of the Grand Chamber Judgment of the European Court of Human Rights in the Ilias and Ahmed v. Hungary case in light of the current legal framework*, 27 November 2019, available at: https://bit.ly/39hn6ur.

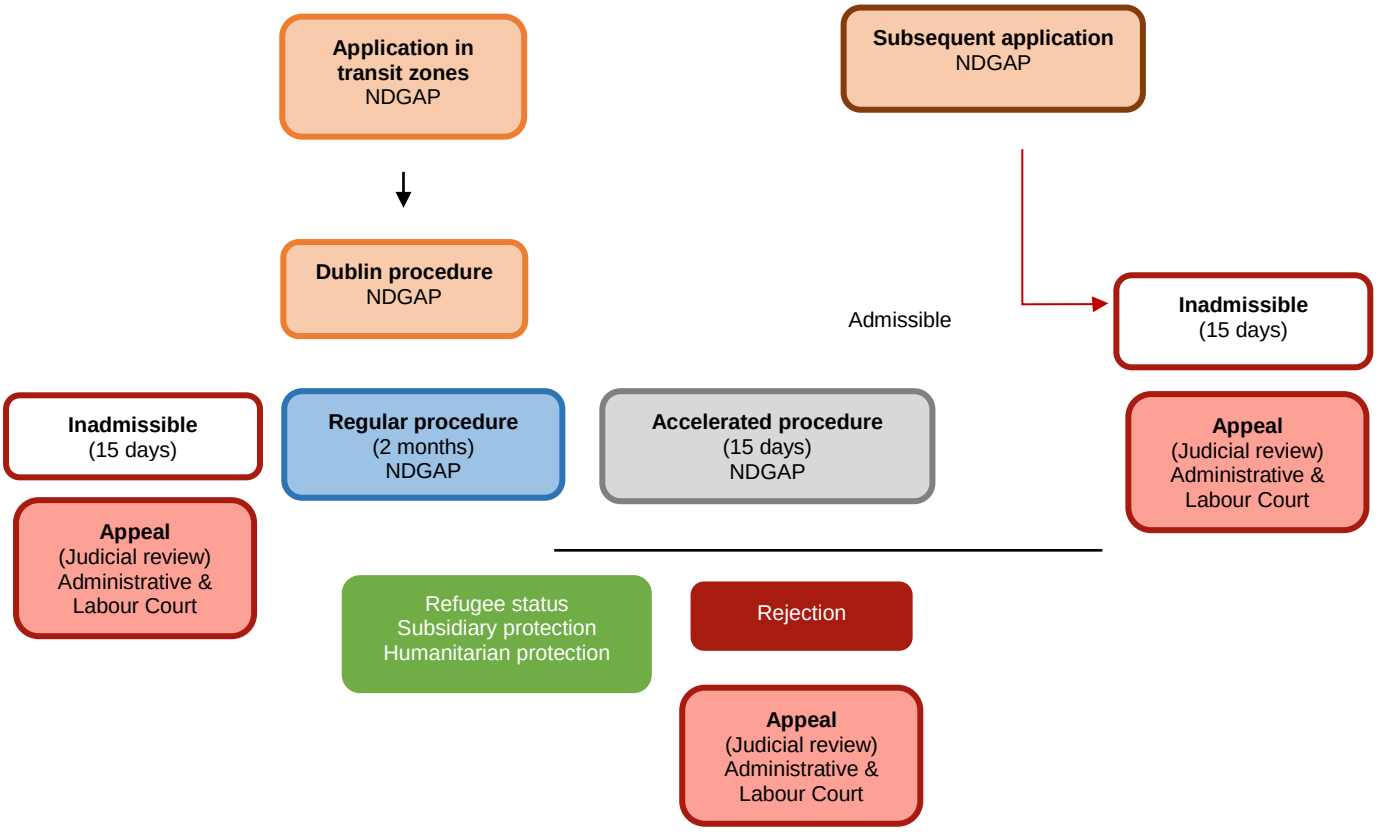
8 C-924/19 PPU and C-925/19 PPU.

9 Commissioner 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, http://bit.ly/30upiLp.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination:[10]	☒ Yes	☐ No
▪ Fast-track processing:[11]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[12]	☒ 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 aforementioned state of crisis due to mass migration.

Section 35(7) of the Asylum Act provides that in the case of an unaccompanied child, the asylum procedure shall be conducted as a matter of priority, but in practice this is not always the case. The HHC is aware of one unaccompanied child who has been held in the transit zone for one year, after multiple negative decisions had been issued in his procedure.

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

Stage of the procedure	Competent authority (EN)	Competent authority (HU)
Application at the border	Police Immigration and Asylum Office (IAO)/National Directorate-General for Aliens Policing (NDGAP)	Rendőrség Bevándorlási és Menekültügyi Hivatal (BMH)/Országos Idegenrendészeti Főigazgatóság
Application on the territory	Immigration and Asylum Office (IAO)/National Directorate-General for Aliens Policing (NDGAP)	Bevándorlási és Menekültügyi Hivatal (BMH)/Országos Idegenrendészeti Főigazgatóság
Dublin (responsibility assessment)	Dublin Coordination Unit, Immigration and Asylum Office (IAO)/National Directorate-General for Aliens Policing (NDGAP)	Dublini Koordinációs Osztály, Bevándorlási és Menekültügyi Hivatal (BMH)/Országos Idegenrendészeti Főigazgatóság
Refugee status determination	Immigration and Asylum Office (IAO)/National Directorate-General for Aliens Policing (NDGAP)	Bevándorlási és Menekültügyi Hivatal (BMH)/Országos Idegenrendészeti Főigazgatóság
Appeal (Judicial review)	Regional Administrative and Labour Court	Közigazgatási és Munkaügyi Bíróság
Subsequent application (admissibility)	Immigration and Asylum Office (IAO)/National Directorate-General for Aliens Policing (NDGAP)	Bevándorlási és Menekültügyi Hivatal (BMH)/Országos Idegenrendészeti Főigazgatóság

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

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

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

4. Determining 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) / Immigration and Asylum Office (IAO)	119	Ministry of Interior	☒ Yes ☐ No

Source: NDGAP, 3 February 2020.

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.[13] The Directorate continues to be under the supervision of the Ministry of Interior and having its own budget, but operating as a law enforcement body under the Police Act.[14] While the Directorate kept the institutional structure of its legal predecessor, as being 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, who is appointed in the same manner as the head of the Office used to be.[15]

The NDGAP, a government agency under the Ministry of Interior, 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, 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,[16] the authority provides regular trainings 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.[17] The Documentation Centre is responsible for organising trainings to the personnel of the authority regarding countries of origin and third countries.[18] According to the answer of the NDGAP in August 2019, the Documentation Centre provided information to the case officers in the first half of 2019. However, their answer did not specify the frequency or the content of these trainings/information provision.[19]

According to the NDGAP, the data on the types of trainings to the case officers and the educational material that is provided and used during these trainings do not qualify as public information. Consequently, they did not provide any information on this matter. NDGAP briefly stated that case officers are obliged to attend trainings that are relevant and necessary for fulfilling their scope of activities.[20] As for the entire year of 2019, there were 8 trainings provided for a total of 82 personel of the Asylum Directorate of the NDGAP.[21]

The Ordinance does not specify a unit that deals specifically with the cases of vulnerable asylum seekers. To the knowledge of HHC there is a specialised unit for the cases of unaccompanied minors.

13 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.
14 Act XXXIV of 1994 on the Police.
15 Section 5 point g) of the Police Act.
16 Section 1(3) of the Police Act.
17 Section 1(4) of the Police Act.
18 Point 1.2.13.2. f) of Annex 2 of the Ordinance.
19 Freedom of information request answer letter of the Directorate sent to HHC on 5 August 2019.
20 Ibid.
21 Information provided by NDGAP on 3 February 2020.

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 National Directorate-General for Aliens Policing (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 with the assistance of 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 nine times since then and is currently in effect until 7 September 2020.

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.
- 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 deadlines to seek judicial review against inadmissibility decisions and rejections of asylum applications decided in accelerated procedures are drastically shortened to 3 days.

The asylum procedure is a single procedure where all claims for international protection are considered. The procedure consists of two instances. The first instance is an administrative procedure carried out by the NDGAP. The second instance is a judicial review procedure carried out by regional Administrative and Labour Courts, which are not specialised in asylum. There is an inadmissibility procedure and an accelerated procedure in addition to the normal procedure.

Asylum may only be sought at the border (inside the transit zone). This is due to the current status of mass migration emergency.[22] Only those lawfully staying can apply for asylum in the country. The asylum procedure starts with the submission of an application for asylum in person before the determining authority.

The asylum procedure starts with an assessment of 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 circumstances or facts; (e) has travelled through a safe third country; and (f) the applicant arrived through a country where he or she is not exposed to persecution or to serious harm, or in the country through which the applicant arrived to Hungary an adequate level of protection is available.

[22] Section 80/J(1) Asylum Act.

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

Border procedures exist in law but are not applicable at the moment 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, usually immediately upon the entry in the transit zone. 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 for being heard, or submitted a subsequent application and, in the application, failed to state facts or provided proofs that would allow the recognition as a refugee or beneficiary of subsidiary protection.

Appeal: The applicant may challenge the negative NDGAP decision by requesting judicial review from the regional Administrative and Labour 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 have an automatic suspensive effect on the NDGAP decision in the regular procedure, but in practice the alien policing procedure never starts beforehand. In case of inadmissibility it will only have a suspensive effect if the application is declared inadmissible on "safe third country" grounds. In the accelerated procedure, the judicial review has suspensive effect only if the accelerated procedure is applied because the applicant entered Hungary irregularly or extended his or her stay illegally and did not ask for asylum within reasonable time although he or she would have had the chance to do so.

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

Since March 2017, most asylum applications are examined in the transit zones and asylum seekers are required to remain in these transit zones, with the exception of unaccompanied children below the age of 14, who are placed in a childcare facility, and with the exception of those lawfully staying in the territory. In September 2017, the HHC published an information note on the asylum situation in Hungary following two years of successive reforms.[23] In July 2019, the HHC published an information note on the asylum situation one year after the legal changes introduced in July 2018.[24]

[23] HHC, *Two years after: What's Left of Refugee Protection in Hungary?*, September 2017, available at: http://bit.ly/2EdCWqm.

[24] 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.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

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. So-called "transit zones" have been established as parts of the fence. The two transit zones along the Serbian border are located in **Tompa** and **Röszke**, while **Beremend** and **Letenye** are the transit zones along the Croatian border (these two were never operational). They consist of a series of containers, which host actors in a refugee status determination procedure. The chain of authorities inhabiting the linked containers starts with the police who record the flight route, then, if an asylum application is submitted, a refugee officer to accept it, and finally, a judge in a "court hearing room", who may only be present via a videoconference;[25] in the past, a court clerk could also have issued the judgment, but as of 2018 they are no longer entitled to do so.[26] After the construction of the fences, the number of asylum seekers arriving in Hungary dropped significantly. However, this is not due to the people not wishing to enter Hungary because of the fence, but due to the entry quota imposed by the NDGAP and former IAO, as discussed below. 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 to Europe.[27]

According to government statements, on 15-16 September 2015 only 185 asylum seekers were allowed to enter the transit zones, while in **Röszke** many hundreds of others – mainly Syrian refugees – were waiting outside, without any services (food, shelter etc.) provided by either the Serbian or the Hungarian state. The HHC witnessed that only very few asylum seekers were allowed to enter the transit zone, sometimes literally not a single person was let in for hours. In 2016, only 20-30 persons per day were let in at each transit zone.[28] From November 2016, only 10 persons were let in per day and only through working days, due to the changes in working hours of the former IAO. In 2017, only 5 persons were let in per day in each transit zone. From 23 January 2018 until the end of 2019, only one person was let in each transit zone per day, and sometimes even this low quota was not followed.[29] For example in the first week of July 2018, no asylum seeker was allowed to enter into the transit zones[30] and since mid-December 2019 no asylum seeker is allowed to enter the Tompa transit zone. The above-described policy hinders access to the asylum procedure for most asylum seekers arriving at this border section of the EU.

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25 B. Nagy, 'Parallel realities: Refugees seeking asylum in Europe and Hungary's reaction', 4 November 2015, available at: http://bit.ly/1LjTg3S.

26 Section 94 of Act CXLIII of 2017 amending certain acts relating to migration.

27 See Frontex, *Migratory routes map*, available at: http://bit.ly/1FZMUYU.

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

29 Info Park, 'Hungary reduces quota for regular entry into asylum procedures', 25 January 2018, available at: http://bit.ly/2Fiaq8i; UNHCR, 'Hungary: UNHCR dismayed over further border restrictions and draft law targeting NGOs working with asylum-seekers and refugees', 16 February 2018, available at: https://bit.ly/2SbVVaV; FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: https://bit.ly/2To4QI2.

30 FRA, *Periodic data collection on the migration situation in the EU*, July 2018, available at: https://bit.ly/2uLK0Id.

On 19 July 2018, the European Commission decided to refer Hungary to the Court of Justice of the European Union (CJEU) for non-compliance of its asylum and return legislation with EU law.[31] Among other issues, the Commission considers that Hungarian legislation falls short of the requirements of the recast Asylum Procedures Directive as it only allows asylum applications to be submitted within such transit zones where access is granted only to a limited number of persons and after excessively long waiting periods.

The NDGAP decides exactly who can enter the transit zone on a particular day. Beginning in March 2016, an ever-growing number of migrants continued to gather in the "pre-transit zones", which are areas partly on Hungarian territory that are sealed off from the actual transit zones by fences in the direction of Serbia. Here, migrants waited in the hope of entering the territory and the asylum procedure of Hungary in a lawful manner. Approximately one-third of those waiting to access the transit zones were children. Although parts of the pre-transit zones are physically located on Hungarian soil, they are considered to be in "no man's land" by Hungarian authorities, who provided little to nothing to meet basic human needs or human rights. Migrants waited idly in dire conditions.[32]

In autumn 2016, the Serbian authorities decided to terminate the practice of waiting in the pre-transit zone and now all asylum seekers that wish to be put on the waiting list in order to be let to the transit zone in Hungary need to be registered in one of the temporary reception centres in Serbia and wait there until it is their turn to enter the transit zone.[33] The only person staying in the pre-transit zone for longer periods of time is the community leader, as discussed below. People who are about to enter the transit zone are brought to the pre-transit zone usually one day in advance of their entry. Since April 2018, the role of the community leader in the pre-transit zone is shared between the fathers of the families from the Subotica reception centre. They rotate, with each staying for about 4 days in the pre-transit zone. This is necessary in order to prevent people from accessing pre-transit area and jumping the list. In addition, since there is no direct communication between Hungarian and Serbian authorities, fathers are used for communication between the authorities. The fathers stay in the heated tent in **Röszke** and in the abandoned duty free shop in **Tompa**. Hungarian authorities give them food once a day.

The clear criteria that determine who is allowed access to the transit zone are time of arrival and vulnerability. The other determining factors are not so clear. In **Röszke,** there are three separate lists for those waiting: one for families, one for unaccompanied children and one for single men. In **Tompa** there is a single list containing the names of all three groups. The names are put on the list by the Serbian Commissariat for Refugees, once the people register at the temporary reception centres in Serbia. The list is then communicated to the so-called community leader (an asylum seeker) who is chosen by the Commissariat and who is placed in the pre-transit zone. The community leader then communicates the list to the Hungarian authorities. The Hungarian authorities allow people into the transit zones based on these lists and communicate the names of the people entering the transit zone in the following days to the community leader, who then informs the Commissariat who then informs the people. There is no official communication between the Hungarian and Serbian authorities on this matter. The HHC observes that the waiting time in Serbia is already exceeding a year.

Several abuses were reported regarding the use of the list.[34] Families with small children enjoy priority over single men and usually some unaccompanied children are also allowed entry each Thursday. However, there are other determining factors when it comes to entry, which are not so clear and this lack of clarity further frustrates those waiting. The HHC believes that these lists should be considered as

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31 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.

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

33 On the temporary reception centres, see AIDA, Country Report Serbia, 2018 Update, March 2019, available at: https://bit.ly/2CFJ8sK, 58.

34 See e.g. Council of Europe Lanzarote Committee, *Special report further to a visit to transit zones at the Serbian/Hungarian border*, T-ES(2017)11, 30 January 2018, available at http://bit.ly/2C6bYyZ, 13.

expressions of intention to seek asylum in Hungary and according to the recast Asylum Procedures Directive, Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible.[35] Having to wait for more than a year in order to be let in the transit zone is therefore clearly against the recast Asylum Procedures Directive. Information on waiting lists was confirmed in several reports.[36]

1.2. Irregular entry and police violence

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

While their asylum applications have suspensive effect, and a "penitentiary judge" can impose a prohibition on enforcement of a court sentence of expulsion where the individual concerned is entitled to international protection,[37] that prohibition does not annul the penal sentence, let alone the conviction. UNHCR thus considers that Hungary's law and practice in relation to the prosecution of asylum seekers for unauthorised crossing of the border fence is likely to be at variance with obligations under international and EU law.[38]

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 procedures started at the Szeged Criminal Court under the new Criminal Code for illegally crossing the border fence. In 2,843 cases, the decisions became final. Since 10 July 2016, only seven cases have been tried for "illegally crossing the border fence". In 2017, no such case was reported. The HHC is not aware of any case in 2018 and the National Judicial Office did not provide any information in this regard, as they do not have relevant statistics.[39] According to the Police, there was one criminal procedure started with the charge of illegal crossing of the border fence in 2019. As for the outcome of the procedure (i.e. the judicial judgment) the Police does not have data.[40]

Legal amendments that entered into force on 5 July 2016 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).[41] Legalising pushbacks from within Hungarian territory denies asylum seekers the right to seek international protection, in breach of international and EU law,[42] and according to the HHC constitutes a violation of Article 4 of Protocol 4 of the European Convention

35 Article 6(2) recast Asylum Procedures Directive.

36 Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary*, 12-16 June 2017, available at http://bit.ly/2nLosa8; Heinrich Böll Stiftung, 'The game of hope – Asylum seekers at the Serbian-Hungarian border', 11 December 2017, available at: https://bit.ly/2DQkKV0; FRA, *Periodic data collection on the migration situation in the EU*, February 2018, available at: https://bit.ly/2UyOywb; GRETA, *Report on Hungary*, GRETA(2018)13, 27 April 2018, available at: https://bit.ly/2GxAEY0.

37 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."

38 UNHCR, *Hungary as a country of asylum*, May 2016, available at: http://bit.ly/1XmHUGA, paras 60-62.

39 Information provided by the National Judicial Office, 8 February 2019.

40 Information provided by the Police, 17 January 2020.

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

42 *Ibid*.

on Human Rights (ECHR). Those pushed back have no practical opportunities to file a complaint. As a result of the legalisation of pushbacks by the "8-km rule", in the period of 5 July and 31 December 2016, 19,057 migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border.[43] These migrants were not only denied the right to apply for international protection, despite most of them coming from war zones such as Syria, Iraq or Afghanistan, but many of them were also physically abused by personnel in uniforms and injured as a consequence. Two HHC cases on collective expulsion addressing the unlawful pushbacks were communicated in 2017 by the European Court of Human Rights (ECtHR).[44]

The Human Rights Committee has criticised this practice and recommended to the Hungarian Government to repeal the pushback law established in June 2016 and the amendments thereto, and to legally ensure that the removal of an individual is always consistent with the State party's *non-refoulement* obligations and to refrain from collective expulsion of aliens and ensure an objective, individualised assessment of the level of protection available in "safe third countries"; and to ensure that force or physical restraint is not applied against migrants, except under strict conditions of necessity and proportionality, and ensure that all allegations of use of force against them are promptly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are offered reparation.[45]

GRETA noted that irregular migrants and asylum seekers are groups, which are particularly vulnerable to trafficking. As a consequence, collective expulsions negatively affect the detection of victims of trafficking amongst them and raise grave concerns as regards Hungary's compliance with certain obligations of the Council of Europe Convention on Action against Trafficking in Human Beings, including the positive obligations to identify victims of trafficking and to refer them to assistance, and to conduct a pre-removal risk assessment to ensure compliance with the obligation of *non-refoulement*.[46]

One of the key elements of the 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 zone to the entire territory of Hungary. This includes the 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 2017, 9,136 migrants were pushed back from the territory of Hungary to the external side of the border fence and 10,964 migrants were blocked entry at the border fence.[47] 4,151 pushbacks happened in 2018. The police in Hungary apprehended some 840 migrants in an irregular situation between 1 September and 31 October 2018; this occurred close to the border in all cases. According to the data of the National Headquarters of the Police, these persons were escorted back to the outer side of the fence at the Hungarian-Serbian border. In 2019, 11,101 migrants 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.[48]

The European Committee for the Prevention of Torture (CPT) concluded in its latest report on Hungary that although authorities often took photos of the apprehended migrants while escorting them back to the gates along the border fence, such photos were taken randomly and did not serve the purpose of

43 HHC, *Key asylum figures as of 1 January 2017*, available at: https://goo.gl/KdTy4V.
44 ECtHR, *Khurram v. Hungary*, Application No 12625/17; *H.K. v. Hungary*, Application No 18531/17, Communicated on 21 December 2017.
45 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.
46 GRETA, *Report on Hungary*, GRETA(2018)13, 27 April 2018, available at: https://bit.ly/2GxAEY0.
47 HHC, *Key asylum figures as of 1 January 2018*, available at: http://bit.ly/2mkueyK.
48 Information provided by the Police.

registration. Also in Hungary, the police and the army prevented 241 people from crossing the border into Hungary via the border fence, the National Headquarters of the Police reported.[49]

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.[50] His surviving brother is represented by the HHC and since a criminal investigation in relation to the tragic incident has been closed, the case is now pending at the ECtHR.[51]

The fact that violence against potential asylum seekers has been on the rise is further testified by the report of Human Rights Watch, published on 13 July 2016, citing various testimonies about brutality against migrants at the border.[52] Amnesty International researchers interviewed 18 people who entered Hungary irregularly in an attempt to claim asylum, often in groups, and who were pushed back, several violently. None of them had their individual situation assessed to determine the risks to the person or establish their asylum needs first. They were all sent back to Serbia across the border fence – sometimes through the hole they had cut themselves, sometimes through service doors – without any formal procedure. Most of them were informed in English that they needed to wait to enter the "transit zones", if they wished to seek asylum in Hungary, and that this is the only lawful way to enter the country. Some of the interviewees reported that they were shown an information note in their own language, advising them of the same. Most of them were photographed or filmed by police.[53] The doctors of MSF in Serbia treat injuries caused by Hungarian authorities on a daily basis. This shocking reality is evidenced by a set of video testimonies recorded by a Hungarian news portal on 24 August 2016 in English.[54] A Frontex spokesperson has described the situation in an article of the French newspaper Libération on 18 September 2016 as "well-documented abuses on the Hungary-Serbia border".[55] UNHCR also expressed its concerns about Hungary pushing asylum seekers back to Serbia.[56] In 2017, the following reports addressing these issues were published: a HHC report published jointly with regional partners entitled "Pushed Back at the Door",[57] the Oxfam report "A Dangerous 'game'",[58] the MSF report "Games of violence",[59] and the report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary.[60] The CPT published a report on their visit to Hungary in autumn 2017, which confirmed ill-treatment of migrants along the Hungarian-Serbian borders. Several migrants interviewed by the CPT confirmed that they had been physically mistreated by Hungarian

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49 FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: https://bit.ly/2To4QI2.

50 UNHCR, 'UNHCR alarmed at refugee death on Hungary-Serbia border', 6 June 2016, available at: https://bit.ly/2VIiBoC.

51 ECtHR, *Alhowais v. Hungary*, Application No. 59435/17, http://bit.ly/2NI7nf0.

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

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

54 HVG, 'Hat év a tranzitzónában? Akkorinkábbazillegálisút – riport a határról', 24 August 2016, available in Hungarian at: https://goo.gl/SR8rEY.

55 Libération, 'A la frontière serbe, Frontex s'embourbe dans la galère hongroise', 18 September 2016, available in French at: https://goo.gl/U7LwHv.

56 UNHCR, 'UNHCR concerned Hungary pushing asylum seekers back to Serbia', 15 July 2016, available at: https://goo.gl/T6GxCZ.

57 HHC et al., *Pushed back at the door: Denial of access to asylum in Eastern EU Member States*, 2017, available at: http://bit.ly/2jxcdLd.

58 Oxfam et al., *A dangerous 'game': The pushback of migrants, including refugees, at Europe's borders*, April 2017, available at: https://bit.ly/2x4Uyq1.

59 MSF, *Games of violence*, October 2017, available at: http://bit.ly/2Hy4edo.

60 Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary*, 12-16 June 2017, available at http://bit.ly/2nLosa8.

police officers in the context of their apprehension and escorting back through the border fence. The CPT delegation observed the signs of the recent traumatic injuries, which, in the view of the delegation's doctor, were consistent with the allegations of mistreatment.[61]

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".*[62] 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.[63] 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.[64]

In 2019, ECtHR communicated another case addressing ineffective investigation of police violence during a push back.[65] In light of the unprecedented number of reports about violence committed around the Hungarian-Serbian border, the HHC sent an official letter to the Police, urging investigations into the allegations already made on 14 June 2016.[66] The letter referred to, among others, testimonies given by unaccompanied minor asylum seekers, who told the HHC that the Hungarian Police hit and kicked them, and used gas spray against them. One of these children had visible injuries on his nose that he claimed were the result of an attack by a police dog released on him after he had been apprehended. The HHC requested that the Police launch an investigation immediately, and that steps be taken to ensure that police measures are lawful in all cases. On 23 June 2016, the Police responded by claiming that they "guarantee humane treatment and the insurance of fundamental human rights in all cases". The letter failed to address any of the reported abuses but promised to "pay particular attention" to instruct those on duty at and around the border to guarantee the lawfulness of police measures.[67]

In 2017, despite the fact that as many as 56 reports on abuse committed against migrants at the border have been filed and that the prosecutor's office has launched 50 investigations, only one member of the police and one member of the army have been convicted (fined) in court.[68]

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.[69] The Commission considers that within its territory, Hungary fails to provide effective access to asylum procedures as irregular migrants are escorted back across the border, even if they wish to apply for asylum.

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61 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/2TTgsTq.

62 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, http://bit.ly/2TwWsIO.

63 Council of Europe, Parliamentary Assembly: Pushback policies and practice in Council of Europe member States [Doc. 14909], 8 June 2019, http://bit.ly/30pgxm8.

64 Border Violence Monitoring Network, https://www.borderviolence.eu/.

65 Shahzad Khurram v. Hungary, Appl. No. 37967/18, http://bit.ly/30BPXWV.

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

67 See the Police's response in Hungarian at: http://bit.ly/29EdbiN.

68 444, 'A Honvédség és a rendőrség egy-egy beosztottját ítélték el eddig, mert migránsokat bántalmazott', 25 August 2017, available in Hungarian at: http://bit.ly/2Fjee9E.

69 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.

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

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

The application should be lodged in writing or orally and in person by the person seeking protection at the NDGAP.[70] If the person lawfully staying in Hungary seeking protection appears before another authority to lodge an application for asylum, that authority should inform the asylum seeker about where to turn to with his or her application. If the asylum claim is made in the course of immigration, petty offence or criminal procedures e.g. at the border or in detention, the proceeding authority (police, Immigration Department of the NDGAP, local authorities or court) 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						
2013	2014	2015	2016	2017	2018	2019
18,900	42,777	177,135	29,432	3,397	671	468

Source: NDGAP – Former IAO

C. Procedures

1. Regular procedure

As of 28 March 2017, asylum applications can 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, have to stay at the transit zones for the whole duration of their asylum procedure. The asylum procedure in the transit zone is 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".

[70] 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 2019: 234

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 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.[71]

The procedural deadline for issuing a decision on the merits is 60 days.[72] The amendment of 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 on one occasion before its expiry, by a maximum of 21 days. 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,
f. periods required to comply with a request.

In 2019, 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 privileged under the law are also not always decided within the deadline.

FRA reports (1 May–30 June 2018) that the length of asylum procedures vary significantly, and that in many cases the administrative decisions have been issued several months after the lodging of the asylum claim.[73]

In 2019, the delays in the asylum procedure grew significantly compared to previous years. The reasons behind this may vary significantly. On the one hand, the reorganisation of the asylum and immigration authority put a heavy burden on the staff and management. Several case officers would rather quit than work for the Police, which they considered to be in contrast with the nature of the asylum authority. The NDGAP's asylum units in regional directorates were terminated and their decision-making competence was transferred to the Budapest asylum unit. Furthermore, the IAO's transformation into a branch organisation of the Police meant that asylum officers needed to receive training and pass physical and psychological exams in order to be appointed as police officers. All these factors inevitably led to increased delays in decision-making and standstills in several cases.

71 Section 47(2) Asylum Act.
72 Section 47(3) Asylum Act.
73 FRA, *Periodic data collection on the migration situation in the EU*, July 2018, available at: https://bit.ly/2uLK0Id.

The HHC observed the general practice that decisions were not notified in time (3 days) after their issuance, which is contrary to the Asylum Act.[74] This occasionally still occurred in 2019 and the NDGAP had to pay a fine of approximately 30 EUR (i.e. 10,000 HUF) for breaching this deadline.

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 its application 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 limit and, in the absence of the document or statement, the application cannot be decided on."[75] The HHC has not observed any such termination practice.

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 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. In 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 practice, according to the HHC, 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. In 2019, the HHC observed significantly extended asylum procedures. This is due to the fact that most of the negative decisions are quashed at the court and the NDGAP has to conduct a new procedure that in many cases results in another negative decision that is then quashed again by the court. The average therefore increased to 6 – 10 months.

The HHC attorneys report that no COI is shared by the NDGAP with the applicants, before a decision in their asylum case is made. It is therefore not possible to provide any comments to the COI before the appeal phase. It is also quite common that nearly no COI is collected with regard to the reasonableness part of internal protection alternative (IPA). Or very often COI is just mentioned in the decision, but not quoted, only referred to in a footnote, only by a link and never by the exact location of the information in question (no pages are given). Furthermore, the NDGAP usually does not refer to COI from EASO and UNHCR and in those very rare cases when they do, they are presented selectively.

1.2. Prioritised examination and fast-track processing

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

74 Section 80/K(3) Asylum Act.
75 Section 32/I Asylum Act.

At the time of writing, there was one (former) unaccompanied minor in the transit zone of Tompa whose case represents the systematic delays and the NDGAP's attitude pretty well. He entered the transit zone of Röszke originally together with his uncle and uncle's partner on 3 January 2019 and asked for asylum immediately. While his story was closely linked to that of his relatives who were granted international protection, his asylum application was rejected. This meant that the relatives were transferred to an open camp while the minor had to stay in detention, practically becoming an unaccompanied child. The first procedure lasted 3 months. The Metropolitan Court ordered the NDGAP to conduct a new procedure, which started in 19 July 2019 and ended on 4 December 2019, lasting nearly five months. In January 2020, the minor turned eighteen and therefore 'aged out' of the special legal protection afforded to unaccompanied minors.

In case of an asylum seeker 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.[76] Note that the Government does not consider transit zones as detention; therefore the prioritisation does not apply there.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

The personal interview of the asylum seeker is mandatory in the asylum procedure. The NDGAP may omit the personal interview in the following cases, where the asylum seeker:[77]

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

The asylum seeker has a first interview usually immediately upon the entry into the transit zone, unless the interpreter is not available, in which case the interview is scheduled in the following days. During the asylum procedure, the asylum seeker can have one or more substantive interviews, where he or she is asked to explain in detail the reasons why he or she had to leave his or her country of origin.

More asylum seekers in the transit zones also complained to the HHC of the fact there were armed security guards present during the interviews, standing or sitting behind their backs. This made the asylum seekers feel extremely intimidated.

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 at the second time contradictions are clarified in the light of the country of origin information obtained by then.

[76] Section 35/A Asylum Act.
[77] Section 43 Asylum Act.

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.

In 2019, the NDGAP conducted a total of 549 personal interviews.[78]

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 his or her mother tongue or the language he or she understands orally and in writing during his or her asylum procedure. If the asylum application is submitted orally and the asylum seeker does not speak Hungarian, the 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 him or her, 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.[79] For asylum seekers who are facing gender-based persecution and make such a request, this designation is compulsory.[80] 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 his or her choice on grounds that his or her gender identity is different from the gender registered in the official database.[81] Nevertheless, the HHC is not aware of any gender or vulnerability-specific guidelines applicable to eligibility officers conducting interviews (see Special Procedural Guarantees).

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 his or her quality would not be the best. For example, in the **Vámosszabadi** refugee camp, the HHC lawyer reported that in all his cases regarding Nigerian clients, none of the English interpreters fully understood what the clients said; the lawyer had to help the interpreter. The same happened at the court. There was another case, where the interpreter did not speak English well enough to be able to translate; for example, he did not know the word "asylum".

In 2018, the HHC lawyer reported a bad experience with the interpreter in the case of a young Afghan girl detained in the transit zone. The interpreter and the case officer were in **Debrecen**, therefore the interview was conducted through videoconference. The girl talked about sexual violence and the interpreter and the case officer laughed, because the interpreter did not know a word in Hungarian language. In another case, upon the entry of an Afghan family in the **Röszke** transit zone, the interpreter in the police container (which is the first container the asylum seekers enter) told the asylum

78 Information provided by NDGAP, 3 February 2020.
79 Section 66(2) Asylum Decree.
80 Section 66(3) Asylum Decree.
81 Section 66(3a) Asylum Decree.

seeker that they should not choose the NGO attorney they wanted to, but the attorneys provided by the state legal aid system. The same interpreter also started to ask the father in the family why they had to flee Afghanistan, and the father felt very afraid and intimidated speaking about the reasons in front of his family members since he had to flee due to his sexual-emotional orientation. The father also considered the questions of the interpreter very inappropriate because there was no case officer present, and he thought interpreters should not ask questions without an official interview taking place. The same asylum seeker was also humiliated by the laughter of the interpreter who interpreted during his official asylum interview as he was describing the sensitive parts of his asylum story related to his sexual-emotional orientation.

In a case of Somali asylum seeker that started in summer 2018, the authorities could not find an interpreter for about a year. (Fortunately, the applicant was not staying in the transit zone through all this time).

An asylum seeker from Ghana entered the transit zone in July 2019, but was still not heard at the time of this update (January 2020). The attempts were made, but the client did not understand the interpreter and since then no new Hausi-Hungarian interpreter has been found. On the other hand, HHC lawyers are aware of good examples, as well, when upon the request of the converted Christian applicant from Afghanistan the former IAO respected the wish of the asylum seeker and appointed a Christian, Hungarian nationality interpreter who spoke perfectly the Farsi language and had a very sensitive manner towards the applicant.

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

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.

1.3.2. Videoconferencing

Interviews are frequently conducted through videoconferencing. It happens several times that there are more interpreters present in the same room in **Budapest** and having videoconferences with asylum seekers from the **transit zones**. On account of the noise, it is hard to hear and to concentrate on what the interpreter is 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. 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 he or she would then read it out to the applicant.

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. However, the HHC has observed that minutes of the interviews are systematically not read back to the asylum seekers in different locations, e.g. in **Békéscsaba** (which is now closed) and in the **Röszke** and **Tompa** transit zones. Furthermore, there was a case when the Afghan interpreter had so many interviews on the same day that she wanted to leave just before the read-back of the record. There are several cases where the courts would annul the former IAO's first instance decision and to order a new procedure to be carried out due to the inadequate interviews.[82] However, in 2018, as well as in 2019, the HHC lawyers in the transit zones observed that if they are present, the interview transcripts are always read back to the asylum seeker.

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 his or her mother tongue or in another language he or she understands. Together with this oral communication, the decision shall also be made available to the applicant in writing, but only in Hungarian. The HHC's attorneys working at the **transit zones** observed that most decisions are not translated to the clients by the interpreters. Instead, the NDGAP uses case officers or even other clients to announce the main points of the decision. The justification for a decision reached is – apart from some exceptions - almost never explained to the asylum seeker. However, in 2018 as well as in 2019, the HHC's lawyers working in the transit zone reported that usually the decision is translated to the applicant by an interpreter. Whether the justification is translated depends on the case officer.

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

Competent court

As regards jurisdiction in asylum cases, there has been a dispute going on between the courts in 2018. According to the Code on Administrative Litigation that came into force on 1 January 2018, the asylum judicial procedure shall be conducted by the court under whose territorial jurisdiction the administrative activity subject to the dispute is performed. If the administrative activity is performed in **Budapest**, then, in accordance with Section 13(3)(a) of the aforementioned Code the Metropolitan Administrative and Labour Court has exclusive territorial jurisdiction. Prior to the legislative changes, the territorial jurisdiction was defined by the residence of the actor, thus asylum judicial reviews initiated from the **transit zones** were adjudicated by Szeged Administrative and Labour Court.

Since April 2018 the **Szeged** Administrative and Labour Court has declared lack of jurisdiction in asylum cases based on the argument that the administrative activity is performed in **Budapest**. Given that the former IAO (and now NDGAP) is a Central Office and the territorial organs have no territorial

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

competence, the decisions are issued in Budapest. Therefore, it referred the appeals to the Metropolitan Administrative and Labour Court that became exclusively competent in asylum cases.

Nonetheless, in October 2018, the Metropolitan Administrative and Labour Court reinterpreted the jurisdiction and, by referring to a ruling of the Metropolitan Regional Court, claimed that the administrative activity shall be determined based on the place of issuance of the decision. Since none of the courts took responsibility on conducting the judicial review, the Metropolitan Regional Court decided on the jurisdiction in November last year. The Court rendered the jurisdiction to the **Szeged** Administrative and Labour Court based on the argument that the place of issuance of the decision determines the place of the activity performed by the administrative body. Therefore, since November 2018 decisions issued in the transit zones are adjudicated in **Szeged**.

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 will however change again, when the amendments to the Code of Administrative Court Procedure will enter into force (April 2020), following which the administrative branches of the district courts will have jurisdiction.

Time limits

The deadline for lodging a request for judicial review is only 8 days.[83] The drastic decrease of the time limit to challenge the NDGAP's (and before the IAO's) decision, 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.[84] 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 is not informed about the benefits the refugee status would bring him or her (e.g. possibility of family reunification under beneficial conditions). Within 8 days, it is sometimes impossible to meet a lawyer and the person might miss the deadline for the appeal.

Keeping with the deadline proved especially difficult in the case of unaccompanied children since it requires discussions with a lawyer and the arrangement of the minor's personal appearance before the asylum authority. The understaffed Children's Home in **Fót** may find it difficult to carry out these tasks on time. A shortage in cars and drivers remained to be a recurring problem throughout 2019.

There was one case in 2017 when the Administrative and Labour Court of Budapest accepted the appeal of an unaccompanied minor, although it was submitted some 20 days late. The minor argued that the psychological burden of coping with the traumatic experiences in the Röszke transit zone and the time needed to settle in at his new place of stay prevented him from meeting the extremely short deadline. In another case in 2018, the Metropolitan Court accepted the late appeal of a young adult in aftercare, whose mentor failed to pass him the former IAO's letters.

The request for judicial review does not have a suspensive effect. The Asylum Act does not specifically say that appeals do not have a suspensive effect, but the amendments in 2015 simply removed the provision on suspensive effect, with explanation that the Asylum Procedures Directive and the right to an effective remedy do not require an automatic suspensive effect, but the suspensive effect should be requested. However in practice, the attorneys report different approaches. Some do not request the suspensive effect, while others do. But the lack of suspensive effect in regular asylum procedure was never an issue in practice. The HHC is not aware of any case, where an alien policing procedure would have been started before the appeal was decided.

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83 Section 68 Asylum Act.

84 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.

Section 68(3) of the Asylum Act provides that the court should take a decision on the request for judicial review within 60 days. However, in practice, the appeal procedure takes a bit longer, around 3 months or even more, depending on the number of hearings the court holds in a case. A preliminary reference was asked, 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.[85]

Hearing

The hearing is only mandatory if the person is in detention. And even this is subject to some exceptions, where:[86]

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

At the judicial stage, asylum seekers held in the **transit zones** are not heard if the case is adjudicated by the Metropolitan Court. The reason is that the technical requirements are not met by the court, as the videoconference system is not set up at all and the court would not want to summon the clients – even if there is a credibility issue – from the transit zones, as that would require transport by the police which they deem problematic in terms of costs, time, logistics etc. This is extremely problematic as the Metropolitan Court has the sole territorial jurisdiction to adjudicate all asylum cases, as mentioned above. This will change in April 2020. HHC is aware of a recent case, where the Metropolitan Court judge actually ordered the applicants from the transit zone to be brought to the Court for a hearing. But the NDGAP filed an objection, claiming that according to the law, due to the mass migration crisis, the hearing can only take place through the video conference and that the law does not allow the applicants to be brought to the court. After that the judge established that since there is no possibility to conduct a videoconference at the Metropolitan Court, the applicants will not be heard.[87]

Interpreters are provided and paid for by the court. For rare languages, e.g., Oromo there is usually one or two interpreters nationwide and if he or she travels 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.[88] However, the personal data, including nationality, of the appellant are deleted from the published decisions.

In the summer of 2018, several decisions were issued by the court in which it rejected the appeals of asylum seekers held in the transit zones, claiming that the applicants did not specify the legal harm they had suffered by the former IAO decision. The court argued that applicants were represented by legal representatives, therefore the Code on Administrative Litigation did not allow the court to call the applicant to remedy this deficiency. The HHC appealed these decisions, arguing that although the applicants had lawyers, upon submitting the appeal the asylum seekers acted in person and not by their legal representative. The Asylum Act provides that the power of attorney does not cover those acts and statements that must be taken in person.[89] Therefore, the court should have called the applicant to remedy the deficiency.

In December 2018, the Metropolitan Regional Court decided on the appeal and annulled the decision of the Metropolitan Administrative and Labour Court. It agreed with the asylum seeker that regarding the

85 Opinion of advocate general Bobek (CJEU), Case C-406/18, *PG v. Bevándorlási és Menekültügyi Hivatal*, 5 December 2019.
86 Section 68(4) Asylum Act.
87 17.K.33.700/2019/10, 3 January 2020.
88 Asylum cases published on the Hungarian court portal are available in Hungarian at: http://bit.ly/1IwxZWq.
89 Section 32/T(4) Asylum Act.

peculiarities of the asylum procedure and the circumstances of the submission of the appeal, the lack of detailed specification of the legal injury could not be the reason for rejecting the appeal.[90] The Court also agreed that at the time of the submission of the appeal the applicant acted in person and not by his legal representative. In January 2019, another council of the Metropolitan Regional Court came to the opposite conclusion and approved the decision of the Metropolitan Administrative and Labour Court. The Court interpreted the power of attorney in a way that it covers the judicial procedure, as well, therefore the applicant is considered as acting with a lawyer at the time of the appeal. The judgment also stated the legal representative was present at the delivery of the decision so the lawyer could have completed the appeal of the asylum seeker.[91] In 2019, the HHC attorneys made sure that the initial appeal of the applicants already contains the specifications of legal harm suffered by a negative decision or is supplemented within the deadline. The HHC is also aware of the case, where the Metropolitan Court actually called the asylum seeker to supplement his appeal.

The court carries out an assessment of both points of fact and law as they exist at the date when the court's decision is made (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.[92] On 29 July 2019, the CJEU delivered its ruling on the question of compatibility of such a remedy with the right to an effective remedy under Article 47 of the EU Charter.[93] 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 game between the asylum authority and the courts.

There were 166 appeals submitted against the decisions of the NDGAP in 2019. The courts issued a total of 255 decisions in asylum cases in 2019. In 57 cases, the courts rejected the appeal of the asylum seekers while in 173 cases the courts annulled or overturned the decisions of NDGAP and ordered them to conduct a new procedure or granted international protection. In 17 cases courts terminated the judicial procedure[94] and in 7 cases rejected the appeals as inadmissible.[95]

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:[96] ☒ 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

90 Metropolitan Regional Court, Decision 12.Kpkf.671.039/2018/2, 11 December 2018.
91 Metropolitan Regional Court, Decision 3.Kpkf.671.107/.2018/4, 9 January 2019.
92 Section 68(5) Asylum Act.
93 CJEU, Case C-556/17, *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal*, 29 July 2019.
94 Information provided by the National Judicial Office, 3 February 2020.
95 Information provided by NDGAP, 3 February 2020.
96 This refers both to state-funded and NGO-funded legal assistance.

income or financial situation, merely on the basis of their statement regarding their income and financial situation.[97]

The Legal Aid Act sets out the rules for free of charge, state-funded legal assistance provided to asylum seekers. Sections 4(b) and 5(2)(d) provide that asylum applicants are entitled to free legal aid if they are entitled to receive benefits and support under the Asylum Act. Section 3(1)(e) provides that legal aid shall be available to those who are eligible for it, as long as the person is involved in a public administrative procedure and needs legal advice in order to understand and exercise his or her rights and obligations, or requires assistance with the drafting of legal documents or any submissions. Legal aid is not available for legal representation during public administrative procedures. Therefore, in the asylum context, the presence of a legal representative during the asylum interview conducted by the NDGAP is not covered by the legal aid scheme. In the transit zones asylum seekers requesting assistance of lawyers at their first interview would get such assistance only occasionally, depending on whether the State legal aid lawyers are at that moment present in the transit zone. The interview would not be postponed in order to wait for the lawyer to arrive.

Since mid-November 2018, the former IAO had been rejecting the power of attorney of the HHC attorney providing legal representation in the transit zones, claiming that the power of attorney is not in compliance with the requirement of the private documents with full probative value, as it did not contain the signature of the interpreter. The referred section requires the power of attorney to contain the reference as to the asylum seeker being informed about its contents by (either of the witnesses or) the counter-signatory.[98] The HHC argues that the authorisation explicitly states that an interpreter informed the applicant about the contents thereof, which is confirmed by the signature of the attorney. Furthermore, the HHC is of the view that this practice is unlawful and has challenged the decisions of the former IAO before the court. As a result of the judicial review, in January 2019 the Szeged Administrative and Labour Court ruled on the question and confirmed the arguments of the attorney. It declared that the power of attorney is a private document having full probative value and that the former IAO violated the right to lawyer of the applicant. Therefore, the Court annulled the ruling of the former IAO and ordered the conduct of a new procedure.[99] Since then no such problem has arisen.

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 emphasizes the right of the legal representative for being present at the personal interview even if the interview was conducted by a closed telecommunication network (i.e. either the translator or the case officer is not present at the sight of the asylum seeker).[100]

Legal aid providers may be attorneys, NGOs or law schools who have registered with the Legal Aid Service of the Judicial Affairs Office of the Ministry of Justice and Public Administration.[101] 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. However, in the transit zone, asylum seekers cannot choose the state legal aid representative from the list.

97 Section 5(2)(d) Legal Aid Act.
98 Section 6(7) Civil Code.
99 Administrative and Labour Court of Szeged, Decision 19.K.27.020/2019/9, 22 January 2019.
100 43(5) Asylum Act, adopted by the Act CXXXIII of 2018 and in effect since 1 January 2019.
101 Chapter VIII Legal Aid Act.

In 2019, the NDGAP – following a series of Court rulings[102] – abandoned its practice of not allowing lawyers who are not yet members of the Bar Association to represent asylum seekers. This practice was started in 2017 and was in stark contrast with the wording of the Asylum Act and the Act on General Rules of Administrative Proceedings. Consequently, HHC lawyers who are not yet members of the Bar Association can again represent asylum seekers in their administrative proceedings.

Although asylum seekers in the transit zone are informed about the possibility to request legal assistance from state legal aid lawyers, this assistance has been reported as not effective. Asylum seekers have complained that the state legal aid lawyers rarely meet them and do not give them any information about the procedure. They rarely write effective submissions for the clients.

The HHC attorneys or any other non-government affiliated attorneys do not have access to the transit zones. The 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 container located outside the living sector of the transit zone. This way the legal aid in the transit zone is seriously obstructed, as free legal advice does not reach everyone in the transit zone, but only those explicitly asking for it. Besides, it is impossible to obtain legal assistance by the HHC attorney during the first NDGAP interview, since the interview usually happens immediately when the person is admitted to the transit zone and therefore there is no opportunity to access an attorney first. If an asylum seeker would request assistance from a HHC attorney at the first interview, the NDGAP would never postpone the interview and inform the HHC attorney that his or her presence is requested. HHC attorneys therefore usually get involved only in subsequent interviews. The phone signal in the transit zone is also very weak, which often obstructs the interpretation conducted by the phone during lawyer-client meetings.

Since 1 September 2016, the Legal Aid Service is run by the Ministry of Interior. In 2019, state legal aid in extrajudicial procedures was provided in 103 asylum related cases.[103]

State-funded legal aid in asylum procedures: 2019		
	Extrajudicial procedures	Court procedures
Total requests made and granted	**103**	**9**
Bács-Kiskun County (Tompa)	16	2
Csongrád County (Röszke)	16	4
Baranya County	0	1
Jász-Nagykun-Szolnok County	1	0
Szabolcs-Szatmár-Bereg County	70	2

Source: Ministry of Interior, 31 January 2020 and 6 March 2020.

As to the high number of applicants for state legal aid in Szabolcs-Szatmár-Bereg County – especially in light of the 40 asylum seekers detained in Nyírbátor in 2019 according to the NDGAP (see chapter on Detention of Asylum-seekers) - the Ministry of Interior did not provide any reasoning. Apart from Nyírbátor detention centre there is no reception centre functioning in that county, therefore the significant difference in numbers of applications for state legal aid in respect to Szabolcs-Szatmár Bereg County is not clear.

According to the Ministry of Interior, in asylum cases there were only four persons providing legal aid throughout 2019.

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102 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.

103 Information provided by the Ministry of Interior, 31 January and 6 March 2020.

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 2019, despite the continuous governmental attacks on the organisation and the significant drop in the numbers of asylum seekers, the HHC provided legal counselling to 864 asylum seekers, an increase compared to the year before. Among these cases, the HHC provided legal representation in 316 cases. Only 20 asylum seekers received some form of international protection, which demonstrates the gross dysfunctionality of the Hungarian asylum system. The HHC won nearly 90% of the cases where it provided legal representation for asylum seekers before domestic courts. This is a clear indication of the quality of the decisions taken by the asylum authority, as nearly all asylum seekers in Hungary are represented by the HHC.

2. Dublin

2.1. General

Dublin statistics: 2019

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	200	28	**Total**	1697	1
Bulgaria	113	0	France	1204	0
Germany	32	11	Belgium	99	0
Austria	13	5	Ireland	98	0
Greece	10	0	Austria	89	1

Source: NDGAP

In 2019, one asylum seeker was transferred from Austria to Hungary.

2.1.1. Application of the Dublin criteria

The Dublin procedure is applied whenever the criteria of the Dublin III Regulation are met, and most outgoing requests are issued based on the criteria of irregular entry or a previous application in another Member State. Whereas in 2016, the majority of the 5,619 outgoing requests issued by Hungary were addressed to Greece, most requests issued in 2017, 2018 and 2019 concerned Bulgaria.

If an asylum seeker informs the NDGAP that he or she has 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. The 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. HHC lawyers and attorneys experienced an increasingly strict and negligent attitude from the German asylum authority, BAMF, which has been even stricter in 2019.

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 have 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 it can only be invoked by Bulgaria. The Hungarian authority's stance on this did not change, however, Bulgaria no longer accepts incoming requests from Hungary.

In 2019, the HHC successfully facilitated Dublin procedures for unaccompanied minors to Germany and Norway, based on Article 8 (1) of the Dublin Regulation. While the Norwegian authorities proceeded in a prompt and speedy manner, the German authorities, as referred to above, unnecessarily prolonged the cases and issued very schematic rejection decisions before finally taking responsibility.

2.1.2. The dependent persons and discretionary clauses

Hungary decided in a total of 227 cases[104] in 2017, in 82 cases in 2018 and in 17 cases in 2019 under Section 17(1) of Dublin Regulation to examine an application for international protection itself.[105]

Even though in 2018 the former IAO refused to provide the necessary data, in 2019 NDGAP made them available upon request of HHC.[106] According to that, Hungary established the responsibility of other Member States in 1 case under the "humanitarian clause". Pursuant to the humanitarian clause of Dublin Regulation there was no request by other Member States sent to Hungary in 2019. There were 18 cases in 2019 where "sovereignty clause" was applied, while no case where dependent persons clause was applied.

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? 43,92 days[107]

The Dublin Unit had 15 NDGAP staff members in 2019. However, on 31 December 2019 the number was 7.

Where an asylum seeker refuses to have his or her fingerprints taken, this can be a ground for an accelerated procedure,[108] or the NDGAP may proceed with taking a decision on the merits of the application without conducting a personal interview.[109]

104 Once in relation to **Germany**, at another time regarding **Bulgaria** and in 225 cases the former IAO examined the application in relation to **Greece**.
105 Information provided by former IAO, 12 February 2018; 12 February 2019; and by NDGAP on 3 February 2020.
106 Information provided by NGDAP on 3 February 2020.
107 Information provided by NGDAP on 3 February 2020.
108 Section 51(7)(i) Asylum Act.
109 Section 66(2)(f) Asylum Act.

If a Dublin procedure is initiated, the procedure is suspended until the issuance of a decision determining the country responsible for examining the asylum claim.[110] The suspension ruling cannot be subject to individual appeal.[111] 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 it notes the existence of vulnerability factors already in the request sent to the other EU Member State and, if necessary, asks for individual guarantees. Nonetheless, the former IAO and NDGAP do not have any statistics on the number of requests of individual guarantees. The request of individual guarantees concerns the treatment and the 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 contain 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).

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.[112] Once the NDGAP issues a Dublin decision, the asylum seeker can no longer withdraw his or her asylum application.[113]

All asylum seekers, including asylum seekers under Dublin procedure, except minors below 14 years of age are held in transit zones for the whole duration of the asylum procedure (including Dublin procedure).

The transfer procedure to the responsible Member State is organised by the Dublin 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 his or her 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 NGDAP the average duration between the request and the execution of the transfer is 99,57 days. If another Member State has taken responsibility the average duration between the acceptance of the responsibility and the execution of the transfer is 43,92 days.[114]

110 Section 49(2) Asylum Act.
111 Section 49(3) Asylum Act.
112 Section 83(3) Asylum Decree.
113 Section 49(4) Asylum Act.
114 Information provided by NGDAP on 3 February 2020.

In 2019, Hungary issued 200 outgoing requests and carried out 28 transfers, thereby indicating a 14% transfer rate.

2.3. Personal interview

Indicators: Dublin: Personal Interview
☐ Same as regular procedure

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

There is no special interview conducted in the Dublin procedure. The information necessary for the Dublin procedure is obtained in the first interview with the NDGAP, upon submission of asylum application, but usually only in relation to the way of travelling and family members. According to the HHC, this is contrary to Articles 4 and 5 of the Dublin Regulation.

Until recently, according to the HHC's experience, asylum seekers were rarely asked about the reasons for leaving another EU Member State. This was particularly problematic because the NDGAP takes the decision on transfer without being aware of any potential problems that the applicant could have experienced in the responsible Member State. This problem further escalates at the appeal stage since there the hearing is excluded by law. Therefore, asylum seekers never actually got a chance to explain why they believe return to a responsible Member State would violate their rights. In one case for example, the applicant did not even have a regular interview, the former IAO only checked his fingerprints and issued a Dublin transfer decision for **Greece**. The case reached the Court only after 8 months because of the delay in communication of the Dublin decision to the applicant and finally the court quashed the decision due to the procedural mistakes.[115] In another case, the applicant was asked during the interview about Serbia and informed that Serbia is considered as a safe third country and that he had 3 days to submit the additional evidence why his return to Serbia would not be safe. After that, the applicant received a Dublin decision ordering his transfer to Greece.

In 2018, as well as in 2019, 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.[116] The extremely short time limit of 3 days for challenging a Dublin transfer does not appear to reflect the "reasonable" deadline for appeal under Article 27(2) of the Dublin III Regulation or the right to an effective remedy under Article 13 ECHR.[117]

115 Metropolitan Court, Decision No 35.Kpk.46.367/2016/6.
116 Section 49(7) Asylum Act.
117 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*

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.[118]

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.[119] 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.[120] 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 he or she left the responsible Member State and, since the court does not hold a hearing, this information never reaches the court either. In 2018, as well as in 2019, the HHC observed that the interview questions did touch upon the conditions in the EU countries on the applicants' journey. 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,[121] according to the TCN Act and Asylum Act this request does not have suspensive effect either.[122] 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.[123] 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. Further on, the court decisions were often delivered by the court clerk and not by the judge. However, this has changed from 2018, since according to the new amendments the clerks can no longer issue judgments.[124]

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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.

118 Section 49(7) Asylum Act.

119 Section 49(8) Asylum Act.

120 Section 49(8) Asylum Act.

121 Article 27(3) Dublin III Regulation.

122 Section 49(9) Asylum Act.

123 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.

124 Section 94 of Act CXLIII of 2017 amending certain acts relating to migration.

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 short deadlines (only 3 days to lodge an appeal) and the absence of a right to a hearing before the court. In such a short time it is hard to get access to legal assistance, which seems even more crucial since there is no right to a hearing. The importance of legal assistance is on the other hand seriously restricted since the courts are only performing an *ex tunc* examination and do not want to take into account any new evidence presented during the judicial review procedure.

Asylum seekers and their legal representatives do not have any information on the procedural steps taken in the Dublin proceudre, 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.

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*,[125] transfers to Greece have 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. The former IAO was of the opinion that the *M.S.S.* case was no longer applicable, since Greece had received substantial financial support and the reception conditions in Greece were not worse than in some other EU countries. In some cases, the HHC lawyers successfully challenged such decisions in the domestic courts and in two cases the HHC obtained Rule 39 interim measures from the ECtHR, because the domestic courts confirmed the transfer decision of the former IAO.[126] In both cases, the court decision was not issued by a judge but by a court secretary. Both cases were struck out in 2017 because the applicants left Hungary and the Court was of the opinion that they are no longer at risk of being sent back to Greece because of the constrained resumption of Dublin transfers to Greece and the cautious treatment of transfers to Hungary.[127]

125 ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.
126 HHC, *Hungary: Update on Dublin transfers*, 14 December 2016, available at: https://goo.gl/Fm00tF.
127 ECtHR, *M.S. v. Hungary*, Application No 64194/16 and *H.J. v. Hungary*, Application No 70984/16.

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

However, in December 2016, the practice changed again and no more Dublin transfer decisions to Greece are issued. The same is valid for 2017, 2018 and 2019.

Bulgaria

Hungary has not suspended transfers to Bulgaria, even after UNHCR's call in January 2014 to temporarily suspend such transfers because of the risk of inhuman and degrading treatment due to systemic deficiencies in reception conditions and asylum procedures in Bulgaria.[128] The HHC lawyers in 2016 obtained two interim measures from the United Nations Human Rights Committee (UNHRC) regarding returns of persons with PTSD to Bulgaria.[129] In 2017, another interim measure was granted by the UNHRC, but the government did not respect the granted interim measure and deported the applicant to Bulgaria. All three cases are still pending. Meanwhile, in one of the three cases the former IAO established the responsibility of Hungary based on Article 29(1) and (2) of the Dublin Regulation and is currently conducting the asylum procedure on the merits.

The HHC is aware of a positive decision from the Szeged Court, which stopped a transfer of an Iraqi family with four small children to Bulgaria under the Dublin III Regulation. The wife in the family was 8 months pregnant with the fifth child when the Szeged Administrative and Labour Court ruled on 3 July 2017 that due to her pregnancy, they were in need of special treatment and therefore their transfer to Bulgaria could jeopardize the life of the unborn baby and the wife, which lead the court to the conclusion that their transfer would be unlawful.[130]

In a case of two brothers, the Szeged Administrative and Labour Court annulled a Dublin decision in 2018, reasoning that since one brother was under 14, Hungary is responsible. As to the other brother, the Court applied Article 10 of the Dublin Regulation.[131]

The HHC observed that in 2018 Bulgaria stopped accepting responsibility for requests sent by the Dublin Unit. There were no Dublin decisions and transfers to Bulgaria in 2019.

In the case 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:

(a) Persons who had not previously applied in Hungary and persons whose applications are still pending are both treated as first-time asylum applicants.

(b) Persons who withdraw their application in writing or tacitly 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. Subsequent Applications raise several

128 See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014, available at: http://bit.ly/1dsMr2Y.
129 See e.g. Human Rights Committee, *B. v. Hungary*, Communication No 2901/2016, 9 December 2016.
130 Administrative and Labour Court of Szeged, Decision No 11.Kpk.27.469/2017/12, 3 July 2017.
131 Administrative and Labour Court of Szeged, Decision No 4. 10.K.27.051/2018/5, 7 February 2018.

issues, not least regarding exclusion from reception conditions. This is also not in line with 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 has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive.

(c) 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 (see section on Subsequent Applications). According to Article 18(2) of the Dublin III Regulation, the responsible Member State that takes back the applicant whose application has been rejected only at the first instance shall ensure that the applicant has or has had the opportunity to seek an effective remedy against the rejection. According to the 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.

(d) All asylum seekers returned under Dublin will be placed in the transit zone and will have to remain there until the end of their asylum procedure.

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

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;
(c) The applicant is recognised as a refugee by a third country and protection exists at the time of the assessment of the application and the third country is prepared to readmit him or her;
(d) The application is repeated and no new circumstance or fact occurred that would suggest that the applicant's recognition as a refugee or beneficiary of subsidiary protection is justified; or
(e) There exists a country in connection with the applicant which qualifies as a Safe Third Country for him or her;
(f) The applicant arrived through a country where he or she is not exposed to persecution or to serious harm, or in the country through which the applicant arrived to Hungary an adequate level of protection is available.

As to 2019, the NDGAP did not provide the number of inadmissibility decisions, claiming that it does not have the data.[132] However, the given data on the judicial decisions issued in inadmissibility procedures are indicative. There were a total 91 decisions, out of which the court annulled the decision of the NDGAP in 78 cases and approved its decision in 12 cases. In 1 case the court terminated the judicial review procedure.

A new inadmissibility ground, a hybrid of the concepts of "safe third country" and "first country of asylum", is in effect since 1 July 2018.[133] Automatic inadmissibility of asylum applications based on the new ground has now become the norm (see Hybrid Safe Third Country / First Country of Asylum).

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

3.2. Personal interview

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

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure? ☒ 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.[134] The March 2017 amendment to the Asylum Act further shortened the appeal time to 3 calendar days.[135]

Judicial review is carried out by the same Regional Administrative and Labour Court that considers other asylum cases. The court's review shall include a complete examination of both the facts and the legal aspects, but only as they exist at the date when the authority's decision is made.[136] 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 at 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".[137] Moreover, the review procedure in admissibility cases differs from those rejected on the merits, since the court must render a decision within 8 days, instead of 60. A preliminary reference was asked, 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.[138]

132 Information provided by NDGAP, 3 February 2020.
133 Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.
134 Section 53(3) Asylum Act.
135 Section 80/K Asylum Act.
136 Section 53(4) Asylum Act.
137 Section 53(4) Asylum Act.
138 Opinion of advocate general Bobek (CJEU), Case C-564/18, *LH v. Bevándorlási és Menekültügyi Hivatal*, 5 December 2019.

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.[139]

There is no automatic suspensive effect of the appeals against an inadmissible decision based on the ground introduced in July 2018 (see Hybrid Safe Third Country / First Country of Asylum). At the beginning of the use of this inadmissibility ground in August 2018, the alien policing procedure started to run against the rejected asylum seekers, despite them asking for suspensive effect in their appeals.[140] Although those applicants who submit a court appeal against an inadmissibility decision still have the right to remain on the territory of Hungary,[141] they were expelled and ordered to stay in the transit zone, where they were denied access to food.[142]

The former IAO did not consider that it was obliged to provide food to foreigners under alien policing procedures in the transit zones. The former IAO argued that the government decree on the implementation of alien policing procedures only prescribes the provision of food in community shelters, and does not specifically mention the transit zones in this regard.[143] The HHC requested Rule 39 in five cases and the ECtHR ordered the Hungarian Government to provide food for the applicants. After these successful Rule 39 cases, this clearly inhuman treatment and absurd legal situation stopped.[144] The Government in its response to the Rule 39 interim measures stated that it had "misinterpreted" the law. Currently rejected applicants that appeal their inadmissibility decision do get food in the transit zone. The alien policing procedure is still started, but it is immediately suspended because of the appeal.

However, foreigners in the alien policing procedure, whose asylum cases are no longer pending still do not receive food (see Conditions in Detention Facilities). The HHC obtained 12 interim measures based on Rule 39 in 2019 and three interim measures so far in 2020, ordering the Government to provide food to the applicants.

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.[145]

The European Commission launched an infringement procedure against Hungary for the violation of asylum-related EU law in December 2015, after a record fast preparatory process. Regarding the asylum procedure, the Commission is concerned that there is no possibility to refer to new facts and circumstances in the context of appeals and that Hungary is not automatically suspending decisions in case of appeals, effectively forcing applicants to leave their territory before the time limit for lodging an appeal expires, or before an appeal has been heard. Further on, the Commission is also concerned as to the fact that, under the new Hungarian law dealing with the judicial review of decisions rejecting an asylum application, a personal hearing of the applicants is optional. By the end of 2017, the European Commission decided to move forward on the infringement procedures concerning Hungarian asylum law. 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.[146]

3.4. Legal assistance

139 Section 53(6) Asylum Act.
140 Based on Section 52 Code on Administrative Litigation.
141 Article 46(5) recast Asylum Procedures Directive.
142 HHC, *Asylum-seekers with Inadmissible Claims are Denied Food in Transit Zones at Border,* 17 August 2018, available at: https://bit.ly/2Egsz7B.
143 Section 135 TCN Decree.
144 HHC, 'All asylum seekers finally get food in the transit zones at the border', 23 August 2018, available at: https://bit.ly/2S87D6U.
145 Section 53(5) Asylum Act.
146 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.

There is no longer a separate procedure for admissibility, therefore the same rules as in the Regular Procedure: Legal Assistance apply. What is particularly problematic for asylum seekers in the case of an inadmissibility decision are short deadlines (only 3 days to lodge an appeal) and the fact that hearing at the court is an exception rather than the rule. In such a short time, it is 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 want to take into account any new evidence presented during the judicial review procedure.

4. Border procedure (border and transit zones)

In 2017, the border procedure 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 detailed below are no longer applicable, since the procedure in the transit zones became a regular procedure and all asylum seekers have to remain in the transit zone until the end of the procedure. In 2019, the use of border procedure is still suspended.[147]

5. Accelerated procedure

The Asylum Act lays down an accelerated procedure, where the NDGAP is expected to pass a decision within the short timeframe of 15 days.[148] In 2019, the accelerated procedure was not used.

The law provides 10 different grounds for referring an admissible asylum claim into an accelerated procedure,[149] 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 his or her identity or nationality
    - by providing false information;
    - by submitting false documents; or
    - by withholding information or documents that would have been able to influence the decision-making adversely;
(d) Has destroyed or thrown away, presumably in bad faith, his or her identity card or travel document that would have been helpful in establishing his or her identity of nationality;
(e) Makes clearly incoherent, contradictory, clearly false or obviously unlikely statements contradicting the duly substantiated information related to the country of origin that makes it clear that, on the basis of his or her application, he or she is not entitled to recognition as a refugee or beneficiary of subsidiary protection;
(f) Submitted a subsequent application that is not inadmissible;
(g) Submitted an application for the only reason of delaying or frustrating the order of the alien policing expulsion or carrying out of the expulsion ordered by the refugee authority, the alien police authority or the court;
(h) Entered into the territory of Hungary unlawfully or extended his or her period of residence unlawfully and failed to submit an application for recognition within a reasonable time although he or she would have been able to submit it earlier and has no reasonable excuse for the delay;
(i) Refuses to comply with an obligation to have his/her fingerprints taken; or
(j) For a serious reason may pose a threat to Hungary's national security or public order, or he or she was expelled by the alien policing authority due to harming or threatening public safety or the public order.

147 For more details, see AIDA, Country Report Hungary, 2017 Update, February 2018, 41 et seq.
148 Section 47(2) Asylum Act.
149 Section 51(7) Asylum Act.

The application cannot be rejected solely on the grounds of failing to submit an application within a reasonable time.[150]

In accelerated proceedings, the NDGAP, with the exception of the case when 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.[151]

In the event of applying an accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe country of origin.[152] Where the safe country of origin fails to take over the applicant, the determining authority shall withdraw its decision and continue the procedure.[153]

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

15 days for processing a first-time asylum application is – as a general rule – an insufficient time period for ensuring the indispensable requirements of such a procedure, including finding the right interpreter, conducting a proper asylum interview, obtaining individualised and high-quality country information, obtaining – if necessary –medical or other specific evidence, and an eventual follow-up interview allowing the asylum seeker to react on adverse credibility findings or legal conclusions.[154] 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.[155]

Also in contradiction to the relevant EU rule, Hungarian law does not set forth any specific safeguard that would prevent the undue application of accelerated procedures to asylum seekers in need of special procedural guarantees.[156]

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

150 Section 51(8) Asylum Act.
151 Section 51(9) Asylum Act.
152 Section 51(11) Asylum Act.
153 Section 51A Asylum Act.
154 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.
155 Recital 20, Article 31(2) and (9) recast Asylum Procedures Directive.
156 Recital 30 recast Asylum Procedures Directive.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

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

Under the Asylum Act, a person with special needs can be an "unaccompanied minor or a vulnerable person, in particular, a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has suffered from torture, rape or any other grave form of psychological, physical or sexual violence, found, after proper individual evaluation, to have special needs because of his/her individual situation".[157] 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,[158] 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.[159] 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[160] 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 he or she has any health problems. This of course does not guarantee that the authorities get information about the special needs of asylum seekers.

A medical or psychological expert may be involved to determine the need for special treatment. The applicant should be informed in simple and understandable language about the examination and its consequences. The applicant has to consent to the examination, however, if no consent is given, the provisions applicable to persons with special needs will not apply to the case.[161] According to the HHC's lawyers it is up to the legal representative to argue that the applicant is vulnerable, which may be then considered by the caseworker or it may still be disregarded. In the latter case, the lack of proper

157 Section 2(k) Asylum Act.
158 Section 4(3) Asylum Act.
159 Section 3(1) Asylum Decree.
160 IOM, *Mapping Report on Legal Frameworks and Assistance Available to Migrant Victims of Sexual and Gender-based Violence (SGBV)*, 2019, available at: http://bit.ly/39l28KM.
161 Section 3 Asylum Decree.

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.[162] In case of such uncertainty, the asylum officer, without an obligation to inform the applicant of the reasons, may order an age assessment to be conducted. Therefore, decisions concerning the need for an age assessment may be considered arbitrary.

The applicant (or his or her statutory representative or guardian) has to consent to the age assessment examination. However, upon entry to the transit zone, an age assessment procedure is normally carried out before a guardian can be appointed to the children in question. The child is therefore on his or her own in this process with no adult representing his or her best interest.

The asylum application cannot be refused on the ground that the person did not consent to the age assessment.[163] However, as a consequence most of the provisions relating to children may not be applied in the case.[164]

The age assessment is conducted by the military doctor in the transit zone. The main method employed is the mere observation of the child's physical appearance, e.g. weight, height etc., and the child's sexual maturity. In the context of age assessment, the NDGAP does *not* use a psychosocial assessment.

Since the entry into force of the new legal regime in March 2017, age assessment practices became even more important since the law differentiates between unaccompanied children below and above the age of 14. The consequences are severe: erroneous assessment of the applicant's age may result on his or her confinement in the transit zone, which the HHC considers unlawful detention. The military doctor does not possess any specific professional knowledge that would make him appropriate to assess the age of asylum seekers, let alone differentiate between a 14 and a 15-year-old. The practice of age assessment has been criticised by the CPT among others.[165] As is explained at length in the third-party intervention of the AIRE Centre, Dutch Council for Refugees and ECRE in the *Darboe and Camara v. Italy* case,[166] there is currently a broad consensus among medics that existing age assessment methods alone cannot narrow down the age of the applicant to an adequate range to be relied on in the asylum procedure. The margin of error is the broadest among those around 15 years of age. It can therefore be easily seen that carrying out an age assessment procedure with the aim to clearly identify whether a child is under or above the age of 14 is highly problematic.

The previous updates of this report went to great lengths to explain why the methods used by the former IAO and now the NDGAP are inadequate. Since the entry into force of the new law in March 2017, age assessment must be carried out in the transit zones, which are not physically equipped for such purposes. The standards have therefore fallen even lower since the last report was published. Based on interviews with unaccompanied minors, the HHC lawyers found that in reality the "age assessment" takes mere minutes, during which the military doctor simply measures the applicants' height, looks at their teeth, measures the size of their hips and examines the shape of their body (whether it "resembles that of a child or more like that of an adolescent") alongside with signs of their sexual maturity (e.g.

162 Section 44(1) Asylum Act.
163 Section 44(2) Asylum Act.
164 Section 44(3) Asylum Act.
165 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/2TTgsTq.
166 AIRE Centre et al., *Third party intervention in Darboe and Camara v. Italy*, Application No. 5797/17, 5 July 2017, available at: http://bit.ly/2gZ0Zmq.

pubic hair, size of breasts). The HHC is of the opinion that this practice is highly unprofessional and is in breach of the fundamental rights of children.[167]

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.[168] This protocol, which was published in 2014, would *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*).

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

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

According to the NDGAP, there was one age assessment procedure conducted in 2019 by which the adulthood of the applicant was established.[169]

GRETA in its second evaluation round recommended to the Hungarian authorities to review the age assessment procedures applied in the transit zones, with a view to ensuring that the best interests of the child are effectively protected and that the benefit of the doubt is given in cases of doubt, in accordance with Article 10, paragraph 3, of the Convention, and taking into account the requirements of the UN Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child and the European Asylum Support Office (EASO) practical guide on age assessment. The Alien Policing Authority should be given sufficient time to involve expertise such as forensic medicine experts, psychologist and psychiatrists to carry out age assessment before having to assert a young person's age.[170]

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:

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

167 See also Council of Europe Lanzarote Committee, *Special report further to a visit to transit zones at the Serbian/Hungarian border*, T-ES(2017)11, 30 January 2018, available at http://bit.ly/2C6bYyZ.
168 The protocol is available in Hungarian at: http://bit.ly/1X53QT6.
169 Information provided by NDGAP, 3 February 2020.
170 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, Second evaluation round, Adopted 10 July 2019, Published on 27 September 2019, http://bit.ly/364g3D2.

special knowledge on unaccompanied minors, which enables them to conduct the hearings and make the decision in accordance with their special situation.

According to the response of the former IAO in 2017, training to this unit is provided every 6 months by asylum officials working at the Litigation Unit of the Refugee Directorate of the former IAO. The training touches upon vulnerability aspects as well. The training is based on the EASO training modules and contains two levels: asylum case officers have to pass an online exam, and later there is a training with a trainer where the tasks of the online exam are also spoken about. Regarding 2018 and 2019, there was no information provided by the former IAO and the NDGAP.

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 to 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.

Around 18 case officers of the former IAO were trained in November 2016 by the Cordelia Foundation and the HHC on torture victims and traumatised asylum seekers. There were complete asylum departments from the former IAO from which no case officer came to this training e.g. **Békéscsaba** Asylum Department. In 2018, UNHCR contributed to a training session organised by IOM within the framework of its regional child protection project "Protecting children in the context of the refugee and migrant crisis in Europe". UNHCR delivered presentations on the best interests of the child and child-friendly asylum procedures. It involved the training of 16 people.

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."[171] 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,[172] and this right is respected in practice. Since 2018, the law also explicitly provides this for persons with claims based on gender identity.[173]

There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the NDGAP.[174] If the asylum seeker is not able to write, this fact and his or her statement shall be included in the minutes.[175]

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.[176]

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 for identifying these asylum seekers, there is a risk that such an applicant is heard by a case officer who is not appropriately trained. If the applicant does not feel fit to be interviewed, the interview can be postponed, although the NDGAP can reject a request for

171 Section 90 Asylum Decree.
172 Section 66(3) Asylum Decree.
173 Section 66(3a) Asylum Decree.
174 Section 36(7) Asylum Act.
175 Section 62(2) Asylum Decree.
176 Section 43(2) Asylum Act and Sections 77(1) and (2) Asylum Decree.

postponement, if the postponement would prevent the NDGAP from taking its decision within the procedural deadline foreseen in the law. 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. On one occasion in 2017, in the case of two highly vulnerable unaccompanied minors, the NDGAP denied access to a social worker to the asylum interview of the children, although the HHC lawyer had informed the NDGAP about the high level of trust they had come to place on her.

However, it has also happened that unaccompanied minors, victims of torture or traumatised asylum seekers were not interviewed in a proper room with suitable conditions for such hearings. Due to the lack of space, and due to the organisational shortcomings on the side of 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 them unaccompanied children have to go into their hearing right before the Police, whose presence and physical proximity they may feel to be intimidating.

There was one occasion in April 2017 when upon request by the legal representative, the former IAO conducted the interview in the Fót Children's Home of two highly vulnerable unaccompanied minor brothers who had been victims of sexual abuse. The former IAO, in cooperation with the Children's Home guaranteed that the necessary technological equipment would be available in a private room facing a calm park where the children would feel safe and could therefore open up about their experiences. This was, according to the HHC, a great example of child-friendly administration. However, this was a single event and it remains unclear whether the NDGAP would be willing to conduct interviews in the Children's Home for highly vulnerable unaccompanied minors. The HHC thinks that it is highly unlikely.

In the experience of the HHC, unaccompanied minors above the age of 14 who need to wait for the end of their asylum procedure in the transit zone are systematically discontent with their asylum interviews. It is nearly impossible to carry out a child friendly interview in a metal container, which is surrounded by a high barbed wire fence and a significant number of policemen. The minors often only see their case officer on the screen, since these hearings are seldom conducted in person but rather by using a special communications application designed for this purpose. The presence of policemen outside the doors of the container in which the interview takes place further diminishes the minors' trust in the case officer or the procedure as a whole.

In the case of a severely traumatised man who was diagnosed with PTSD and his poor mental state was known by the former IAO, the former IAO held all together six interviews during the three subsequent procedures. Upon the request of the legal representative, in August 2017, the former IAO held an interview that lasted only 1.5 hours and contained questions exclusively about the existence of new facts and circumstances. After the Court had annulled the decision of the former IAO and obliged the authority to recognise the applicant as a refugee, the legal representative again requested the former IAO not to conduct a new hearing due to the poor mental health state of the applicant and referring to Section 43(1) a) of the Asylum Act. The latter provision provides the possibility for the asylum authority to forgo the personal hearing if the applicant is not in a condition to be interviewed. Nonetheless, the former IAO held again an interview in March 2018, and the applicant was questioned about the personal details, the fleeing route, and new facts and circumstances, his family members' situation in the country of origin and ongoing threats, which was clearly a topic that resulted in further frustration and deterioration of his mental state.

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.[177]

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.[178] In practice, only asylum seekers with physically visible special needs (pregnant women, families) were exempted from the border procedure.[179] Since March 2017, border procedures are no longer applied, since the procedure in the transit zones became a regular procedure and all asylum seekers have to remain in the transit zone until the end of the procedure. The only exception are 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.[180] 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.

2.3. Appointment of guardian

In certain cases of vulnerable asylum seekers who lack full legal capacity (primarily children or due to mental health reasons), the NDGAP has to either involve their statutory representative or appoint a guardian. In case of children, the guardian should be appointed without delay, within 8 days.[181]

Since March 2017, unaccompanied children above the age of 14 need to await the end of their asylum procedure in the transit zone. Under the current legal regime, while in the asylum procedure, they are exempted from the special provision of child protection rules.[182] Under Hungarian law, they are considered to have full legal capacity as soon as they are 14 years of age, so they are assigned a formal legal representative only for the asylum procedure (an "ad hoc guardian"). Given their low numbers, such ad hoc guardians are only able to meet the children sporadically, and their consent is not required if a child decides to leave the transit zone through the one-way exit to Serbia.[183] The children report that they do not talk to those temporary guardians at all, they only meet them during the interview conducted by the NDGAP.

GRETA in its second evaluation round recommended to the Hungarian authorities to ensure the timely appointment of trained guardians to unaccompanied or separated children kept in transit zones and enabling guardians to effectively fulfil their tasks by limiting the number of children for which each guardian is responsible.[184]

177 Section 74 Asylum Decree.
178 Sections 71/A(7) and 72(6) Asylum Act.
179 ECRE, *Crossing Boundaries*, October 2015, 17.
180 Section 4 Asylum Decree.
181 Section 80/J(6) Asylum Act.
182 Section 4(1)(c) Law XXXI of 1997 on the Protection of Children.
183 FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: https://bit.ly/2To4QI2.
184 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, Second evaluation round, Adopted 10 July 2019, Published on 27 September 2019, http://bit.ly/364g3D2.

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 but there are no procedural rules on the use of such medical reports.[185] However, no criteria are set out in law or established by administrative practice indicating when a medical examination for the purpose of drafting a medical report should be carried out.

In case the asylum seeker's statements are incoherent and contradictory, it is possible to prove with the aid of a medical expert report that this is due to the applicant's health or psychological condition or due to previous trauma. Therefore, the credibility of the asylum seeker should not be doubted based on his or her statements.[186]

The HHC's experience shows that medical reports were frequently used in practice but mostly at the request of the applicant. The former IAO and NDGAP has the possibility to order a medical examination *ex officio* in case the applicant consents to it. However, this was rarely the case. It was usually the legal representative who obtained and submitted the medical opinion in order to substantiate the applicant's well-founded fear of persecution. In case the applicant obtained a private medical opinion, he or she has to cover the costs; the NDGAP covers the costs only for medical opinions it requests itself. 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 material time), the expert opinion may only be delivered by a forensic expert registered by the competent ministry.[187] For the reasons above (the 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.[188]

Since all asylum seekers with the exception of unaccompanied children below the age of 14 – and those applied for asylum having lawful residence –are held in the transit zone, to which Cordelia Foundation has no access, medical reports are no longer used in the asylum procedures in the transit zones. Medical reports provided by the Cordelia Foundation remain to be used in asylum and Dublin procedures of unaccompanied children below the age of 14 and in Dublin procedures, with the aim of providing proof of their special vulnerability to the receiving Member State such as in those cases who apply for asylum within the territory of Hungary thus have access to the services of Cordelia Foundation.

The HHC lawyers report that in the transit zones the NDGAP does not take the medical reports into account at all. Moreover, the legal representative has no access to them; neither the client gets a copy of them, but can ask for it. The medical reports are not stored together with the case files so many times the case officers do not even know about the medical problem if the asylum seeker did not mention it during the interview. Once the former IAO did not know about the pregnancy of a woman who was already in her 6th month.

185 Section 3(2) Asylum Decree.
186 Section 59 Asylum Act.
187 Section 58(3) Asylum Act.
188 See Cordelia Foundation et al. *From Torture to Detention*, January 2016, available at: http://bit.ly/1Xrmhoi.

In January 2018, the CJEU ruled that asylum seekers may not be subjected to a psychological test in order to determine their sexual orientation as this would mount to disproportionate interference in their private life.[189]

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

The law provides for the appointment of a guardian (who is the legal representative) upon identification of an unaccompanied child. When 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.[190] The appointed guardian is not only responsible for representation in the asylum procedure and other legal proceedings but also for the ensuring that the child's best interest is respected.

As opposed to the information contained in the previous report, delays (though not significant ones) in appointing guardians started occurring again in 2019. Although by law, the Guardianship Office of District V. of Budapest has sole jurisdiction in appointing guardians for unaccompanied asylum-seeking children, it occurred multiple times in 2019 that guardians of other Guardianship Offices were appointed. These guardians had no prior training or experience with unaccompanied minors, however, the NGOs working on the field (including the HHC) managed to reach out to them in all cases and establish a good and effective working relationship.

Under the current system, legal guardians are responsible for asylum seeking unaccompanied children under the age of 14 who are staying in the Károlyi István Children's Home in Fót and for unaccompanied children who had been granted international protection and were thus released from the transit zone and transferred to the Children's Home.

For unaccompanied children above the age of 14, *ad-hoc* guardians are appointed whose mandate is, by definition, a temporary one. They do not have to be trained to care for children the same way legal guardians need to be. They are also not trained in asylum law and can hardly speak English. Given the physical distance between the *ad-hoc* guardians' workplace (Szeged) and the transit zone, the children and their *ad hoc* guardians mostly only meet twice: at the interview and when the decision is communicated. Based on personal interviews with unaccompanied children, the HHC lawyers found out that most of the time there is no direct communication between the *ad-hoc* guardians and the unaccompanied children they are responsible for.[191]

The 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 to be a problem in 2019. Under the Child Protection Act, a guardian may be responsible for 30 children at the same time.[192] 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. 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

189 CJEU, Case C-473/1 *F*, Judgment of 25 January 2018.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.

190 Section 80/J(6) Asylum Act.

191 See also 'Special report further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border, 5-7 July 2017', available at http://bit.ly/2C50qfw.

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

employs one interpreter but guardians do not always have access to his services. In 2018, the Children's Home hired an Afghan social worker who helps with translation and intercultural communication.

Legal guardians have participated in trainings held by the HHC, the Cordelia Foundation and other actors such as IOM. 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 2019 as well. 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.

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 the children's access to education. Currently this is the only forum where State actors and the NGO sector together discuss how to further the case of unaccompanied children.[193]

The role of the child protection guardian consists of supervising the care for the child, following and monitoring his or her physical, mental and emotional development.[194] In order to fulfil his or her duties, the child protection guardian has a mandate to generally substitute the absent parents. He or she:

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

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

The child protection guardian cannot give his or her consent to the adoption of the child. Although adoption is not an option for unaccompanied minors, SOS Children's Villages Hungary managed a project in 2017 to recruit and train families who would be willing to become the foster family for children from a migrant background.[195] Based on personal discussions with SOS Children's Villages Hungary staff members, the HHC can report that a few families have completed the training and one child, who had been represented by the HHC in his asylum procedure, moved to a foster family in September. While being placed with a foster parent, the children's legal guardian remains the same as before – this role therefore is not given up or shifted to the foster families.

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

193 EuroChild and SOS Children's Villages International, *Let Children Be Children*, November 2017, available at: http://bit.ly/2HjyOKn, 75.
194 Section 86 Child Protection Act.
195 EuroChild and SOS Children's Villages International, *Let Children Be Children*, November 2017, 72.

evidence on behalf of the applicant and they may ask questions to the asylum seeker during the interview.

E. Subsequent applications

Indicators: Subsequent Applications

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

2. Is a removal order suspended during the examination of a first subsequent application?[196]
   - ❖ At first instance ☐ Yes ☒ No
   - ❖ At the appeal stage Depending on outcome

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

A subsequent application is considered as an application following a final termination or rejection decision on the former application. New circumstances or facts have to be submitted in order for a subsequent application to be admissible.[197] Persons who withdraw their application in writing or tacitly cannot request the continuation of their asylum procedure upon return to Hungary; therefore, they will have to submit a subsequent application and present new facts or circumstances (see section Dublin: Situation of Dublin Returnees).

In 2019 there were 32 subsequent applicants.[198]

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;[199]

(b) Admissible subsequent applications are examined in an accelerated procedure (see section on the Accelerated Procedure);[200]

(c) The court hearing of subsequent applicants who are detained can be dispensed if their subsequent application is based on the same factual grounds as the previous one;[201]

(d) The NDGAP hearing can be dispensed if a person failed to state facts or to provide proofs that would allow the recognition as a refugee or beneficiary of subsidiary protection in the subsequent application;[202]

(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 having been granted subsidiary or tolerated status prior to the subsequent application).[203] Since all asylum seekers except unaccompanied minors below age of 14 are 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 does not actually mean that they are returned to Serbia before getting a decision in their asylum procedure. They are also allowed to

196 Most of the asylum seekers are held in the transit zones, which means that none of them has a right to remain on the territory of Hungary. They are waiting to be granted the right to enter the territory. But this does not mean that subsequent applicants would have to wait for their decision in Serbia, they are allowed to wait for them in the transit zones, but they are not entitled to any food or hygienic kits. So in practice we can speak of a suspension of removal, but not in the sense of having a right to remain on the territory, only in the transit zone.

197 Section 51(2)(d) Asylum Act.

198 Information provided by NDGAP, 3 February 2020.

199 Section 51(2)(d) Asylum Act.

200 Section 51(7)(f) Asylum Act.

201 Section 68(4)(c) Asylum Act.

202 Section 43(2)(b) Asylum Act.

203 Section 80/K(11) Asylum Act. This is due to the mass migration crisis measures.

stay in the transit zone. However, they do not receive any food or any other material conditions. They only get a bed in a living container. The HHC requested the ECtHR to issue an interim measure based on Rule 39 in case of a subsequent applicant who did not receive any food in the transit zone.[204] The interim measure was granted but the Hungarian authorities did not comply with it. The HHC requested another interim measure, which was also granted, and this time the Court explicitly requested the Hungarian Government to provide food to the applicant. The Hungarian Government did not abide by this request either.[205]

(f) Judicial review of rejected subsequent applications does not have a suspensive effect (see Accelerated Procedure);[206]

(g) Amendments 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 exemption from paying for 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.[207]

(h) Under the rules applied in case of state crisis due to mass migration,[208] 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.[209]

There is no time limit for submitting a subsequent application or explicit limitation on the number of asylum applications that may be lodged.

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 the recognition of the applicant as a refugee or as a beneficiary of subsidiary protection. The existence or not of new facts or circumstances is determined in the admissibility procedure.

Given the lack of clear and publicly available guidelines, the NDGAP may interpret the concept of "new facts or circumstances" in a restrictive and arbitrary way. Example of such arbitrary interpretation occurred in 2019. 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 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 and the Court explicitly stated that this is inappropriate use of subsequent procedures.[210]

204 ECtHR, *R.R. v. Hungary*, Application No 36037/17.
205 Politico, 'Hungary ignoring court orders to improve border camp conditions: watchdog', 29 July 2017, available at http://politi.co/2FZsPpR.
206 Section 53(2) Asylum Act.
207 Section 34 Asylum Act.
208 Section 80/K(11) Asylum Act.
209 As it is set out in Section 5(a)– (c) Asylum Act.
210 Metropolitan Court, 15.K.31.737/2019/17.

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. 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. There is no further legislative guidance on this concept. The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.

2. Safe third country

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

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

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

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.[211] In practice, transit or stay is a sufficient connection, even in cases where a person was smuggled through and did not know the country at all.

2.2. Procedural guarantees

In the event of applying the "safe third country" concept, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case,

[211] Section 51(3) Asylum Act.

the specific country does not qualify as a safe third country.[212] The law does not specify in which format and language this information should be communicated to the applicant, if an interpreter should be made available, or if a written record should be prepared. 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 the HHC attorneys are able to assist their clients with these submissions.

In the case that 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 his or her application for asylum was not assessed on the merits.[213] This guarantee was 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.[214] This provision was not respected in practice, when this inadmissibility ground was still used towards Serbia.

The fact is that since 15 September 2015, Serbia is not taking back third-country nationals under the readmission agreement except for those who hold valid travel/identity documents and are exempted from Serbian visa requirements. Therefore, official returns to Serbia are not possible.

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.[215] Following a subsequent amendment to the list, the following countries are currently considered safe third countries:

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

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

- The law requires the applicant to prove that he or she could not present an asylum claim in Serbia.[216] This represents an unrealistically high standard of proof (as compared to the lower standard of "to substantiate", which is generally applied in Hungarian asylum law). An asylum seeker typically smuggled through a country unknown to him or her is extremely unlikely to have any verifiable, "hard" evidence to prove such a statement;
- The impossibility to have access to protection in Serbia does not stem from individual circumstances, but from the general lack of a functioning asylum system. Therefore, it is absurd and conceptually impossible to expect an asylum seeker to prove that, for individual reasons, he or she had no access to a functioning system in Serbia which in reality does not exist;

212 Section 51(11) Asylum Act.
213 Section 51(6) Asylum Act.
214 Section 51A Asylum Act.
215 Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries. The original list did not include **Turkey**, but the country was later inserted.
216 Section 51(5) Asylum Act.

- If the claim is considered inadmissible, the NDGAP has to deliver a decision in maximum 15 days (8 days at the border).[217] 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,[218] 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. In a case of an extremely vulnerable single woman from Cameroon, who was a victim of trafficking in Serbia, hold in hostage and raped several times. The HHC obtained an interim measure from the UN Human Rights Committee,[219] 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 clearly was 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 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.

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, the inadmissibility decisions based on safe third country grounds were not issued either, as inadmissibility under the Hybrid ground became the norm.

3. '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", is in effect since 1 July 2018.[220] The new provision stems from amendments to the Asylum Act and the Fundamental Law,[221] but it was only put to practice in mid-August 2018. Since 28 March 2017, persons without the right to stay in Hungary can only lodge an asylum application in either of the two transit zones located at the Hungarian-Serbian border.[222] Since Hungary regards Serbia as a safe third

217 Section 47(2) Asylum Act.
218 Recital 46 and Article 38 recast Asylum Procedures Directive; Section 2(i) Asylum Act.
219 Human Rights Committee, Communication No 2768/2015.
220 Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.
221 Article XIV Fundamental Law.
222 Section 80/J(1) Asylum Act.

country,[223] the new inadmissibility provision abolished any remaining access to a fair asylum procedure in practice. Since July 2018, once an asylum application was lodged, authorities systematically denied international protection to those who arrived via Serbia, declaring these applications inadmissible under the new rules.[224] The applicant can rebut the NDGAP's presumption of inadmissibility in 3 days, after which the NDGAP will deliver a decision.[225] In case the NDGAP decides the application inadmissible, it will also order the applicant's expulsion, launching an alien policing procedure.

This newly established inadmissibility ground is 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 is 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 curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights."[226]

The NDGAP does 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 just automatically rejects all asylum claims, but it also now expels asylum seekers to their countries of origin (such as Afghanistan) without ever assessing their protection claim in substance.[227] 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."*[228] According to the TCN Act, such modification of expulsion order cannot be challenged at the court, the HHC however submitted an appeal and the Szeged Administrative and Labour court accepted it and referred a preliminary reference to the CJEU.[229] Questions asked address 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 lack of judicial remedy is in line with Return Directive and whether the placement in the transit zone amounts to deprivation of liberty during asylum procedure and during an alien policing procedure.

223 Section 2 Decree 191/2015.
224 FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: https://bit.ly/2To4QI2.
225 Section 51(12) Asylum Act.
226 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.
227 Filippo Grandi, UN High Commissioner for Refugees: Hungary's coerced removal of Afghan families deeply shocking, 8 May 2019, http://bit.ly/2sKyRcW.
228 HHC, One year after. How legal changes resulted in blanket rejections, refoulement and systemic starvation in detention, 1 July 2019, http://bit.ly/35V44Yn.
229 C-924/19 and 925/19, referred on 18 December 2019.

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 is clearly malevolent.

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*.[230] Several similar cases were suspended based on this referral. However, in the meantime, due to the courts' dispute over the territorial jurisdiction of the cases (see 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.[231] The Szeged Court directly applied Articles 33 and 35 of the recast Asylum Procedures Directive and stated that the new inadmissibility ground is 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 but their applicability 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.[232] 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.

As of August 2019, this inadmissibility ground is no longer used and the cases are again examined on the merits. There is no publicly available information on why the practice has changed.

The Advocate General opinion in the above-mentioned case was delivered on 5 December 2019 and he states that the new inadmissibility ground is against EU law, reiterating the stance of the HHC on this matter.

4. Safe country of origin

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

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

If the applicant's country of origin is regarded as "safe", the application will be rejected in the accelerated procedure (see Accelerated Procedure).[233] In the event of applying the accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe country of origin.[234] Where the safe

230 CJEU, Case C-564/18 *LH*, Reference of 7 September 2018.
231 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.
232 Administrative and Labour Court of Szeged, Decision No 42.K.32.906/2018/12, 5 September 2018.
233 Section 59(1) Asylum Act.
234 Section 51(11) Asylum Act.

country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.[235]

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Countries of Origin,[236] which are the following:

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

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.[237] The decision was met with heavy criticism by the HHC.[238]

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.[239]

The same level and sources of information are used in all stages of the asylum 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. Common leaflets drawn up by the Commission are already used in practice.

The asylum seeker is informed about the fact that a Dublin procedure has started, but after that, he or she is not informed about the different steps in the Dublin procedure. If the Dublin procedure takes a long time, this creates frustration, especially since the majority of asylum seekers are detained in the transit zones. Asylum seekers only receive the decision on the transfer, which includes the grounds for application of the Dublin Regulation and against which they can appeal within 3 days. The NDGAP does

235 Section 51A Asylum Act.
236 Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries.
237 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.
238 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.
239 Section 37 Asylum Act.

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 procedural steps taken during a Dublin procedure still persisted in 2019.

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.[240] 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.

Oral, *ad hoc* information sessions organised by UNHCR, although informal, are a useful channel for basic information provision on reception conditions and the asylum procedure, mainly for those who have just arrived in the transit zones. Specific information on assisted voluntary return and reintegration, and also child friendly information is provided by IOM throughout the asylum procedure during their regular visits in the facilities where asylum seekers are held.[241]

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?
   - ❖ UNHCR ☒ Yes ☐ With difficulty ☐ No
   - ❖ NGOs ☐ Yes ☒ With difficulty ☐ No
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 summer 2017, the authorities terminated cooperation agreements with the HHC and denied 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.[242] Regarding the access of HHC lawyers for the purpose to provide legal aid, see Regular Procedure: Legal Assistance.

In the summer of 2018, Hungary passed legislation criminalising otherwise legal activities aimed at assisting asylum seekers. 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 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,

240 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.

241 IOM, *Children's rights and responsibilities*, available at: https://bit.ly/2V8xWvs. For more details see HHC, *Legal and procedural information for asylum seekers in Europe: Hungary*, April 2018, available at: https://bit.ly/2QFjc5x.

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

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).[243] 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.[244]

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?[245] ☒ 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).

243 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.

244 European Commission, press release: 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.

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

Reception Conditions

The majority of asylum seekers (433 persons) in 2019 were placed in the transit zones,[246] while only a few applicants were waiting for their first instance asylum decision in one of the open reception facilities in 2019, such as in 2018. Therefore, it has to be stressed out that the section on reception conditions concerns only a few asylum seekers in Hungary. The main form of reception is still detention carried out in one of the transit zones.

According to the NDGAP, on 31 December 2019 there were altogether only four asylum seekers in **Vámosszabadi** and one asylum seeker in **Balassagyarmat**.

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 a standard of living adequate for the health of persons seeking asylum until the asylum procedure ends.[247] However, since March 2017, first-time asylum seekers without lawful Hungarian residence or visa have been accommodated exclusively in one of the transit zones immediately after claiming asylum where they are entitled only to reduced material conditions(see Conditions in Detention Facilities). Asylum seekers who enter the transit zones can no longer request to stay in private accommodation at their own cost on account of the existent state of crisis due to mass migration.[248]

Those asylum seekers who are residing lawfully in the country at the time of submitting the asylum application, and do not ask to be placed in a reception centre still have the right to request private accommodation as their designated place to stay during the asylum procedure. However, similarly to the previous year in 2019 the majority of applicants submitted their asylum application in one of the transit zones and 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 by the time of submitting the asylum application. In this latter case, asylum seekers are not provided with any material reception condition since their subsistence is deemed to be ensured. Otherwise, deriving from the wording of the Asylum Act those who are residing lawfully in Hungary but would like to be placed in a

246 Based on the information provided by former IAO, 12 February 2019.
247 Section 27 Asylum Act.
248 Section 80/I(d) Asylum Act.

reception facility can submit their asylum application only in the transit zones.[249] The HHC is not aware of such an example.

Only those asylum seekers who are deemed as destitute are entitled to material reception conditions free of charge.[250] 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 an obstacle to accessing reception conditions.
Based on 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 anymore, although reception conditions are *ex lege* reduced.

According to the Asylum Act,[251] subsequent applicants shall not be entitled to exercise the right to aid, support and accommodation.[252] Although in practice since transit zones are the compulsory places of confinement, accommodation (a bed in a container) was ensured for asylum seekers. Regarding the provision of food and other material support, subsequent applicants in the transit zones can only count on the aid of civil organisations and churches having access to the transit zones (see more at Subsequent Applications).[253]

Outside of the transit zones, the HHC is aware of some cases from 2018 in which asylum seekers were provided accommodation at an open reception facility during their subsequent asylum procedure, but were denied any additional help and support such as food or hygienic items.

The legal changes regarding reception conditions derive from the establishment of the regulation concerning the transit zone system. Therefore, the logic behind it strictly links to the conditions and circumstances asylum seekers find themselves in the closed container camp along the Serbian-Hungarian border.

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. In state of crisis due to mass migration, the content of material reception conditions is limited to accommodation and food provided in reception facilities; costs of subsistence of asylum applicants. The state of crisis furthermore suspends 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, as well by virtue of the state of crisis due to mass migration.[254] Since 1 April 2016, asylum seekers are not entitled to receive pocket money either.

249 Section 80/J(1)(c) Asylum Act.
250 Section 26(2) Asylum Act.
251 Section 80/K(11) Asylum Act.
252 Set out in Section 5(1)(b) Asylum Act.
253 HHC, *Turbulent 50 days – an update on the Hungarian asylum situation*, 22 May 2017, available at: http://bit.ly/2EFxDAo.
254 Section 99/C(1)(c) Asylum Decree.

According to the Asylum Decree, asylum seekers residing in reception centres receive:[255]

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** until 30 April 2018, asylum seekers were provided with hygienic items and food in kind. After that, over the course of 2018 and 2019 asylum seekers were given either food allowances or food and hygienic items in kind.[256] However, Menedék Association reported that in 2019 food was provided again in kind. According to them despite the law giving the opportunity to the asylum seekers to 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. Cooking was also a possibility for residents in Balassagyarmat.

According to the NDGAP, in **Vámosszabadi** asylum seekers had been provided by food and hygienic items in kind until 31 May 2018.[257] After that, over the course of 2018 and 2019 asylum seekers were given food allowance. However, reported by Menedék Association in 2019 food was provided again in kind.

The HHC is aware of an asylum-seeking woman who had been residing in Vámosszabadi until September 2018 with her approximately 1-year-old child, who only had the right to reside in the reception centre but was denied food in kind or an equivalent financial allowance on account of being a subsequent applicant. The single woman with her child could exclusively count on the help of volunteers and NGOs' services being present in Vámosszabadi in the course of her pregnancy and after the birth of the child.

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 shall not be applied in the current state of crisis due to mass migration. Pursuant to the legislative changes, no decision has been issued on the reduction or the withdrawal of the reception conditions since 2017.[258]

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 his or her 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 a place of accommodation if the person seeking recognition grossly violates the rules of conduct in force at the designated place of

255 Section 21 Asylum Decree.
256 Based on the information provided by former IAO, 12 February 2018.
257 Information provided by former IAO, 12 February 2019.
258 Information provided by former IAO, 12 February 2018; 12 February 2019.

accommodation, or manifests seriously violent behaviour.[259] All in all, emergency health care services must be provided even in the event of the reduction or withdrawal of reception conditions.[260]

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.[261] 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.[262] 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.[263] 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. If the sum value of the benefits and services is received without entitlement, the NDGAP shall order the collection of the sum repayable – and treated as outstanding public dues enforced as taxes – unless it is repaid voluntarily.[264]

As of January 2018, recuperation of financial claims can be ordered by the NDGAP and implemented via the national tax authority.[265] According to Section 32/Y(4) of the Asylum Act the person concerned shall be required to pay a default penalty if he or she has failed to comply with a payment obligation. There is no independent remedy set out in the law against such an enforcement order issued by NDGAP, however it can be challenged before the administrative court .[266] As of January 2019,[267] the head of the authority might authorise the instalment payment or the postponement of the payment upon the request of the applicant.

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

Until March 2017, asylum seekers were allocated to a specific facility through a dispersal scheme managed by the former IAO. In March 2017 those asylum seekers who had already had an on-going procedure thus had been staying in Hungary remained in open camps with the same material conditions as ensured prior to the amendment (except those who were deemed subsequent asylum seekers, they were refused to be provided with food and other material reception conditions apart from accommodation). Since then, asylum seekers are primarily held in the transit zones and those who are exceptionally released from there are placed to open reception centres. At the end of last year, there were only five asylum seekers residing in open facilities[268] (see Types of Accommodation).

Asylum seekers who are not detained (either in asylum detention or in the transit zones) can move freely within the country, but may only leave the reception centre where they are accommodated for less

259 Section 30(2) Asylum Act.
260 Section 30(3) Asylum Act.
261 Section 31 Asylum Act.
262 Section 30(3) Asylum Act
263 Section 31(1) Asylum Act.
264 Section 26(5) Asylum Act.
265 Section 32/Y Asylum Act.
266 Section 32/Y(1) Asylum Act.
267 Act CLXXXIII of 2018 on the modification of the Asylum Act.
268 Information obtained from NDGAP.

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 difficulty in this regard.

In 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. Therefore, the request of an asylum seeker for private accommodation accommodated alone in **Kiskunhalas** was rejected several times by the former IAO in 2017. Nonetheless, after the applicant had been relocated to **Balassagyarmat** the former IAO finally approved his request to move to a private accommodation in 2018, albeit applying the provisions on alternatives to detention,[269] and not Section 48(1). In its decision, the former IAO set out the obligation of staying at an assigned (private) place which constitutes one form of alternative to asylum detention,[270] despite the fact that the applicant was not in detention but had been living in open reception centres (first in Kiskunhalas, later on in Balassagyarmat).

In the **Balassagyarmat** community shelter, a curfew had been introduced in 2017, which allowed asylum seekers to leave the facility for only 2 hours per day. According to NGOs this practice was terminated at the end of 2018, according to NGOs and has not been reintroduced since then.

The relocation of applicants was not a common practice in 2018 and 2019, although there were more cases recorded in last year than in the previous year. Since transit zones serve as reception centres in the first place, there have been only a few exceptional cases when asylum seekers were transferred from **Röszke** or **Tompa** to open reception facilities in both years. HHC is aware of a case of an Iraqi woman with her 5-year-old son who were relocated to **Kiskunhalas** (formerly functioning open reception centre see earlier AIDA country reports) in 2018 after the woman's unsuccessful suicide attempt in the transit zone. There has been another case where an Afghan woman with her husband and children were held in Röszke transit zone even though the applicant gave an account of her serious depression disorder already at her personal hearing when they entered the transit zone in mid-August 2017. The family was represented by the lawyer of HHC who requested several times the transfer of the family to an open reception facility due to the poor mental health state of the woman but was rejected by the former IAO every time. She was provided with limited psychological assistance but without any interpreter service. After the unsuccessful suicide attempt in the beginning of December 2017, the family was finally transported to Kiskunhalas. Other cases were also noted by HHC in 2017 concerning applicants under outgoing Dublin procedures after a Western EU Member State had taken responsibility were placed to **Balassagyarmat** and could wait for the transfer there.

In 2018, the HHC is aware of a couple of cases where applicants were released from the transit zone in accordance with judicial decisions obliging the former IAO to do so.[271] These judgements in general refer to Article 43(2) of the Procedures Directive that prescribes for the Member States the obligation not to keep asylum seekers more than 4 weeks in the transit zones or under border procedure. The judgments *expressis verbis* request the asylum authority to provide accommodation to applicants that does not result in detention or inhuman and degrading treatment. There were certain cases with the same practice in 2019, as well, however the majority are from the beginning of the year (for details see Section on Judicial review of the detention order). As a result, applicants were placed mainly to the open reception facility in Balassagyarmat.[272]

269 Section 2(l) Asylum Act.
270 Section 2(lb) Asylum Act.
271 See e.g. Administrative and Labour Court of Szeged, Decision 6.K.27.060/2018/8, 1 March 2018; Metropolitan Administrative and Labour Court, 44.K.33.689/2018/11, 14 November 2018.
272 See e.g. Administrative and Labour Court of *Szeged*, judgement no. 6.K.27.016/2019/8., 25 March 2019; judgement no. 6.K.27.019/2019/14., 1 March 2019; judgement no. 6.K.27.646/2018/16., 21 January 2019; judgement no. 19.K.27.583/2019/7., 3 September 2019; Administrative and Labour Court of *Debrecen*, judgment no. 10.K.28.267/2018/23., 12 February 2019.; *Metropolitan* Administrative and Labour Court, judgment no. 3.K.30.088/2019/6., 26 February 2019.

There have been only a few, exceptional cases when asylum seekers – without visa or residence permit – were placed in open reception facilities. In 2018 an Afghan woman and her son were accommodated in Vámosszabadi after they had submitted their asylum application in the transit zone, but due to the severely poor health of the woman requiring constant medical assistance and surveillance, they were placed in **Vámosszabadi**. According to a volunteer and the Menedék Association, the woman received special treatment in the reception centre. She was provided with a flexible toilet placed in her room and a personal nurse. Despite her special health status, as the other applicant, she did not have a chance either to meet a legal representative within the building (in her room) of the reception facility.

In general, those who were released from the transit zones in the last three years, after spending a few days in the reception facility, left Hungary.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:[273] 3
2. Total number of places in the reception centres: 350
3. Total number of places in private accommodation: N/A

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 2019, there were 2 open reception centres and 1 home for unaccompanied children in Hungary. The two reception centres are:

Reception Centre	Location	Maximum capacity	Occupancy at end 2019
Balassagyarmat	Near Slovakian border	140	1
Vámosszabadi	Near Slovakian border	210	4
Fót (unaccompanied minors under age 14)	Near Budapest	130	12
Total		**480**	**17**

Source: NDGAP

There is a visible discrepancy between the numbers of occupancy and the maximum capacity of reception facilities in the table above. It clearly points out that these reception facilities are not efficiently used and despite the fact that only in December 2019 there were applicants who were placed in the transit zones and not in open reception facilities (see Access to the Territory and Place of Detention).[274] The dramatic decrease in the numbers of asylum seekers accommodated in open reception centres started in March 2017 (see the 2018 AIDA country report). Since then the figures have remained very low.

273 Both permanent and for first arrivals.
274 Information provided by former IAO, 12 February 2019.

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 2018 and 2019, primarily this reception facility hosted those asylum seekers who were released from the transit zones as a result of judicial orders for relocation. In 2017, it was functioning mainly for asylum seekers relocated from the transit zones based on their on-going Dublin procedure. They waited in Balassagyarmat for the transfer to Western EU Member States.

Vámosszabadi Reception Centre is located outside 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.[275] The reception centre until July 2018 hosted mainly asylum seekers whose cases had been launched before the March 2017 amendments. The HHC is aware of one case, when an asylum-seeking family was placed there due to the poor health status of the mother in 2018. There has been another case recorded in 2019, when due to the lethally ill child an asylum-seeking family was placed there. The centre hosted nonetheless primarily beneficiaries of international protection released from the transit zones. Although, according to the information provided by NDGAP, people on average had stayed only 2-3 weeks before they left the country.[276]

The centres are managed by the asylum authority.[277] Until the end of 2018, the reception centres operated financially under the direction of the Director-General as an independent department structurally being a part of the regional directorates and perform their professional tasks under the supervision of the Refugee Affairs Directorate of the former IAO. As of 1 January 2019, the reception facilities and detention centres fall under the exclusive management and supervision of the central Refugee Affairs Directorate of the NDGAP.[278]

Unaccompanied children below the age of fourteen are not placed in the transit zones but are accommodated in **Fót**. The Károlyi István Children's Home in Fót is a home for unaccompanied children located in the North of Budapest, which belongs to the Ministry of Human Resources and can host 130 children.[279] Unaccompanied children beyond the age of 14 are detained in the transit zones as it is detailed in

275 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.

276 *Ibid.*

277 Section 12(3) Asylum Decree.

278 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.

279 Information provided by the Directorate-General for Social Affairs and Child Protection upon the freedom of information request of HHC, on 17 January 2020.

Fót, therefore, hosts unaccompanied children whose asylum procedure is still on going, 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 for shutting the Home down has been announced several times, the Home remains to be open at the time of writing. Several Hungarian children have been placed to other child welfare institutions (in all cases, with worse material conditions) or were sent back to their parents or previous caregivers in 2019, in procedures which child protection experts reported to be extremely unprofessional. A previously announced plan to renovate a ruinous building at the backyard of a youth detention facility (Aszód see in 2018 AIDA country report) for unaccompanied minors seems to have been dropped by the Government, at least nothing happened to the building in the past year. The Children's Home is therefore being emptied rapidly, with only a few unaccompanied minors remaining there, whose future accommodation is uncertain. 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.

Last year Fót registered 10 unaccompanied minors. On 31 December 2019, there were 12 asylum seeking children and 6 minor beneficiaries of international protection residing in the facility.[280]

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 2019, it had not been the case that asylum seekers were 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.[281] 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. The Decree of the Minister of Interior 52/2007 on the organisation of NDGAP stipulates the amount of nutrition value that must be provided at the open reception facilities and states that religious diets are to be respected in all facilities.

In all centres, regular cleaning is arranged and the number of toilets and showers are sufficient in all facilities during regular occupancy. Although in 2017, in **Vámosszabadi** toilet and shower facilities raised concerns relating to hygiene and possible spread of diseases, there was no complaint noted by the Menedék Association in 2018 and 2019. Not every door is lockable which can easily amount to unsecured privacy. It was recorded in 2018 in Vámosszabadi in the case of a young asylum-seeking woman that armed security guards did not let her to lock her room's door, only if she reported herself at the security personnel on a daily basis.

280 Data received from the Directorate-General for Social Affairs and Child Protection upon the freedom of information request of HHC, on 17 January 2020.

281 EASO, *Description of the Hungarian asylum system*, May 2015, available at: https://bit.ly/2GS9E4H, 10.

Residents share rooms. The minimum surface area that should be available is outlined in the national legislation only for the community shelters i.e. **Balassagyarmat**. The relevant Decree[282] provides that the community shelter must have at least 5m^{3}of air space and 4m^{2}of floor space per bed.[283] Families are accommodated in family rooms.

Every facility has computers, community rooms and sport fields.
There have been no problems reported regarding the religion practice. Unlike in the precedent years, in 2018 the personnel of **Fót** Children's Home in the beginning of the holiday of Ramadan did not adjust to the changed daily routine of the children, which resulted in conflicts between the staff of the Home and the children. Although, after two weeks, with the mediation of NGOs, the Home made it available to the children that they could cook for themselves. There was no such a case reported in 2019.

Asylum seekers can go outside whenever they want. In **Vámosszabadi**, the former IAO used to provide direct free bus transport to Győr, the nearest big town, for the residents of the reception centre. The practice was halted around mid-2018, supposedly owing to the limited number of people accommodated by the centre. Although, in case there are important matters to manage in Győr (e.g. personal document issues), asylum seekers have been transported on weekdays by a minibus driven by a social worker to the city.

2.2. Activities in the centres

Social workers of the former IAO used to organise different activities for asylum seekers in the reception facilities e.g. drawing, music activities, movie clubs, cooking or sport events. In **Vámosszabadi**, they used to even organise a small library and Hungarian language classes, as well. However, in 2018 and 2019 reportedly, there was no regular program provided to asylum seekers by social workers who were mainly burdened by administrative tasks. The withdrawal of the AMIF calls affected the number of the social workers and their activities as well. Many of them lost their job after 30 June 2018. Furthermore, due to the institutional transformation of the asylum authority, there were several employees whose employment ceased by July 2019. Consequently, in 2018 and 2019 community activities were exclusively **provided by NGOs** in the reception facilities however, the number of these organizations on the field due to funding troubles has also decreased.

The **Menedék Association for Migrants** just as in 2018 continued its activity in all reception facilities providing regular individual support, information provision, legal counselling (information on the rights and obligations, furthermore on rules of employment, accommodation etc.) and organized community programs for the residents. Their community programmes covered a wide range of activities for children and sport programmes to cultural activities. The organization was also present in **Fót** between January and March 2019 and then from September again until now. They have joint visits with the Jesuit Refugee Service two times a week. They offer a wide range of activities to the unaccompanied children, such as art and craft programmes, table tennis, board games or going to the cinema.

Reportedly, the **Hungarian Red Cross and the Kalunba Nonprofit Kft.** were also present in **Vámosszabadi** in 2019 from time to time.
Cordelia Foundation was also present providing psychosocial services to the residents of **Vámosszabadi**, **Balassagyarmat** and **Fót**, as well (see for more detail Section Health care).

In **Vámosszabadi** a couple of volunteers also assisted asylum seekers in 2018, mainly those who were in subsequent procedure and were denied food. According to HHC's report from 2018,[284] besides food, volunteers provided the residents of the reception centre with hygienic items and clothes, as well. In 2019, there was no more voluntary activity reported in Vámosszabadi.

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282 According to Annex 1 Decree 239/2009 on the detailed conditions of providing countinuous shelter-service activity and the rules on the issuance of the permissions to operate a shelter, available in Hungarian at: https://bit.ly/2S8eugp.
283 Section 131 Asylum Decree.
284 HHC, *Safety Net Torn Apart – Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018.

In each facility, general medical services are available. However, asylum seekers complain about the lack of interpretation services when accessing medical services. In Vámosszabadi SOS Children' Villages provided interpreters to assist asylum seekers at the medical services in the first half of 2018 however, their project ended, therefore this activity ceased, as well. According to Menedék Association in Vámosszabadi there has been Arabic language social worker assisting with interpretation, on the other hand there was no interpreter available in Balassagyarmat in 2019. In Fót, there are Arabic, Dari and Pashtu interpreters available. For special treatment and examination, asylum seekers were accepted by nearby town hospitals (in Győr), where according to a volunteer assisting a pregnant asylum seeker, people encountered the same language barriers.

2.3. Duration of stay in reception centres

According to the NDGAP,[285] in Vámosszabadi there was a total of 33 people accommodated under the effect of the Asylum Act in 2019. It is not specified though if they were asylum seekers or beneficiaries of international protection. The average length of their stay was 135 days. Balassagyarmat hosted a total number of 150 people in 2019. Out of them there were 142 asylum seekers and 8 persons were under aliens policing procedure. The average length of time spent there was 2-3 weeks. There was one asylum seeker known to HHC whose procedures had been started more than 3 years ago and owing to the lack of effective remedy, he was still struggling to obtain international protection in one of the reception facilities until July 2018. Since then he has been waiting for the end of the procedure at private accommodation.

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 ☒ No

As a result of the rules applicable in times of state of crisis due to mass migration, asylum seekers have no longer access to the labour market. [286] They are neither entitled to work in the premises of the reception centres nor at any other work place. This regulation is clearly in violation of Article 15 of the recast Reception Conditions Directive. Furthermore, it was introduced with an *ex tunc* effect, thus it is applicable also in cases that had started prior to the adoption of the amendment (see the 2018 AIDA report).

This provision was amended with the effect of January 2019 in a way that currently it applies exclusively to those staying in the transit zones. In contrast to that, applicants staying at private accommodation have again the right to work after 9 months have passed by since the start of their procedure. In practice, however, Menedék Association reports that the modification did not result in a real change, since employers are not willing to offer jobs to people in possession of a residence permit (i.e. humanitarian residence permit) with a 2-3-month-long definite time of validity.[287]

According to the regulations in force prior to March 2017,[288] asylum seekers were able to undertake employment in the premises of the reception centre, without obtaining a work permit. After 9 months from the start of the asylum procedure could asylum seekers also work outside the centres, in accordance with the general rules applicable to foreigners. In this case, the employer had to request a

285 Information provided by NDGAP, 3 February 2020.
286 Section 80/J (4) Asylum Act
287 I.e. the humanitarian residence permit is prolonged every 2-3 months with further 2-3 months.
288 Section 5(1)(c) Asylum Act.

work permit – valid for 1 year and renewable – from the local employment office. Asylum seekers could only apply for jobs, which were not taken by Hungarians or nationals of the European Economic Area.

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) to 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.[289] 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. In 2018, for the first time in the past years, all children in **Fót** were enrolled and attended school. In contrast to that in 2019 asylum seeking children who arrived around June and in autumn of 2019 were not enrolled. In respect to the first half of the year however, children could attend school. Those unaccompanied minors who were under a Dublin procedure to unite with family members staying in other EU countries were never enrolled in formal education. By the time appropriate steps could be taken – mostly by civil society – to that end, their transfers were completed.

Refugee children are often not enrolled in the normal classes with Hungarian pupils but placed in special preparatory classes. Integration with the Hungarian children therefore remains limited (see below the account of Menedék Association). They can move from these special classes once their level of Hungarian is sufficient. However, there are only a few institutions which accept such children and are able to provide appropriate programmes according to their specific needs, education level and language knowledge. According to the experience of the Menedék 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 from 2019 where schools accepted asylum-seeking children. However, regarding the administration of official documents, there had been problems. These were all sorted out with the help of the HHC's legal officer by explaining the legal background of such children to the headmaster of that particular school.

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

Unaccompanied children in **Fót** attend elementary and secondary school in Budapest. 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, which accept unaccompanied minors. Children therefore need the support of NGOs so that they can successfully fulfil the obligations imposed by the school. It was noted in 2019 that Menedék Association, in cooperation with the legal guardians, provided them the necessary help in this regard. The increasing number of very young unaccompanied minors placed a heavy burden on the

[289] Section 45(3) Act CXC of 2011 on public education.

educational system and shed light on systemic shortcomings such as the lack of an elementary school willing and able to enrol young asylum-seeking children in 2018.

Prior to the last year, the general experience of HHC was that there were no asylum-seeking children placed in Vámosszabadi. However, Menedék Association reported that in the autumn of 2019 a family of three with a 6-year-old girl were placed there. Since December 2019, the child has private classes from a teacher in one of the elementary schools of Győr. The Association notes that the admission to the local elementary school, constituting togetherness with the school community would be a more effective way of integration for her.

In **Balassagyarmat,** there has been no arrangement made with the local schools. There is a school operating at the premises of the community shelter, where resident children can be enrolled. According to the Menedék Association a 5-year-old boy was taken by the local kindergarten in September 2019 thanks to the good cooperation between the reception facility and the preschool.

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 for free of charge. In the reception centres, there were no Hungarian language classes provided to asylum seekers in 2018. In contrast to that, over the course of 2019, the Menedék Association thought Hungarian language to the residents in Vámosszabadi. They also reported that in addition to that there is also a Hungarian language course held in the family support centre in Győr targeting foreigners. The latter provides a great opportunity for community experience to the residents of the reception facility.

In Balassagyarmat there was no Hungarian language class provided in 2019 to asylum seekers, however according to the Menedék Association one applicant commuted from the facility to Budapest in order to attend a language class that was organised by the NGO and a language school.

Before September 2017, education as such was practically non-existent in the transit zones. Since then, according to the Hungarian Government, education in the Tompa transit zone is organised by the Szeged Educational District and in the Röszke transit zone it is organised by the Kiskőrös Educational District (the latter being where unaccompanied minors are accommodated). Prior to 2019 based on personal meetings with unaccompanied children who had participated in these educational programs the HHC concluded that this can hardly be perceived as effective education. Unaccompanied minors found them useful mostly because they had a sense of activity rather than dullness for a while during their arbitrary detention. Classes were not tailored or age-appropriate and teachers often lacked the necessary linguistic skills needed to teach effectively. Based on the observation of teaching materials handed out to unaccompanied minors who had been in the transit zone it could be seen that the classes mostly focused on enabling minors to say a few basic things in Hungarian.

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.[290] It covers essential medical services and corresponds to free medical services provided to legally residing third-country nationals.[291] 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."[292]

In practice, there are no guidelines for identifying vulnerable asylum seekers and 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, an NGO, is the only organisation with the necessary experience in providing psychological assistance to torture survivors and traumatised asylum seekers being present only in a limited number of the reception centres. 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. Despite the utmost importance of the organisation's work, it has not been given an entrance permit to the transit zones so far.

In 2018 and 2019, the Cordelia Foundation was present in both operating reception facilities, namely in **Vámosszabadi** and **Balassagyarmat**. In the latter site, it was present on average once in a fortnight and this frequency applied to the other centre too. However, as a result of the low number of asylum seekers (and beneficiaries of international protection), the regularity of the visits of psychiatrists and psychologists similarly to 2018 remained hectic throughout the year, even though the Foundation would have had the capacity for regular visits on fortnightly basis. Upon the increase of the number of residents in the autumn, the NGO was present more frequently again. The same applies to **Fót** where they were also present on an ad hoc base. The Foundation also plays a key role in the lives of asylum seekers (and of those migrants who have a "refugee story", for instance students from Syria) who are placed in private accommodation, mainly in **Budapest**. In 2018, the Foundation with four psychiatrists and two psychologists provided therapeutic services to 107 persons in Budapest, while in the last year the NGO assisted 86 persons.

Asylum seekers have access to a general physician in Vámosszabadi several times per week and to nurses daily, and there is an Arabic social worker who assists with the translation. Similarly, to the previous years though, the access to effective medical assistance is hindered by language problems since translators are not always available or provided by NDGAP. Nonetheless, as for the Menedék Association the efficiency of the medical services regarding capacity has improved compared to 2018 due to the decrease in the number of the residents at the facilities. Specialised health care is provided in nearby hospitals in all major towns, although similar language problems occur here if a social worker is not available to accompany asylum seekers to the hospital to assist in the communication with doctors. A nurse also visits Balassagyarmat on a daily basis. In case asylum seekers need medical care, they are provided with it by the local health care services in town.

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.[293] In practice, these asylum seekers struggle with accessing medical services as physicians systematically refuse the registration and treatment of asylum seekers

290 Section 26 Asylum Act.
291 A detailed list is provided under Section 26 Asylum Decree.
292 Section 34 Asylum Decree.
293 Section 27(2) Asylum Decree.

on the ground that they lack a health insurance card. According to the verbal 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 often provides asylum seekers with the necessary written explanation (written in Hungarian) that the patient can take with him- or herself to the check-ups, thus avoiding any misunderstanding and complications. Eventually, the social workers of the NGO even give a call to the doctor and explain the legal eligibility of the asylum-seeker on the phone.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
   ☒ Yes ☐ No

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

Furthermore, the Asylum Act provides that in case of persons requiring special treatment, due consideration shall be given to their specific needs.[294] 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.[295]
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 might request expert assistance by a doctor or a psychologist.[296] There is no protocol, however, for identifying vulnerable asylum seekers upon reception therefore, it depends very much on the actual asylum officer whether the special needs of a particular asylum seeker are identified at the beginning or in the course of the procedure at all (see Identification). However, since asylum seekers principally enter the transit zones and stay there during the entire asylum procedure, as of March 2017, there has been only exceptional cases when asylum seekers were accommodated in open reception facilities.

The HHC is aware of the case of a disabled woman who received special treatment in **Vámosszabadi** in 2018. She was provided a flexible toilet placed in her room and a personal nurse assisting her on a daily basis until August 2018. According to the Menedék Association, in addition to that a nurse (besides the doctor and the nurse present in the camp) and a physiotherapist visited her two times a week. In 2019, a lethally ill child and her family members were also placed here after having spent more than 3 months in the transit zone. According to the Menedék Association despite of the nurse being helpful and cooperative the leadership of the reception facility were not inclined to effectively cooperate regarding the treatment of the child. The intercultural mediator of the NGO accompanied the family to check-ups taking place in Budapest, however the family left the camp in the beginning of August. In Vámosszabadi the family having a baby asked for a feeding-bottle and an electric kettle but as the facility could not provide these, the Menedék Association supplied the necessary equipment to them.

Unaccompanied asylum-seeking children below the age of 14 are placed in special homes in **Fót**, designated specifically for unaccompanied children, where social and psychological services are available.[297] However, it is the responsibility of the authorities to conduct an age assessment, and often

294 Section 4(3) Asylum Act.
295 Section 34 Asylum Decree.
296 Section 3(1)(2) Asylum Decree.
297 HHC, *Best Interest Out of Sight - The Treatment of Asylum Seeking Children in Hungary*, 17 May 2017, available at: http://bit.ly/2nMWtrs.

their level of expertise is dubious at best (see section on Identification). If the assessment results in the person being considered either an adult or a child above fourteen, then this poses an obstacle to accessing the services that a child would need. In 2017, the HHC published its report "*Best Interest Out of Sight - The Treatment of Asylum Seeking Children in Hungary*", detailing the problems facing child asylum seekers.[298]

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 gay, lesbian or transgender asylum seekers are accommodated in the same facilities as others, with no specific attention, while there are no protected corridors or houses. As of 1 January 2018, if the gender identity of the asylum seeker is different from his registered gender, this must be considered when providing him/her with accommodation at the reception centre.[299]

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.

298 *Ibid*.
299 Section 22 Asylum Decree.

F. Information for asylum seekers and access to reception centres

1. Provision of information

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 in writing the person seeking asylum in his or her mother tongue or in another language understood by him or her, without delay and within a maximum of 15 days, concerning all provisions and assistance to which he or she is entitled under the law, as well as the obligations with which he or she must comply in respect to reception conditions, and information as to organisations providing legal or other individual assistance.

Information is also provided orally to asylum seekers on the day when they arrive at the reception centre, in addition to an information leaflet. 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. The information is communicated both orally and in written form, in a language that the asylum seeker understands. In contrast to previous year when written information on reception conditions was available only in Hungarian or in English, in Vámosszabadi last year these provisions were accessible in Arabic and Farsi, as well.[300]

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) 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 or detention centres and conduct monitoring visits for asylum seekers, to provide free legal counselling and to request statistical data. The HHC conducted 21 monitoring visits (and prepared reports on these visits) since January 2015.[301] Lacking free access to reception facilities, HHC lawyers and attorneys are able to meet asylum seekers upon their requests. 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. Asylum seekers may meet the lawyer of HHC in front of the reception facility.

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

G. Differential treatment of specific nationalities in reception

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

300 Reported by the Menedék Association.

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

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention	
1. Total number of asylum seekers detained in 2019:	473
❖ Asylum detention	40
❖ Transit zones	433
2. Number of asylum seekers in detention at the end of 2019:	331
❖ Asylum detention	9
❖ Transit zones	322
3. Number of detention centres:	3
❖ Asylum detention centres	1
❖ Transit zones	2
4. Total capacity of detention centres:	
❖ Asylum detention centres	105
❖ Transit zones	700

Detention has become a frequent practice rather than an exceptional measure in Hungary, although most of asylum seekers are detained in the transit zones and not in officially recognized places of deprivation of liberty – asylum detention centres.[302] 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.[303] In 2019, 40 people were placed in asylum detention.[304]

Asylum detention of asylum seekers: 2014-2019			
	Asylum applicants detained	Total asylum applicants	Percentage
2014	4,829	42,777	11.28%
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%

Source: former IAO and NDGAP.

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.

There were 40 asylum seekers detained in the **Nyírbátor** asylum detention centre in 2019. **Kiskunhalas** and **Békéscsaba** are closed.

There are also 3 immigration detention centres 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.

Since 28 March 2017, all asylum seekers entering the transit zones of Röszke and Tompa are *de facto* detained, although the Hungarian authorities refuse to recognise that this is detention. The fact that

302 HHC, Statistical Brief Series on formal detention orders vs placement in the transit zones, 3 February 2019, available at: https://bit.ly/2IbFvNw.
303 Information provided by former IAO, 12 February 2019.
304 Information provided by NDGAP, 3 February 2020.

asylum seekers inside the transit zones are deprived of their freedom of movement is also confirmed by the UNWGAD,[305] CPT,[306] UNHCR,[307] UNHRC,[308] UN High Commissioner for Human Rights,[309] UN Special Rapporteur on the human rights of migrants,[310] European Commission,[311] and Commissioner on Human Rights of the Council of Europe.[312]

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 the 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 and the Grand Chamber of the ECtHR[313] 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. The HHC believes that this finding is applicable only to the situation in the material time of the case, therefore before March 2017, when the stay in the transit zone was for max. 28 days, when the border procedure was conducted and vulnerable applicants were not held there. If prolonged placement in the transit zone for the whole duration of asylum procedure, without a time limit and applicable to all asylum seekers, including the most vulnerable also does not amount to deprivation of liberty remains to be seen, as there are several pending cases at the ECtHR and one at UNWGAD.

In 2019, a total of 433 asylum seekers were *de facto* detained in the transit zones.

At present two transit zones are in operation: the **Röszke** transit zone is suitable for accommodating 450 asylum seekers whereas the **Tompa** transit zone is suitable for accommodating 250 asylum seekers.

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

305 UNWGAD, 'UN human rights experts suspend Hungary visit after access denied', 15 November 2018, available at: https://bit.ly/2B7X5Pu; UNHCR, *Hungary as a country of asylum*, May 2016.
306 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/2TTgsTq.
307 UNHCR, 'UNHCR Chief visits Hungary, calls for greater access to asylum, end to detention and more solidarity with refugees', 12 September 2017, available at: http://bit.ly/2y2BnsC.
308 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.
309 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.
310 OHCHR, End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, 17 July 2019, available at: http://bit.ly/2tqOHcX.
311 European Commission, Migration and Asylum: Commission takes further steps in infringement procedures against Hungary, 19 July 2018, available at: https://bit.ly/2uMEJ2c.
312 Commissioner 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/30upiLp.
313 ECtHR (Grand Chamber), *Ilias and Ahmed v. Hungary*, Application no. 47287/15, 21 November 2019.

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

(a) To establish his or her identity or nationality;
(b) Where a procedure is on-going 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; or
(f) Where it is necessary to carry out a Dublin transfer and there is a serious risk of absconding.

(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 his or her case.

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

The ground most commonly used was the "risk of absconding" under Section 31/A(1)(c), sometimes in combination with the "identification" ground.[314] The risk of absconding is defined in Section 36/E of the Asylum Decree as present: if "the third-country national does not cooperate with the authorities during the immigration proceedings, in particular if":

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

Since the entry into force of amendments to asylum legislation on 28 March 2017, asylum detention is hardly ever used. At the end of December 2019, there were 9 asylum seekers detained in asylum detention. The amended law provides that it is only possible to apply for asylum in the transit zones and that all asylum seekers, with the exception of unaccompanied minors below age of 14, have to remain in the transit zone for the whole duration of the asylum procedure. The stay in the transit zone is *de facto* detention.

Asylum seekers under a Dublin procedure, with the exception of unaccompanied children below 14 years of age are always detained for the whole duration of the Dublin procedure in the *de facto* detention in the transit zone.

[314] In February 2014, the HHC staff conducted monitoring visits to the three asylum detention centres open at the time (Békéscsaba, Debrecen, Nyírbátor). The monitoring teams interviewed over 150 detainees and collected the decisions ordering or maintaining the detention. Following these visits, HHC analysed a total of 107 decisions. See HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, available at: http://bit.ly/1MOnO0Q, 7.

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;[315]
(b) Designated place of stay;[316] and
(c) Periodic reporting obligations.[317]

Asylum detention may only be ordered on the basis of assessment of the individual's circumstances and only if its purpose cannot be achieved by applying less coercive alternatives to detention. However, the HHC's experience shows that the detention orders 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.[318] According to the Supreme Court (Kúria) opinion, contrary to the current practice, alternatives must be considered not only in the course of the initial one, but also in subsequent decisions on extension.

The *O.M. v. Hungary* case of 5 October 2016 also established that the detention order of a vulnerable asylum seeker was not sufficiently individualised.
Alternatives were applied as follows in 2016, 2017, 2018 and 2019:

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

Source: former IAO and NDGAP.

In 2019, asylum detention was hardly used, whereas alternatives to detention were not applied at all. Most asylum seekers (93,5% of the total) were *de facto* detained in the transit zones, for which no alternative is prescribed in the law.

315 Sections 2(lc) 31/H Asylum Act.
316 Section 2(lb) Asylum Act.
317 Section 2(la) Asylum Act.
318 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 6-7.

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.[319] While asylum detention was still widely used, despite that clear ban, unaccompanied children had been detained due to incorrect age assessment,[320] 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.[321]

From 28 March 2017, all unaccompanied children above age of 14 are *de facto* detained in the transit zones for the whole duration of asylum procedure. According to the statistics of the former IAO there were 91 unaccompanied children detained in the transit zones in 2017.[322] On 31 December 2018, there was only one unaccompanied asylum-seeking child who was placed in **Tompa**. In November and December 2018, no unaccompanied asylum-seeking child applied for asylum, according to the authorities.[323] At the end of December 2019, there was only one unaccompanied asylum-seeking child staying in Röszke. Throughout the year, there were a total of 10 unaccompanied minors seeking asylum in Hungary in 2019. Out of the 10 children, 2 were between 16-17 years old placed in the transit zones, the others were less than 14 years old, therefore they were placed out of the transit zones, in Fót. The HHC is aware of 6 unaccompanied minors who applied for asylum in 2019 and were placed in the transit zone, however, some of them have other asylum seekers for guardians and therefore do not figure as UAMs in the official statistics, although their cases are run separately from their guardians.

Moreover, no other categories of vulnerable asylum seekers are excluded from detention. Whereas previously families with children were not detained in practice, they are again detained in some cases. 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.[324]

However, asylum detention must be terminated if the asylum seeker requires extended hospitalisation for health reasons.[325]

In 2016, there were 54 families detained for an average time of 24 days.[326] 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.[327] In 2018 and 2019, there was no child in asylum detention.[328]

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319 Section 56 TCN Act; Section 31/B(2) Asylum Act.
320 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 12.
321 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 60.
322 Information provided by former IAO, 12 February 2018.
323 Information provided by former IAO, 12 February 2019.
324 Commissioner for Fundamental Rights, *Report in Case No. AJB 4019/2012*, June 2012, available at: http://bit.ly/1JKiBZN.
325 Section 31/A(8)(d) Asylum Act.
326 Information provided by former IAO, 20 January 2017.
327 Information provided by former IAO, 12 February 2018.
328 Information provided by former IAO, 12 February 2019.

From 28 March 2017, all asylum-seeking families were *de facto* detained in the transit zones.

GRETA in its second evaluation round made the following recommendations to the Hungarian authorities:
(a) to ensure that there are appropriate facilities in transit zones where asylum seekers can meet in privacy with persons of trust, including lawyers, employees of specialized NGOs, officials of international organisations and social workers (paragraph 97);
(b) to enable specialised NGOs with experience in identifying and assisting victims of trafficking to have regular access to transit zones;
(c) to ensure the timely appointment of trained guardians to unaccompanied or separated children kept in transit zones and enabling guardians to effectively fulfil their tasks by limiting the number of children for which each guardian is responsible.[329]

3.2. Vulnerable applicants in transit zones

On 7 March 2017, UNHCR expressed their deep concerns over the conditions in the transit zone that will have grave effects on children: “This new law violates Hungary’s obligations under international and EU laws, and will have a terrible physical and psychological impact on women, children and men who have already greatly suffered.”[330]

On 8 March 2017, the Commissioner of Human Rights of the Council of Europe also gave alarming signals after the adoption of the amendments to the Asylum Act: "As reported, the adopted Bill would allow the automatic detention of all asylum seekers, including families with children and unaccompanied minors from the age of 14, in shipping containers surrounded by high razor wire fence at the border for extended periods of time. Under the case law of the European Court of Human Rights, detention for the purpose of denying entry to a territory or for removal must be a measure of last resort, only if less coercive alternatives cannot be applied, and based on the facts and circumstances of the individual case. Automatically depriving all asylum seekers of their liberty would be in clear violation of Hungary’s obligations under the European Convention on Human Rights".[331]

In early May 2017, a high-level delegation consisting of three members of the European Parliament's Civil Liberties, Justice and Home Affairs Committee visited the transit zones. Members of the delegation (the Vice-President of the Group of the Progressive Alliance of the Socialists and Democrats (S&D Group) Josef Weidenholzer, Bureau member Peter Niedermüller and S&D Spokesperson for Civil Liberties, Justice and Home Affairs Birgit Sippel) declared in their joint statement that “The conditions asylum seekers are facing in Hungary are grim. Within the Röszke Transition Zone on the Hungarian-Serbian border, women, children and whole families are locked in narrow spaces and require a police escort to even visit a doctor. The conditions are not only inhumane but may also be in breach of international and European law. We remain convinced that only a common European asylum policy can help improve the situation refugees are facing and ensure order at the EU’s external borders.”

On 17 May 2017, the European Commission announced that it will move forward with the infringement procedure against Hungary concerning its asylum law. Amongst other issues, the Commission believes that the systematic and indefinite confinement of asylum seekers in closed facilities in the transit zone without respecting required procedural safeguards, such as the right to appeal, leads to systematic detentions, which are in breach of the EU law on reception conditions and the Charter of Fundamental Rights of the EU. The Hungarian law fails to provide the required material reception conditions for

329 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, Second evaluation round, Adopted 10 July 2019, Published on 27 September 2019, available at: http://bit.ly/364g3D2.
330 UNHCR, ‘UNHCR deeply concerned by Hungary plans to detain all asylum seekers’, 7 March 2017, available at: http://bit.ly/2sGzPpR.
331 Council of Europe Commissioner for Human Rights, ‘Commissioner concerned about Hungary’s new law allowing automatic detention of asylum seekers’, 8 March 2017, available at: http://bit.ly/2HzHOby.

asylum applicants, thus violating the EU rules in this respect.[332] On 7 December 2017, the European Commission decided to move forward on the infringement procedure by sending a reasoned opinion.[333] 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.[334]

On 12 September 2017 UN High Commissioner for Refugees Filippo Grandi called on Hungary to "do away with its so-called border transit zones", which he said are "in effect detention centres." The High Commissioner "expressed his concern that asylum-seekers, including children, were being kept in the transit zones" during their asylum process. "Children, in particular, should not be confined in detention', Grandi said Tuesday after touring the Röszke transit zone…"[335]

On 13 October 2017, the Council of Europe Special Representative on migration and refugees published a report on his fact-finding mission (12-16 June 2017) to the transit zones. He recorded that the metal containers accommodating asylum seekers "were directly exposed to the atmospheric conditions in both hot and cold weather; at the time of our visit there were several complaints by asylum-seekers about unbearable heat inside the containers." The Special Representative also accounts for a lack of "educational programmes, language learning programmes or curricula adapted to the particular needs and age of children in either transit zone and children cannot attend local schools." The Special Representative further reported on children complaining about the inadequacy of food provided for them.[336]

The Council of Europe Lanzarote Committee published an extensive report Special report further to a visit undertaken by its delegation to transit zones at the Serbian-Hungarian border.[337]

In its concluding observations, published on 9 May 2018, the UN Human Rights Committee expressed its concern that "the law adopted in March 2017, which allows for the automatic removal to transit areas of all asylum applicants for the duration of their asylum process, except unaccompanied children identified as being below the age of 14 years, does not meet the legal standards under the Covenant, owing to: (a) the lengthy and indefinite period of confinement allowed; (b) the absence of any legal requirement to promptly examine the specific conditions of each affected individual; and (c) the lack of procedural safeguards to meaningfully challenge removal to a transit area."[338]

The European Committee against Racism and Intolerance (ECRI) conclusions on the implementation of its recommendations in respect of Hungary of 15 May 2018 state that:

> "The Special Representative of the Secretary General on migration and refugees and the UN High Commissioner for Refugees have both visited the transit zones and noted that asylum seekers are held in restricted spaces and cannot move freely, and that they are escorted by guards whenever they have to move outside their designated areas. They are housed in shipping containers with rolls of razor-blade wires on top and the transit zones are surrounded by barbed-wire fences. ECRI considers that these features strongly resemble imprisonment.

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332 European Commission, 'Commission follows up on infringement procedure against Hungary concerning its asylum law', IP/17/1285, 17 May 2017, available at: http://bit.ly/2qvYAA0.

333 European Commission, 'Migration: Commission steps up infringement against Hungary concerning its asylum law', IP/17/5023, 7 December 2017, available at: http://bit.ly/2sJ4Vgu.

334 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.

335 UNHCR, 'UNHCR Chief visits Hungary, calls for greater access to asylum, end to detention and more solidarity with refugees', 12 September 2017, available at: http://bit.ly/2y2BnsC.

336 Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary 12-16 June 2017*, SG/Inf(2017)33, 13 October 2017, available at: http://bit.ly/2DS9v14.

337 Council of Europe Lanzarote Committee, *Special report further to a visit to transit zones at the Serbian/Hungarian border*, T-ES(2017)11, 30 January 2018, available at: http://bit.ly/2C6bYyZ.

338 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.

The average duration of stay in transit zones is reported to range from a few weeks to three months."[339]

On 26 June 2018, the Hungarian Helsinki Committee released "Safety Net Torn Apart", an extensive study on the situation of vulnerable asylum seekers in Hungary. The research relies on first-hand information provided by asylum seekers in the transit zones and lawyers working with them, as well as official information provided by the former IAO through freedom of information requests. The report accounts for a lack of careful assessment of individual vulnerabilities in the transit zone, lack of places where women can have privacy without men present, no specific, tailored information for women and minors in detention, inadequate basic healthcare services and ineffective psycho-social assistance and improper education.[340]

The CPT published its report on 18 September 2018, following its visit to Hungary from 20 to 26 October 2017. The Committee stressed the need to redesign the transit zones spaces in an effort to remove their carceral character and address overcrowding. General medical screening of the population in the transit zones seems to have been improved, but the handling of mental health and age assessment cases was found to be substandard.[341]

The Council of Europe Commissioner for Human Rights highlighted a number of persistent fundamental rights concerns in Hungary in a report published following her country visit in February 2019. *"The Commissioner considers that the systematic detention of asylum seekers in the transit zones without a time limit and adequate legal basis raises serious issues about the arbitrary nature of the detention. She calls on the authorities to discontinue the practice and apply alternatives to detention and stresses that the detention of asylum-seeking children under 18 years is a child rights violation."*[342]

In February 2019, the HHC published a report "**Crossing a red line**" on how EU countries undermine the right to liberty by expanding the use of detention of asylum seekers upon entry, where the conditions in transit zones Röszke and Tompa, gathered through interviews with people who were actually detained in the transit zone are described.[343]

UN High Commissioner for Human Rights, on 3 May 2019 stated: *"We note also that the Hungarian authorities do not consider some of these migrants to be in detention as they can "voluntarily" leave the transit zones towards neighbouring Serbia. However, we add our views that a migrant must not be subject to detention in inadequate conditions, arbitrary detention or other forms of coercion as this renders any return involuntary. Furthermore, we note that such "voluntary" departure could put migrants at further risk as it could breach Hungarian deportation orders, and force migrants to enter Serbia irregularly in contravention of Serbian law."*[344]

Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, stated on 10 May 2019: *"The Committee is deeply concerned by the alarming situation of asylum seekers, refugees and migrants in the State party especially following the state of emergency declared since 2015, including: (a) The legislative amendments and reform in 2017 which led to the indefinite holding of all asylum applicants, except for minors below the age of 14, for the duration of their asylum process in transit zones separated from*

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339 ECRI, *Conclusions on the 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.

340 HHC, *Safety Net Torn Apart – Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, available at: https://www.helsinki.hu/en/safety-net-torn-apart/.

341 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/2TTgsTq.

342 Commissioner 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, http://bit.ly/30upiLp.

343 HHC, *Crossing a red line: How EU countries undermine the right to liberty by expanding the use of detention of asylum seekers upon entry*, February 2019, available at: https://bit.ly/2DQJo7U.

344 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.

Hungarian society, without sufficient legal safeguards to challenge removal to these transit zones; (b) By reports that the conditions in transit zones are not adequate for long term stay of individuals, especially women and children, and reported challenges in accessing adequate medical services, education, social and psychological services and legal aid in the transit zones."[345]

The end of visit statement of **the UN Special Rapporteur on the human rights of migrants, Felipe González Morales**, Hungary (10-17 July 2019) said the following: *"I am concerned that all asylum seekers, including pregnant women, children as young as 8 months and unaccompanied minors between 14 and 18 years old, are automatically detained in the transit zones for the entire duration of the asylum procedure. The severe restrictions on the freedom of movement of asylum seekers as well as the carceral environment in the transit zones qualify as detention in nature. Although the Hungarian authorities do not consider the transit zones as places of detention, departure from the transit zone is only possible in the direction of Serbia, very often resulting in the termination of the asylum application. Automatic placement of asylum seekers in detention is in breach of international human rights standards. Restriction of movement of asylum seekers must be necessary, reasonable, proportionate, and based on individual assessment. The availability, effectiveness and appropriateness of alternatives to detention must be considered before recourse to detention."*[346]

On 25 July 2019, **the European Commission** decided to send a letter of formal notice to Hungary concerning the situation of persons in the Hungarian transit zones at the border with Serbia, whose applications for international protection have been rejected, and who are waiting to be returned to a third country. In the Commission's view, their compulsory stay in the Hungarian transit zones qualifies as detention under the EU's Return Directive. The Commission finds that the detention conditions in the Hungarian transit zones, in particular the withholding of food, do not respect the material conditions set out in the Return Directive and the Charter of Fundamental Rights of the European Union. [347]

The HHC successfully halted the deportation from 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.[348] The HHC obtained 15 other ECtHR interim measures concerning 14 families with children and one unaccompanied child from Afghanistan who were all detained in the transit zones. The ECtHR requested the Hungarian government to 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 the domestic courts annulled their placement in the transit zone, therefore it can be concluded that the interim measures were not respected.[349] 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.

According to the Hungarian authorities, the rules on the procedure for identification of victims of trafficking contained in Government Decree no. 354/2012 also apply in the transit zones. It is the duty of staff of the Asylum and Immigration Office to conduct an identification interview if an applicant shows signs of being a possible victim of trafficking. Should suspicions that the person may be a victim of

345 Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, 10 May 2019, http://bit.ly/3615xfJ.

346 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.

347 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.

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

349 HHC, T*he Immigration and asylum office continues to ignore court decisions and interim measures,* 14 December 2018, available at: https://bit.ly/2BHVrnP.

trafficking grow stronger as a result of the interview, the person concerned should be referred to the victim support services, but only if he/she confirms in writing that he/she is a victim of trafficking. GRETA was informed that from February to May 2018, 14 identification interviews had been carried out by Asylum and Immigration Office staff with possible victims of trafficking in the two transit zones, using identification sheets contained in Government Decree no. 354/2012. By the time of GRETA's second evaluation round visit, two possible victims of trafficking (originating from Afghanistan and Iran) had been detected in the transit zones on the basis of indicators of trafficking. GRETA was informed that because these persons did not agree to sign the form confirming that they were victims of trafficking and did not wish to co-operate with the investigation, no specialised assistance was provided to them. In the further course of 2018, further identification interviews were carried out, but none led to identification of trafficking victims. According to the Hungarian authorities, in the period after GRETA's visit, questions specifically about trafficking were added to the standard questions used in asylum interviews. The authorities have indicated that in January 2019, one asylum seeker was identified as a victim of trafficking through the use of the revised identification sheet developed by the Immigration and Asylum Office and Hungarian Baptist Aid after GRETA's visit.[350]

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):
   - ❖ Asylum detention — 6 months
   - ❖ Transit zones — None

2. In practice, how long in average are asylum seekers detained?
   - ❖ Asylum detention — 68 days
   - ❖ Transit zones — 154 (Tompa) / 121 (Röszke)[351]

The maximum period of asylum detention is 6 months, and 12 months for subsequent applicants, whose cases have no suspensive effect. Families with children under 18 years of age may not be detained for more than 30 days. *De facto* detention in the transit zones has no maximum time limit.

In 2019, the average period of asylum detention was 68 days. According to the statistics of the NDGAP, there were no families with children placed in asylum detention.[352]

As of March 2017, asylum seekers who are *de facto* detained in the transit zone remain there until the end of their asylum procedure.

The HHC calculated the average time spent in the transit zones for all our clients, whose cases were either initiated after 1 January 2019 or that were initiated before 1 January 2019 but are still pending on 16 December 2019. The average length of stay of this asylum-seeking population (altogether 363 persons) in one of the transit zones is **188 days.** This statistical average includes asylum-seekers who applied for asylum in 2018 but their asylum procedure is still pending on 16 December 2019, as well as those who applied for asylum in November 2019 and their asylum procedure is still pending, therefore the data is characterised by significant deviation. Some very disturbing facts are the following:

- Average length of stay during the asylum procedure in one of the transit zones of those who applied for asylum in Q1 of 2019 or before, but their asylum procedure is still pending on 16 December 2019, is **309 days**.

350 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, Second evaluation round, Adopted 10 July 2019, Published on 27 September 2019, available at: http://bit.ly/364g3D2.
351 Data provided by the NDGAP, 3 February 2020.
352 Information provided by NDGAP, 3 February 2020.

- Average length of stay during the asylum procedure in one of the transit zones of **unaccompanied children** whose asylum procedures were initiated after 1 January 2019, calculated on 16 December 2019, is **289 days**.
- Average length of stay during the asylum procedure in one of the transit zones of **families with 4 or more children**, whose asylum procedures were either initiated after 1 January 2019, or before 1 January 2019 but are still pending on 16 December 2019, calculated on 16 December 2019, is **198 days**.
- In none of the asylum procedures conducted in the transit zone in 2019 where the HHC provided legal representation did the asylum authority release the applicant within 28 days. The shortest time an asylum-seeker represented by the HHC had to stay in one of the transit zones until their release was 57 days. The longest time an asylum-seeker represented by the HHC has been staying in the transit zone in their still pending asylum procedure is **474 days** as of 16 December 2019. [353]

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.[354] At the time of writing, the only functioning asylum detention facility is **Nyírbátor**, with a capacity of 105 places and 9 asylum seekers detained on 31 December 2019.

In 2017, most asylum seekers were *de facto* detained in the transit zones. The two transit zones in **Röszke** and **Tompa** can accommodate 450 and 250 persons respectively. At the end of 2019, total number of asylum seekers detained in Röszke transit zone was 167, while it was 155 in Tompa transit zone.[355]

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.[356] 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

353 HHC, Statistical Brief Series on formal detention orders vs placement in the transit zones, 3 February 2019, available at: https://bit.ly/2IbFvNw.
354 Section 31/F(1) Asylum Act and Sections 36/A-36/F Asylum Decree.
355 Information provided by former IAO, 12 February 2019.
356 Section 31/F(2) Asylum Act.

phones, 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.[357] 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.

Currently there are 9 persons detained in asylum detention, 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.[358]
Religious diet is always respected. Specific diets are taken into account, however the HHC is aware of a case, where the detainee despite the medical staff being aware of his medical conditions managed to get a special diet only after he refused to eat the regular food for several days. The nutritional value of the food is regulated in the legal act.

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

> "A considerable number of foreign nationals claimed that they had been subjected to physical ill treatment by police officers at the moment of apprehension, during transfer to a police establishment and/or during subsequent police questioning. It is of particular concern that some of these allegations were made by foreign nationals who claimed to be unaccompanied minors. In addition, a few allegations were received of physical ill-treatment by police officers and/or armed guards working in immigration or asylum detention facilities."[359]

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."[360]

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.

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

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

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357 Section 36/D Asylum Decree.
358 Section 31/F(2) Asylum Act.
359 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 16.
360 *Ibid*, para 48.

Transit zones

The transit zones of **Röszke** and **Tompa** are in remote locations, made out of containers built into the border fence. There are different sectors: offices, a sector for families, a sector for unaccompanied minors, a sector for single men and a sector for single women. Containers are about 13 sq. meters in size (approximately 4 x 3 meters). Asylum seekers stay in containers furnished with 5 beds. Each asylum-seeker has a bed and a closable wardrobe. When five people are staying in a room, there is no moving space left. In case a family consists of more than 5 members, family members are accommodated in several accommodation units but without being placed together with non-family member persons.

Besides sleeping containers, there is a dining container, a community container, shower containers and an Ecumenical prayer room.

The containers are placed in a square and in the middle, there is a courtyard with a playground for children and a ping-pong table. The entire transit zone is surrounded by a razor-wire fence, and is patrolled by police officers and armed security guards. There are cameras in every corner; there is no privacy or silence. The carceral nature of the transit zones has been confirmed by reports published by, for instance, ECRI and CPT, which concluded that such an environment cannot be considered adequate for the accommodation of asylum seekers, even less so where families and children are among them.[361]

Until September 2017, there were no proper educational activities organised for children. Only a programme aimed at very small children, organised by the social workers, was happening once or twice a week for few hours. There were no activities organized for teenagers or adults, therefore they had no opportunity to spend their time in a meaningful way.

According to the Government, school started in the community rooms of the sectors on 4 September 2017. In the Tompa institute teachers are provided by the Kiskőrös Educational District, whereas in the Röszke institute teachers are provide by the Szeged Educational District. For children between the age of 6 and 16 years, school attendance is obligatory (see Access to Education).

There are no programmes organised for teenage unaccompanied children, who often complain of boredom. Their pens and pencils are also taken away because of security risk.

Meals are provided three times a day for adults and five times a day for children under fourteen. Catering is provided by the Szeged Strict- and Medium-Regime Prison. The food provided in a day must contain at least 10900 Kjoules of energy. However, asylum seekers whose claims were dismissed under the new inadmissibility ground entering into force in July 2018 were denied food in the transit zones. The former IAO only provided food after the ECtHR issued interim measures under Rule 39 of the Rules of the Court (see Admissibility Procedure: Appeal). The NDGAP still does not provide food to adults in alien policing procedure held in the transit zone. The HHC obtained 12 interim measures under Rule 39 in such cases in 2019.

Asylum seekers can buy certain items via the social workers. A “shopping list” has been compiled from which asylum-seekers can choose items to buy. Asylum seekers select the items from the list, hand over the money, and when the items have been bought, the social workers settle the accounts in writing.

Each sector has a TV. In the transit zones, free Wi-Fi is available and asylum-seekers may keep their mobile phones with them, but no public phones or computers are available. The asylum seekers

361 ECRI, *Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up*, 15 May 2018, 5; CPT, *Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017*, 18 September 2018.

complain of very poor Wi-Fi connection, which only enables them to send messages, not participate in calls. Those with no personal mobile phone remain disconnected from the outside word. This makes contact with the outside world, including legal representatives, particularly difficult.[362]

Summer 2017 was extremely hot (over 30 degrees during the day) and at that time, there were no ventilators provided in the containers.[363] People also could not leave the windows or doors of the containers opened because bugs would come in, and they complained of their bites. There was hardly any shading roof at the courtyard; therefore, people were obliged to stand in direct sunshine if they wanted to be outside during the day. As of August 2017, each room has a ventilator and there are some shades and parasols available. Residents of the transit zones – who are often families with young children – still complain about the excessive heat over the summer, not enough parasols and also of bugs coming into the containers and biting them. Making a draught is not possible since the windows and the doors are on the same side of the containers. Asylum seekers also complained that they want to use the bathroom or shower during winter, they have to walk from their containers to the bathroom containers through the very cold courtyard. The courtyard is covered with white gravel and when it rains, the entire outside area in the transit zone becomes so flooded that it is not possible to use the open-air part.[364]

Asylum seekers are escorted by several police officers anytime they want to go to the medical container, to the interview, or to meet their lawyer. There were reports of people being handcuffed while being taken outside the transit zones to hospitals or to Western Union, however the handcuffing was no longer reported in 2018. They are still nevertheless escorted to a hospital by armed policemen as if they were criminals.

Different sources from international monitoring bodies contain information on the conditions in the transit zones (see Detention of Vulnerable Applicants).[365]

CERD - in its concluding observations - recommended to the Hungarian authorities to take measures to improve conditions in transit zones, including for women and children, and ensure full access to adequate medical services, education, social and psychological services and legal aid.[366]

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, medical care provided is often criticised by detainees. They rarely have access to specialist medical care when requested and are only taken to hospital in emergency cases. In severe cases of 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

362 CPT, *Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017*, 18 September 2018.

363 Reuters, 'Hungary's tough asylum policy keeps thousands stranded in Serbia', 14 June 2017.

364 As it can be seen in a video recording shot by asylum seekers staying in the transit zone besides children asking for release: http://www.rudaw.net/sorani/world/240520173.

365 See e.g. HHC, *Crossing a red line: How EU countries undermine the right to liberty by expanding the use of detention of asylum seekers upon entry*, February 2019, available at: https://bit.ly/2DQJo7U; Budapest Beacon, 'Hungary's transit zones are prisons where pregnant women are handcuffed and children go hungry', 14 June 2017, available at: http://bit.ly/2HApcIn; Honvedelem, 'Belügyminiszterilátogatás a transit zónában', 6 April 2017, available in Hungarian at: http://bit.ly/2CzOL8Z;Atlaszo, 'Life in the Hungarian transit zones: no proper food, medical care or education', 30 August 2017, available at: http://bit.ly/2sGBhsj; András Lederer, 'Transit zone – summer 2017', available at: http://bit.ly/2HAaYYa; S&D, 'Conditions refugees are facing in Hungary are appalling – the Commission must act', 9 May 2017, available at: http://bit.ly/2pjrpTe.

366 Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, 10 May 2019, http://bit.ly/3615xfJ.

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.[367] The 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 psychosocial support available in any of the detention centres. During consultation hours, interpretation is not provided in **Nyírbátor**. The CPT found in 2015 that the provision of psychological and psychiatric care was clearly insufficient, if not inexistent in all establishments visited.[368] In the absence of regular, state-funded psychological counselling and regular mental healthcare, the tension deriving from the closed circumstances, lack of information and forced close contact of persons from different national, cultural and social backgrounds is not mitigated. Instances of self-harm, suicidal attempts or thoughts, as well as aggressive outbursts towards fellow detainees or guards were witnessed as regular during all monitoring visits.[369]

The majority of the social workers working in the asylum detention facilities hardly speak any foreign language and at the time of the HHC's visits, the HHC's observed they did not really engage with the detainees. They were mainly performing the administrative tasks, handed out sanitary packs, clothes or other utensils while being mostly separated from their clients by iron doors or having their offices in a part of the centre where detainees have no access to. Social workers could play an active role in the identification of torture victims and other detainees with special needs. However, not only are they overburdened by administrative and basic service provision tasks, but they also lack possibilities to be trained specifically to this end, and they are not officially appointed to perform this task.[370]

Transit zones

Each transit zone has a medical unit capable of accommodating 10 persons. A general practitioner is available for 4 hours on workdays, whereas a children's doctor is available twice a week; in addition, a field surgeon is available in the transit zone every day, 24 hours a day. Where specialist care is needed, the person in need of such care is taken to the specialised medical institution, namely to one of the Medical Clinics of Szeged University or to Kiskunhalas Hospital and Polyclinic.

When pregnant women have to be taken for a medical examination, 2 or 3 policemen escort them to a nearby hospital. A pregnant woman reported that the policemen had stayed in the examining room during her pre-natal medical check-up.

No interpretation is provided during the medical examination, which makes communication and building confidence between doctor and patient extremely difficult. In one of the pending ECtHR cases,[371] the Court's interim measure granted explicitly requested the Hungarian government to provide interpretation at the medical check-ups of the applicant. Despite this interim measure being granted, the Hungarian government responded that according to the regulation they are only obliged to guarantee the translation during the administrative procedures and not during the medical examinations. Lack of interpretation during consultations with doctors remained an issue in the transit zones in **Hungary**, as the **UN Special Rapporteur on the human rights of migrants reiterated** during his visit in July 2019 to the Hungarian transit zones at the southern border with Serbia. According to the UN Special Rapporteur, some asylum applicants reported cases where the doctor simply failed to provide a diagnosis due to communication barriers.[372]

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367 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.

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

369 Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016, 24-25.

370 *Ibid*, 25.

371 ECtHR, *R.R. v. Hungary*, Application No 36037/17.

372 FRA, *Migration: Key fundamental rights concerns*, Quarterly bulletin 4, 2019, http://bit.ly/30NBDe9.

Asylum seekers complain that they only receive painkillers for any type of problem they report. When being brought outside of the transit zone for medical check-up, asylum seekers are transported in a van fit for the transportation of criminals.

Since mid-November 2017, the former IAO and now NDGAP employs a clinical psychologist who speaks English and when an asylum seeker does not, a psychologist can request a translator. The psychologist visits both zones once a week. There are, however, reports of issues of interpretation and access.[373] The psychiatrist started to visit the transit zones on 24 January 2018. The visit takes place once a week. However, people complain that psychosocial care is not adequate, in particular there is no specific psychological care provided for children, often the psychologist would only talk to the parents and not to the child. The ECRI conclusions of May 2018 state that children held in the transit zones did not receive proper psychosocial counselling, and the Hungarian authorities did not provide them with proper recreational services and facilities in the transit zones. ECRI also stressed that detention conditions in the transit zones worsened since 2015.[374] Due to organisational shortcomings, there are periods when no psychologist or psychiatrist are present for a month or two, until their contracts are renewed.

2.3. Conditions for vulnerable asylum seekers

Asylum detention

Under Section 31/F of the Asylum Act, detention must take into account special needs.[375]

Vulnerable persons, except unaccompanied children, are not excluded from detention. HHC in the past regularly saw that persons with special needs such as the elderly, persons with mental or physical disability were detained and did not get adequate support. A mechanism to identify persons with special needs does not exist. 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.

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.[376]

Transit zones

The transit zones in their current state are unfit for accommodating people for a longer period of time and are unfit for accommodating people belonging to vulnerable groups for even a shorter period of time.[377] The conditions in the transit zones are dire and clearly do not meet international and EU law standards. Adequate care for vulnerable individuals is missing, similarly to systematic identification and support mechanisms for people with special needs.

373 HHC, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, 7-14, in particular 11.
374 ECRI, *Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up*, 15 May 2018.
375 Section 31/F(1) Asylum Act.
376 Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016.
377 CPT, *Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017*, 18 September 2018.

Separate accommodation for vulnerable asylum seekers is missing. For example single women and unaccompanied girls are usually held together in a sector with families (and therefore men and boys), and in general there are no private women-only places.[378] There is no adequate support provided for victims of domestic violence, victims of torture and traumatised asylum seekers. Special needs of LGBTI people are not taken into account. The transit zones are not equipped to meet the needs of persons with mental or physical disabilities. For example, the HHC obtained an interim measure under Rule 39 in a case of an Iraqi family of six, with a 10-year-old child who is unable to use her limbs and is confined to a wheelchair. She is completely dependent on her parents in all aspects of everyday life and she faced severe difficulties living in the transit zone.

The Hungarian Helsinki Committee has already submitted 15 requests for interim measures under Rule 39 of the Rules of Court of the European Court of Human Rights in order to obtain the release of vulnerable asylum seekers from the transit zones (14 families and one unaccompanied minor). All 15 interim measures were granted by the Court, and the Court requested the Hungarian government to place the applicants, as soon as possible, in conditions respecting Article 3 ECHR (see Detention of Vulnerable Applicants). In 2019, the HHC obtained 6 such interim measure.

FRA report states: *"In Hungary, two members of parliament who visited the Tompa transit zone at the end of November 2018 indicated that, for around 40 children, an outdoor area not bigger than a basketball court is the only place provided for activities. Children complained about boredom and depression due to the limited number of activities available, and about the presence of armed guards everywhere in the transit zone. The members of parliament also met an autistic boy who had been staying in the transit zone with his family for months, without access to proper care as he was not allowed to be taken out of the facility."*[379]

Assessment by the **Lanzarote Committee** of the follow-up given by the Hungarian authorities to the recommendations addressed to them further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017), on 6 June 2019 stated: *"The Hungarian authorities have not ceased the practice of detaining children in the transit zones in fenced open air areas with containers for shelter (Recommendation R12)." "Despite the positive outcome related to the setting-up of shaded areas acknowledged above (see §10) other aspects of the living conditions in the transit zones (Recommendation R13) remain poor. Air conditioning is limited to community areas, which leaves the metal containers where the children sleep and spend most of their day very hot during the summer, despite ventilating fans. Wireless internet connection remains poor and no public telephones or computers are available. This means that children affected by the refugee crisis in the transit zones who are not equipped with personal mobile phones remain disconnected from the outside world and others have to pay for bad quality communication."*[380]

On 26-27 March 2019 social workers employed in the transit zones attended training organised by IOM for first-line professionals and law enforcement officers working with migrants and refugees.[381]

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378 HHC, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, 14.

379 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1*, 18 February 2019, http://bit.ly/30wRaik.

380 Council of Europe, Lanzarote Committee (Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse), Assessment by the Lanzarote Committee of the follow-up given by the Hungarian authorities to the recommendations addressed to them further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017) , 6 June 2019, available at: http://bit.ly/2sDNq1W.

381 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, Second evaluation round, Adopted 10 July 2019, Published on 27 September 2019, available at: http://bit.ly/364g3D2.

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 summer 2017, the authorities terminated cooperation agreements with the Hungarian Helsinki Committee and denied 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.[382] 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.[383]

In asylum detention, no NGO is present on a regular basis. In transit zones, the Charity Council,[384] which consists of six organisations, is the only organisation which is allowed to enter to provide certain type of assistance to asylum seekers based on an agreement with the Hungarian authorities: Red Cross distributes donations; The Hungarian Interchurch Aid distributes donations, holds children programmes and helps in conflict management; The Hungarian Reformed Charity Service distributes donations, organises community programmes and, in case of need, religious programmes; the personnel of the Migration Medical Health Service of the Hungarian-Maltese Charity Service operate 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 the Hungarian Reformed Church, the Reformed Church of Békésszentandrás and the Hungarian Red Cross were regularly present in the transit zones.[385]

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.[386]

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

382 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.

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

384 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: http://karitativtanacs.kormany.hu.

385 Information provided by NDGAP, 3 February 2020.

386 UNWGAD, 'UN human rights experts suspend Hungary visit after access denied', 15 November 2018, available at: https://bit.ly/2B7X5Pu.

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.[387] The CPT confirmed this and made an explicit recommendation to the Hungarian government regarding this issue.[388]

CPT further finds that: "[…] many foreign nationals (including unaccompanied juveniles) complained about the quality of interpretation services and in particular that they were made to sign documents in Hungarian, the contents of which were not translated to them and which they consequently did not understand."[389] 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."[390]

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.

In recent years, the effectiveness of judicial review has been criticised by the CoE Commissioner for Human Rights expressed concern as to the lack of effective judicial review,[391] UNHCR[392] and the UNWGAD.[393]

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387 Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016.

388 CPT, Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015, 3 November 2016, paras 58 and 63.

389 *Ibid*, para 59.

390 *Ibid*, para 62.

391 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.

392 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.

393 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.

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.

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

Judicial reviews of immigration and asylum detention are conducted mostly by criminal law judges. Judicial review of immigration detention has been found to be ineffective, as Hungarian courts fail to address the lawfulness of detention in individual cases or to provide individualised reasoning based upon the applicant's specific facts and circumstances. HHC's analysis of 64 court decisions from February 2014 (as does the experience of HHC lawyers in 2015) confirmed that the judicial review of asylum detention is ineffective because of several reasons:[394]

Firstly, the proceeding courts systematically fail to carry out an individualised assessment as to the necessity and the proportionality of detention and rely merely on the statements and facts presented in the 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.[395] As an extreme example demonstrating the lack of individualisation, 4 decisions of the Nyírbátor District Court analysed by the HHC contained incorrect personal data (name, date of birth or citizenship of the applicant).[396] 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 a formulaic nature of the courts' statements of reasons.

Moreover, 4 court decisions contained a date of birth which indicates an age lower than 18 years.[397] 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.

According to a survey conducted by the Hungarian Supreme Court, out of some 5,000 decisions made in 2011 and 2012, only 3 discontinued immigration detention, while the rest simply prolonged detention without any specific justification.[398] 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

394 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014.
395 Articles 8(2) and 9(1) recast Reception Conditions Directive; Section 31/A(2) Asylum Act.
396 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.
397 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.
398 Supreme Court, Advisory Opinion of the Hungarian Supreme Court adopted on 30 May 2013 and approved on 23 September 2013.

equal to zero. If the asylum seeker is represented, then there is a very slim chance that he or she would be released. The same findings apply for 2018.

The 60-day interval for automatic judicial review *per se* excludes the use of detention only for as short a period as possible and only until the grounds for detention are applicable, as it would be required by EU law.[399] If for any reason, the relevant grounds for detention cease to be applicable, for example, one week after the last judicial review, this fact is extremely unlikely to be perceived by the detaining authority and the detainee will only have the first chance to bring this change to the attention of the district court and request to be released only 53 days later. Therefore, the 60-day intervals cannot be considered as "reasonable intervals" in the sense of Article 9(5) of the Recast Reception Conditions Directive.

The Asylum Working Group of the Supreme Court adopted a summary opinion on 13 October 2014, which, based on a vast analysis of cases and consultations with judges and experts, dealt with a number of different issues including the judicial review of asylum detention. Such summary opinions constitute non-binding guidance to courts, aimed at the harmonisation of judicial practices, and are not related to a particular individual case. The Kúria confirmed HHC's concerns with regard to the ineffectiveness of the judicial review of asylum detention in all aspects, and concluded that "the judicial review of asylum detention is ineffective", for the same reasons as in the case of immigration detention.

The Kúria especially pointed out *inter alia* that judicial decisions are completely schematic and limit themselves to the mere repetition of the arguments submitted by the authority ordering detention; judges are overburdened, insufficiently qualified and not in a position to conduct an individualised assessment, nor able to verify whether or not detention was ordered as a "last resort".

Despite the Supreme Court's very positive analysis and guidance, nothing has changed since then in the practice. The same is true for the similar summary conclusions on immigration detention published in September 2013, which put forward very positive standards, with yet no visible impact on anything.

Judges are overburdened, and the irrationally high number of cases they are assigned makes it impossible to provide effective judicial review. A systemic change is desperately needed in order to remedy the situation.
The Committee of Ministers of the Council of Europe did not close any of the Hungarian cases, where the judgment was delivered on the arbitrariness of detention of asylum seekers, as they are aware that Hungary did not implement any systemic changes.[400] In 2019, 7 cases concerning arbitrary detention of asylum seekers were communicated by the ECtHR.[401]

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.[402] The objection must be decided upon by the local court within 8 days.[403] Based on the decision of the court, the omitted measure shall be carried out or the unlawful situation shall be terminated.[404]

399 Article 9(1) recast Reception Conditions Directive.
400 The two leading cases are Nabil and Others v. Hungary, Appl. No. 6116/12, 22 September 2015 and Lokpo and Toure v. Hungary, Appl. No. 10816/10, 20 September 2011.
401 Ahmed AYAD v. Hungary and 4 other applications, Appl. Nos. 7077/15, 26250/15, 26819/15, 32038/15, 48139/16, http://bit.ly/36bs0a2; S.B. v. Hungary, Appl. No. 15977/17, http://bit.ly/2uYkyC7 and Dragon DSHIJRI v. Hungary, Appl. No. 21325/16, http://bit.ly/2uYkyC7.
402 Section 31/C(3) Asylum Act.
403 Section 31/C(4) Asylum Act.
404 Section 31/C(5) Asylum Act.

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 subject to regular period review by the court, yet 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 his or her 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 issues 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.[405] This ruling is not a detention order, as transit zones are not considered places of detention by the government. There is no possibility to seek legal remedy against the ruling. It can only be challenged within the potential judicial review request against the future decision of the NDGAP on the asylum application.

Such a remedy is ineffective for several reasons. On the one hand, asylum seekers granted desired status do not have any interest in appealing a positive decision. Persons who receive protection are released and therefore the appeal against the placement in the transit zone is deprived of meaning since asylum seekers cannot complain about the conditions in the transit zone since they are no longer detained there. Additionally, the HHC is aware of cases where the Szeged Court did not adjudicate on the lawfulness of the asylum seekers' past placement in the transit zone, arguing that there was no need for that since the asylum seeker had been already released from the transit zone.

The HHC is also aware of cases where this type of remedy has already been proved ineffective even in case of those who had a – successful – judicial review performed in relation to the former IAO's ruling (as well as the in-merit decision) and who had to stay in the transit zone for the duration of the appeal. Although the Szeged Court found that the former IAO's ruling on placement in the transit zone was

405 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."

unlawful and therefore annulled the ruling and ordered the former IAO to deliver a new ruling on the placement in the re-opened asylum procedure, the court had not carried out any assessment as to whether the plaintiff's placement in the transit zone was appropriate and met the legal requirements under the recast Reception Conditions Directive and Article 3 ECHR. More importantly, since the court has no reformatory powers, it cannot issue a ruling that would remedy the asylum seeker's situation to avoid future violations. Even in case of annulment, the former IAO still avoided compliance with the court's order. The HHC is aware of several cases where despite the court ruling that placement in the transit zone was unlawful and ordering that asylum seekers should be placed in another open camp, the former IAO ignored the court's decision and re-appointed the transit zone as a place of stay in the repeated procedure.[406]

In 2018, the Szeged Administrative and Labour Court annulled several transit zone placement decisions,[407] and the former IAO actually respected the court decisions and placed the applicants in the open community shelter in **Balassagyarmat**. The Szeged Court adopted a position that according to the Article 43(2) of the Asylum Procedures Directive, a placement in a transit zone at the border can last maximum 4 weeks and annulled all the placement orders that were appealed (appeal can only be made together with the appeal against a decision on the asylum case), where asylum seekers were held there for longer. Unfortunately, this practice lasted only until February 2019. From then on, the Metropolitan Court started to have exclusive jurisdiction to adjudicate the cases from the transit and Metropolitan Court did not adopt the same position on the legality of placement in the transit zone. The HHC attorneys were involved in more than 200 asylum cases at the Metropolitan court in 2019 and they are only aware of 5 interim measures ordering the release of asylum seekers from the transit zone, that were granted by three judges all together. Families with small children have been detained for extensive period of time in the transit zones and interim measures are categorically refused.

The HHC attorneys brought actions for omission to the Szeged Administrative and Labour Court, claiming that the NDGAP is in omission by not applying necessary detention related procedural safeguards to people detained in the transit zones. The Szeged Court granted an interim measure, ordering a release of a father and his 8 years old son, who have been detained in the transit zone for almost a year. The NDGAP did not execute the interim measure, but instead appealed to the Regional Court. The Upper Court annulled the interim measure, therefore the father and the son are still in the transit zone, now for over a year already. These omission cases are currently suspended because of a preliminary reference referral, asking amongst others also whether the placement in the transit zone is a deprivation of liberty.[408]

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

Asylum seekers in asylum detention have the same rights regarding legal assistance as those not detained. The same shortcomings apply to the provision of legal assistance (see section on Regular Procedure: Legal Assistance).

Since the cooperation agreements were revoked by the authorities in summer 2017, the HHC lawyers do not have direct access to the detention centres or transit zones. The HHC lawyers can only represent the clients if the asylum seekers explicitly communicate the wish to be represented by the

406 HHC, T*he Immigration and asylum office continues to ignore court decisions and interim measures,* 14 December 2018.
407 See e.g. District Court of Szeged, Decisions No 6.K.27.060/2018/8 and 44.K.33.689/2018/11.
408 C-924/19 and 925/19, referred on 18 December 2019.

HHC lawyer to the NDGAP (they sign a special form). Once this form is received by the NDGAP, the HHC lawyers can meet the client in a special room/container located outside the living sector of the detention centre/transit zone. This way the 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 2016, the HHC lawyers provided legal advice to 997 asylum seekers detained and represented 178 clients during their judicial review of detention. For 2017, 2018 and 2019 data is only available for the number of all representation by the HHC lawyers at courts.

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

Even though the presence of an officially appointed lawyer is obligatory, HHC has witnessed that the lawyers usually do not object to the prolongation of detention. Officially appointed lawyers often provide 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."[409]

In all other instances of the review of detention, the detainees have the right to free legal assistance under the state legal aid scheme, but this assistance in not available in practice.

E. Differential treatment of specific nationalities in detention

The HHC is not aware of differential treatment in terms of specific nationalities being more susceptible to detention or systematically detained.

[409] CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 55.

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-governmental and church-based organisations provide the needed services aimed at integration such as housing, assistance with finding an employment, learning Hungarian language or assisting in family reunification.[410] Moreover, the Commissioner for Human Rights of the Council of Europe points out in her 2019 report that xenophobic rhetoric and attitudes also have a harmful effect on the integration of recognised refugees.[411] By contrast, the general migration strategy adopted in 2013 called for the creation of a tolerant Hungarian host society.[412] However, this strategy has never been materialised.[413] According to a comparative report on refugee integration frameworks in 14 EU Member States from 2019, written by Wolffhardt et al., among east-central European countries Hungary stands out as providing the least advantageous integration policy framework. As for the authors this is due to deliberate policy choices and has no relation to the country's long and short histories of receiving refugees and there is no correlation shown between the country's region and its position in relation to the recent movements.[414]

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:

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status: 3 years
   - ❖ Subsidiary protection: 3 years
   - ❖ Humanitarian protection: 1 year

In Hungary, persons with protection status do not get a residence permit, but a Hungarian ID. For refugees the duration of the status used to be 10 years, while for persons with subsidiary protection 5 years. However, on 1 June 2016 both were reduced to 3 years. According to the Asylum Act, refugee and subsidiary protection statuses shall be reviewed at least every 3 years.[415]

There are difficulties regarding the issuance of IDs in practice, notably the fact that it takes at least 1 month to issue a personal identification card. However, pursuant to the law the procedure should take up to 20 days.[416] According to the regulations in force from 1 June 2016, persons with international protection status are able to stay in the reception centres only for 30 days after the delivery of the

410 HHC, *Two years after: What's Left of Refugee Protection in Hungary?*, September 2017, available at: http://bit.ly/2EdCWqm.

411 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.

412 Wolffhardt A., Conte C. and Huddleston T., The European Benchmark For Refugee Integration: A comparative analysis of the national integration evaluation mechanism in 14 EU countries, Migration Policy Group and Institute of Public Affairs, 2019, available at: https://bit.ly/39gJDrc, 159.

413 Wolffhardt et al. 2019, 49.

414 Wolffhardt et al. 2019, 10.

415 Sections 7/A(1) and 14(1) Asylum Act.

416 See more information regarding the requirements and procedures to obtain an ID card int he 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.

decision.[417] Therefore, in 2017 it was a common experience that by the time that beneficiaries of international protection had to leave the camp, they had not received their ID and address card, thereby facing greater difficulties in finding a job and accommodation. Since people dominantly leave the reception facilities after receiving international protection, this has been more of a theoretical problem in 2018. In 2019, due to the low number of beneficiaries, the whole issue became negligible.

In 2017, a client of the HHC received his ID card approximately 1.5 months after the delivery of the international protection status. Presumably, the length of the issuance procedure was due to the difficulty as to the communication of the former IAO and the Government Office. In 2016, another person received subsidiary protection after his status had been revoked the same year. Even though the former IAO had sent the notification about the recognition decision to the Government Office, the latter still did not change the status of the beneficiary in the central system so the issuance of the ID card was not possible at first.

According to the experiences of the Evangelical Lutheran Church, cases were mostly prolonged where the beneficiaries of international protection had left the country without waiting for their Hungarian personal documents but were afterwards transferred back to Hungary. In these cases the refugees/beneficiaries of subsidiary protection have to first request the NDGAP to contact the competent (based on the person's address) local government office and send them the case file of the person. This usually takes at least two weeks but can last even longer. After the local government office received the notification, the person can submit the application for address and ID cards. In 2018 in the case of a refugee the lack of permanent address (he could not register his dormitory address as a permanent one) resulted in the non-delivery of the ID card for two months. In 2019, the Lutheran Church reported no similar case. In contrast to that, the organisation gave an account of cases when the ID cards of beneficiaries of subsidiary protection were not prolonged during the procedure for reviewing their status that amounted to that beneficiaries were without any ID card for months.

In practice children who are beneficiaries of international protection face a great obstacle by obtaining ID cards if only one of their parents resides with him/her in Hungary. According to the law,[418] 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 beneficiary of international protection has to set down his/her consent in writing (either in private document providing full evidence or a statement taken before the Hungarian Consulate) and has to deliver the original copy of it to Hungary. Consequently, it is obvious that in countries of origin such as Syria, Afghanistan or Somalia public service does not function or it functions in a highly limited way, and Hungarian Consulates do not operate. Not to mention the level of public security, which amounts to the fact that such a requirement from refugees and beneficiaries of subsidiary protection, is unnecessary and disproportionate. This regulation highlights that the law is not tailored to the situation of beneficiaries of international protection. HHC is aware of a case from 2017 where it took approximately one year to obtain an ID card for a 10-year-old boy as a result of the afore-mentioned issues.

Between the age of 18 and 65, the ID card is issued for 6 years. Under the age of 18, children are provided with an ID card valid for 3 years. As regards the renewal of ID cards, refugees prior to 2016 did not have problems renewing their Hungarian ID after 10 years, as this was done automatically. However, persons with subsidiary protection could not merely renew their Hungarian ID, but the authorities had to examine *ex officio* whether the conditions for subsidiary protection were still met. According to the new regulations, 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.

417 Section 32(1) Asylum Act.

418 Section 20 Government Decree 414/2015 (XII.23.) on the issuance of ID card and on the uniform image and signature recording rules.

2. Civil registration

2.1. Registration of child birth

Pursuant to the Act on Civil Registration Procedure,[419] within one day from the birth of a child, parents have the obligation to register his/her birth at the competent Registry Office, which issues the birth certificate. Neither the HHC nor the Menedék Association is aware of any cases regarding problems as to birth registration. Main challenges concern the establishment and registration of the 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. Provided that parents cannot contact the embassy of their country of origin in order to register their child, the new-born remains unknown citizen.

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.[420] 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 continues in 2019.

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.[421] The term "personal law" is defined in the Act on International Private Law,[422] meaning the law of any State of which the person 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), which on one hand might be dangerous for the person. On the other hand, it is prohibited by the Asylum Act to do so, unless the person loses his/her 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[423] and provides *ex lege* exemption in cases where the country of origin is knowingly unable to issue the required certificate.[424]

As per the experiences of 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 Menedék to write the application for exemption. The practice of the registry office regarding the required

419 Act I of 2010 on Civil Registration Procedure.

420 "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." Source: Gábor Guylai, *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.

421 Section 23(1) Act I of 2010 on Civil Registration Procedure.

422 As of 1 January 2018, Section 15 of Act XXVIII of 2017 on International private law.

423 Section 23(1) Act on Civil Registration Procedure.

424 Section 23(2) Act on Civil Registration Procedure.

documents is diverse. In 2018, according to Menedék Association on one occasion the birth certificate of the marrying party's mother was requested by the registry office without any legal ground for doing so. This was confirmed by the experiences of the Evangelical Lutheran Church, as well.
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 with that, in practice the parties are asked to bring an interpreter. The HHC is aware of a positive example from 2017, when the authorization procedure was accelerated by the Registry Office taking into account the pregnancy of the bride and the close date of the child's birth.

3. Long-term residence

Indicators: Long-Term Residence	
1. Number of long-term residence permits issued to beneficiaries in 2019:	not available

The TCN Act regulates long-term residence. Long-term residence status could be granted to those refugees or beneficiaries of subsidiary protection who have lawfully resided in the territory of Hungary continuously for at least the preceding three years before the application was submitted.[425] Continuity assumes that a person has not stayed outside the territory of Hungary for more than 270 days at all.[426] In practice, the 3-year term of residence must be understood as starting when people with international protection status have already moved out of the reception facilities and established a domicile.

The January 2019 amendments to the TCN Act and the Asylum Act exclude the possibility of residing concurrently under two legal titles in Hungary.[427] This means that by receiving another legal title for residence the person loses his or her international protection status.

According to the law, the applicant has to submit the documents in proof of means of subsistence in Hungary and the Hungarian existing residence, such as the comprehensive health insurance.[428]

The NDGAP has 70 days to examine the case and take a decision.[429] The long-term residence permit is granted for an indefinite term of time but the document has to be renewed every 5 years.

There are no different criteria for refugee status and people granted subsidiary protection.

According to the TCN Act, in cases of exceptional circumstances the third-country national may be given a national permanent residence permit by decision of the minister in charge of immigration even in the absence of the relevant statutory requirements. The minister in charge of immigration may consider the individual circumstances, family relationships and health conditions of the third-country national as exceptional circumstances, and may consider the economic, political, scientific, cultural and sporting interests of Hungary.[430]

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 2019:	34

425 Section 35(1)(a) TCN Act.
426 Section 35(2) TCN Act.
427 Section 1(7) TCN Act; Section 1(3) Asylum Act.
428 Section 94(1) TCN Decree.
429 Section 35(6) TCN Act.
430 Section 36(1) TCN Act.

The main criteria for naturalisation are laid down in Section 4(1) of the Citizenship Act as the following:

(a) The applicant has resided in Hungary continuously over a period of eight years;
(b) According to Hungarian laws, the applicant has a clean criminal record and is not being indicted in any criminal proceedings before the Hungarian court;
(c) The applicant has sufficient means of subsistence and a place of residence in Hungary;
(d) His or her naturalisation is not considered to be a threat to public policy or to the national security of Hungary; and
(e) The applicant provides proof that he or she has passed the examination in basic constitutional studies in the Hungarian language, or of his or her exemption from such examination.

The minimum period of residence prior to the naturalisation application is shorter for a number of categories of applicants who are treated preferentially. Recognised refugees and stateless persons are two of the categories benefitting from preferential treatment, and are required to have resided in Hungary continuously for a period of at least three years directly prior to the submission of the application.[431] Although 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 troubles fulfilling 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 of applying for Hungarian citizenship. Moreover, the high fees of the Hungarian Office for Translation and Attestation Ltd. might result in further difficulties when it comes to the application for citizenship.

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-longprevious 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.[432]

Applications for citizenship had been adjudicated by the former IAO until the end of 2016. Pursuant to legislative changes, since the beginning of 2017, citizenship is examined by the Government Office of Budapest. The petition can be submitted at any local government office, which transfers the case file to the Government Office of Budapest.

On the authentication of foreign documents – the relevant obligation of the authentication being provided by Section 14(5)(a) – that might result in difficulties in case of refugees the study on Hungarian nationalisation written in 2016 by the Gábor Gyulai, an 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

431 Section 4(2) Citizenship Act.
432 Section 17(4) Asylum Act.

other beneficiaries of international protection; nonetheless, there is no information whether it is applied as such in practice."[433]

According to the latest experience of the HHC, the authority upon a request for exemption accepts original documents without diplomatic authentication.
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.[434]

There is an *ex lege* practice of the Government Office of Budapest, according to that the authority summons the applicant for a "data checking". In fact, there is a proper interview held with the applicant about the very detail of his or her professional and private life, including questions regarding his or her 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 decision is not clear.

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.[435] In practice, the general procedural time takes at least approximately one year.

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 his or her residence shall send the invitation.[436] 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 for a long time – meaning at least a year– for a decision. Since the decision on granting citizenship is not an administrative one, 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 fair procedure.[437] The experience of Menedék Association confirms the aforementioned, as according to them, besides some positive decisions, several application with substantially similar background were rejected in the last year.

In 2019, 82 beneficiaries of international protection applied for Hungarian citizenship. In the same year 23 (breakdown by the three main nationalities was 5 Iraqis, 4 Afghan and 4 Iranian) refugees and 11 (breakdown by the three main nationalities was 3 Afghan, 2 Egyptian and 2 unknown citizen) subsidiary protection beneficiaries obtained citizenship. The applications of beneficiaries of international protection were rejected in 54 (breakdown by the three main nationalities was 26 Afghan, 5 Russian and 4 Iraqis) cases.[438] Compared to 2018 the number of citizenship grants has almost doubled, while the figure of rejection grew only with two cases. The number of applicants showed a 17% increase in 2019 in comparison with the previous year.

433 HHC, *The Black Box of Nationality: The naturalisation of refugees and stateless persons in Hungary*, 2016, available at: https://goo.gl/V7OVT5, 18.
434 Section 6(1) Citizenship Act.
435 Section 17(2) Citizenship Act.
436 Section 4(2) Citizenship Act.
437 HHC, *The Black Box of Nationality*, 2016.
438 Information provided by the Registry of the Government Office of Budapest, 16 January 2020.

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 the revocation of the recognition under the same Section.[439] 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:[440]

(a) The refugee has voluntarily re-availed him or herself of the protection of the country of his or her nationality;
(b) The refugee has voluntarily re-acquired his or her lost nationality;
(c) The refugee has acquired a new nationality and enjoys the protection of the country of his or her new nationality;
(d) The refugee has voluntarily re-established him or herself in the country which he or she had left or outside which he or she had remained owing to fear of persecution;
(e) The circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, subject to the exception of a well-founded fear arising from past persecution;[441]
(f) The refugee waives the legal status of refugee in writing;
(g) The refugee was recognised in spite of the existence of the reasons for exclusion referred to in Section 8(1) of the Asylum Act or such a reason for exclusion prevails in respect of his or her person;
(h) The conditions for recognition did not exist at the time of the adoption of the decision on his/her recognition;
(i) The refugee concealed a material fact or facts in the course of the procedure or made a false declaration in respect of such a fact or facts or used false or forged documents, provided that this was decisive for his or her recognition as a refugee.

The conditions for the cessation of subsidiary protection status are mainly the same as those concerning refugee status.

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-years interval.[442] NDGAP shall also examine compliance with the conditions for refugee status or subsidiary protection if his or her extradition was requested.[443]

439 Sections 11 and 18 Asylum Act.
440 Section 11(2) Asylum Act.
441 Section 11(4) Asylum Act.
442 Sections 75/A(1) and (2) and 14(1)(2) Asylum Act.
443 Section 7/A (2) Asylum Act.

The review of the international protection status is to be 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.[444] The procedure shall be conducted within 60 days.[445]

Proceedings for the withdrawal of refugee status or subsidiary protection are opened *ex officio*.[446] The rules of the general asylum procedure shall be applied during the withdrawal proceedings.[447] The NDGAP shall interview the person holding international protection status and in 60 days decide if the conditions of refugee status or subsidiary protection are still applicable. [448] If there is no ground of the revocation of the status, the proceedings shall be terminated. [449]

The resolution on the withdrawal of recognition of refugee status or subsidiary protection may be subject to judicial review.[450] The petition for judicial review shall be submitted to the refugee authority within 8 days following the date of delivery of the decision.[451] The petition for judicial review shall be decided by the court, within 60 days following the receipt of the petition, in contentious proceedings. The court review shall provide for a full and *ex nunc* examination of both facts and points of law.[452] The court may not overturn the decision of the NDGAP but it shall abolish the decision it finds unlawful and, if necessary, shall order the refugee authority to reopen the case. The court's decision adopted in conclusion of the proceedings is final, and it may not be appealed.[453]

With regard to the review of protection status in the last years, the HHC experienced that there have been many cases where Afghan beneficiaries of subsidiary protection did not have their status renewed after 3 years (and before July 2016, 5 years) because the former IAO considered their return to Afghanistan as being safe. In these cases, the former IAO systematically claimed 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, even though the deteriorating situation of both destinations reported by different sources and the lack of family links or sufficient means of subsistence.

As for re-availment of protection of the refugee's country of origin, a report of EMN published in November 2019[454] 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, when Hungarian authorities become aware of the contact, this would automatically lead to cessation of refugee protection.

The NDGAP withdrew the status of 57 beneficiaries of international protection in 2019. The refugee status was withdrawn in 12 cases (including 2 Syrian, 2 Nigerian, 2 former Yugoslavian refugees), whereas subsidiary protection was withdrawn in 45 cases (the majority of the beneficiaries, 27 persons had Afghan citizenship, followed by 6 Iraqis and 5 Syrians).

HHC is aware of a case from 2018, in which one month after the former IAO had recognised the Palestinian applicant as a refugee the determining authority initiated the withdrawal of the status. At the end the refugee status was not withdrawn as the former IAO revealed in the course of two asylum interviews with the assistance of an interpreter, that the translator – appointed by the former IAO - made

444 Section 75/A(1) Asylum Act.
445 Section 75/A(2) Asylum Act.
446 Section 72/A(1) Asylum Act.
447 Section 72/A(2) Asylum Act.
448 Section 72/A (3) Asylum Act.
449 Section 74 (1) Asylum Act.
450 Section 75(1) Asylum Act.
451 Section 75(2) Asylum Act.
452 Section 75(3) Asylum Act.
453 Section 75(5) Asylum Act.
454 European Migration Network, *Beneficiaries of International Protection Travelling to and Contacting Authorities of their Country of Origin*, November 2019, available at http://bit.ly/2OIk0Y3.

a wrong translation in the first instance procedure based on which the determining authority launched the withdrawal procedure. For 2019 HHC is not aware of such a case.

6. Withdrawal of protection status

Pursuant to the amendment to the Asylum Act that entered into force on 1 January 2018, the grounds of exclusion from refugee status were extended. According to Section 8(5) of the Asylum Act – the version in force in 2018 – a foreigner sentenced by a court's final and enforceable resolution for having committed a crime, which is punishable by at least five-year imprisonment may not be recognised as a refugee. The provision clearly violated Article 1F(b) of the Geneva Convention since it prescribes that only those are excluded from refugee status who had committed a crime "outside the country of refuge prior to his or her admission to that country as a refugee". Furthermore, this was the only provision of the January 2018 amendment, which was to be applied in on-going procedures, as well. Based on this provision, the NDGAP could also revoke the recognition as a refugee if a court with a final and absolute decision sentenced the refugee for having committed a crime, which is according to the law punishable by five years or longer-term of imprisonment.[455]

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."[456] Regarding this provision, a preliminary ruling was requested by the Metropolitan Administrative and Labour Court on 29 May 2017. The claimant was represented by Gábor Győző, a contracted attorney of HHC. According to the HHC, this domestic legal interpretation is more restrictive than the parallel EU norm (and thus unlawful), as the latter only allows for exclusion if the applicant committed a serious non-political crime, while the Asylum Act defines seriousness exclusively on the basis of the years of possible imprisonment. In its judgment of 13 September 2018, the CJEU declared that Article 17(1)(b) of the Qualification Directive "*must be interpreted as precluding legislation of a Member State pursuant to which the applicant for subsidiary protection is deemed to have 'committed a serious crime' within the meaning of that provision, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under the law of that Member State. It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned.*"[457]

Due to the aforementioned CJEU judgment, the relevant provisions of the Asylum Act were amended with effect as of 1 January 2019. However, the new regulation is still not in line with the CJEU ruling since it excludes again 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 declares that a person cannot be recognised as a refugee,[458] or as a beneficiary of subsidiary protection,[459] who has been sentenced by the court:

(a) to imprisonment of five years or more as a result of committing an intentional criminal offense;
(b) to imprisonment for committing a crime as repeat offender, habitual recidivist or a repeat offender with a history of violence who had been already convicted by a final judgment for imprisonment;
(c) to imprisonment of three years or more as a result of committing a criminal offense against life, limb and health, health, personal freedom, sexual freedom, public peace, public security or administrative procedures.

455 Section 11(3) Asylum Act.
456 Section 15(ab) Asylum Act.
457 CJEU, Case C-369/17 *Ahmed*, Judgment of 13 September 2018.
458 Section 8(5) Asylum Act.
459 Section 15(ab) Asylum Act.

In accordance with the regulations currently in force, both refugee status[460] and subsidiary protection[461] are to be revoked on the basis of Section 8(5) of the Asylum Act.

The NDGAP may not deviate from the opinion of the special authorities; not just in exclusion cases.[462] Although this had not been present *expressis verbis* in the Asylum Act before 2019, even then the determining authority had no right and competency to decide not in line with the content of the opinion of the special authorities. Consequently, there has been no change in the practice. As of January 2018, the NDGAP is also authorised to take data from the INTERPOL FIND international database and use them in the asylum proceedings.[463]

The procedure for withdrawal see above at Procedures and guarantees.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
   ☐ Yes ☒ No
2. Does the law set a maximum time limit for submitting a family reunification application?
   - ❖ General conditions: All beneficiaries ☐ Yes ☒ No
   - ❖ Preferential conditions: Refugees ☒ Yes ☐ No

   3 months
3. Does the law set a minimum income requirement?
   - ❖ General conditions: All beneficiaries ☒ Yes ☐ No
   - ❖ Preferential conditions: Refugees ☐ Yes ☒ No

Under Hungarian law, the family reunification applicants are the family members of the refugee in Hungary, not the refugees themselves. The 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.[464] 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. This is particularly problematic for Afghans in Iran since many are not provided with documents in Iran and face danger if returned to Afghanistan. However, the Hungarian consulate in Tehran accepted in 2019 in two children's case certificates which allow them to attend school legally as proof of residing lawfully by considering the issuance of those certificates as legal permission to stay given by conduct.

Although family members are required to apply at the competent Hungarian consulate, it is the National Directorate-General for Aliens Policing (NDGAP, former IAO) that considers the application and takes a decision. The applicants are required to prove their relationships with the sponsor and the necessary resources to return to their country of origin. The consulate records the biometric data of the applicant when submitting the application. The consulate must delete the data immediately when a rejection decision becomes final and enforceable. The final decision may be challenged in an administrative lawsuit. If the applicant wins the lawsuit, the NDGAP has to repeat the procedure. When the residence permit and the visa are granted in the repeated procedure, the consulate will record the biometric data again. It can cause financial and bureaucratic difficulties to the applicant to travel once again to the

460 Section 11(3) Asylum Act.
461 Section 18(1)(g) Asylum Act.
462 Section 57 Asylum Act.
463 Section 86/A Asylum Act.
464 Section 47(2) TCN Decree.

country where the application was submitted. However, the practice varies between consulates according to our experiences of 2019. Some consulates would delete the data right after the second instance rejection, some would wait until the court's judgement on the family reunification. The sponsor has to verify his/her subsistence, accommodation, and a comprehensive health insurance (or sufficient saving to fund the medical treatment) of the family members. The requirements regarding the volume of funds verifying the subsistence are not defined in the law. 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. According to the Hungarian law, there is no time limit to initiate the family reunification.

In Hungary, only refugees are entitled to family reunification under favourable conditions within three months following the recognition of their status.[465] They are exempted from fulfilling the usual material conditions: subsistence, accommodation, health insurance. No preferential treatment is applied in case of 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 hardly ever have the means to fulfil the strict material conditions for family reunification. It demands sacrifice and even luck to find a job or jobs where the beneficiary could earn a salary that is high enough. 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.

The authorities are strict regarding the documents what makes family reunification more difficult. They request that all the documents bear an official stamp from the authorities, proving that they are originals, as well as an official stamp from the Hungarian consulate. All documents have to be translated into English or Hungarian and bear an official stamp, too, 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. Hand written documents with correction of irrelevant data (made by the issuing authority) were considered as falsified in 2019 despite of a previous judgment banning this way of proceeding, and the family reunification was rejected by the first and second instance authority without considering other proof of the family link. This is particularly relevant to DNA tests, which cannot be requested by the applicants as of 2017, but it has to be ordered by the NDGAP.

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

127 family reunification applications were submitted to the former IAO in 2016, of which 80 applications were approved and 30 appeal cases are pending.[467] Data for 2017, 2018, 2019 were not provided by the asylum authority.

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.[468] However, according to the definition of family members provided by the

465 The favourable rule was amended by Section 29 Decree 113/2016. (V.30).

466 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).

467 Information provided by former IAO, 20 January 2017.

468 Section 7(2) Asylum Act.

Asylum Act,[469] 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 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.

Family members with a residence permit have access to education and vocational training however, they are excluded from integration and language programmes, health care, employment and self-employment, social security and assistance. [470]

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. Under Hungarian law, asylum seekers who obtain legal residence in Hungary, do not have to move into the transit zones and are able to apply for a designated place of residence in private accommodation. 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.

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 mainly concentrated in the capital of Hungary.

2. Travel documents

The duration of validity of travel documents issued to beneficiaries of international protection is one year, both for persons with refugee status and subsidiary protection. Refugees receive a "refugee passport", a bilingual travel document specified in the 1951 Refugee Convention, while holders of subsidiary protection receive a special travel document, not a refugee passport.[471]

A refugee is entitled to a bilingual travel document under the Refugee Convention, unless compelling reasons of national security or public order otherwise require.[472] There are no geographical limitations, except for travelling to the country of origin.

The NDGAP can deny the issuing of a travel document for beneficiaries of international protection in case the National Security Authority, the National Tax and Customs Administration of Hungary or the Police provides information to the NDGAP according to which the person should not get a travel document for reasons of national security and public order.[473] The resolution rejecting the issuance of a bilingual travel document to the refugee may be subject to judicial review.[474] As it is fixed in the Asylum Act, the petition for judicial review shall be submitted to the refugee authority within 3 days following the date of delivery of the decision.[475] The NDGAP shall, without a delay, forward the petition for judicial review to the competent court together with the documents of the case and any counterclaim

469 Section 2(j) Asylum Act.
470 Wolffhardt et al., 74.
471 Section11/A Decree 101/1998. (V. 22.) on the execution of Act XII of 1998 on travelling abroad.
472 Section 10(3) (a) Asylum Act.
473 Section 4/A Asylum Decree.
474 Sections 10(5) and 17(2a) Asylum Act.
475 Section 10(6) Asylum Act.

attached.[476] The petition for judicial review shall be adjudged by the court within 8 days in non-contentious proceedings, relying on the available documents.[477] The court may overturn the decision of the refugee authority. The court's decision adopted in conclusion of the proceedings is final, and it may not be appealed.[478]
For beneficiaries of subsidiary protection, the same rules are applied as to refugees.

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 needs to have already his or her ID card and the address card. Obtaining the latter could be problematic because of the difficulties beneficiaries face concerning housing. The authority issues the travel document within 22 working days.[479]

According to the statistics of NDGAP, 1,654 travel documents were issued to beneficiaries of international protection in 2017.[480] No data are available for 2018. In 2019, there were 745 travel documents for refugees and 581 for beneficiaries of subsidiary protection issued.[481]

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 2019	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.[482] In practice, in 2017 this meant that they had to leave the centres before being issued with an ID (see section on Residence Permit). In 2018, beneficiaries of international protection were accommodated in Vámosszabadi until the new inadmissibility ground, namely the "safe transit country" was adopted and got to be applied as of 10 August 2018. Since then until the end of 2018, there was only one unaccompanied minor who received tolerated status and was transferred to Fót, while the other applications were rejected on the ground of Serbia being a "safe transit country", therefore, no person with international protection status was accommodated in Vámosszabadi at that time. In 2019, there were a total of 33 persons accommodated in Vámosszabadi. However, the information provided by the NDGAP[483] does not specify the basis of their stay, only states that they were persons under the effect of the Asylum Act, it can be concluded from the context that this number concerns beneficiaries of international protection.

Besides accommodation, people are entitled to food during their 30-day stay. Persons with permission to stay could be placed in the community shelter in **Balassagyarmat**, although in 2018 this practice was not applied as only asylum seekers were accommodated by the shelter. However, according to the general experience most of the beneficiaries of international protection left the country a few days after their release from the transit zones both in 2018 and 2019.

The July 2013 amendments to the Asylum Act had introduced a new integration system moving away from camp-based integration to community-based integration. As of January 2014, integration support was provided via an integration contract concluded by the asylum authority and the person granted international protection upon request of the latter within 4 months following their recognition. The

476 Section 10(6) Asylum Act.
477 Section 10(7) Asylum Act.
478 Section 10(8) Asylum Act.
479 NDGAP, *Kétnyelvü úti okmányok kiállítása*, available at: http://bit.ly/2jrKbou.
480 Information provided by former IAO, 12 February 2018. As to 2018 the former IAO could not provide this data free of charge.
481 Information provided by NDGAP, 3 February 2020.
482 Section 41(1) Asylum Decree.
483 On 3 February 2020.

maximum period of validity of the contract was 2 years. The amount of integration support was set in the integration contract and the services were provided via the family care service of the local municipality. A social worker was appointed supporting the beneficiary of international protection throughout the integration process.

By June 2016, all forms of integration support were eliminated. Therefore, since then beneficiaries of international protection are no longer eligible to any state support such as housing or financial support, additional assistance and others.

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.[484] Accommodation free of charge is provided exclusively by civil society and church-based organisations. 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.[485] This means that by 30 June 2018 all those programmes whose integration support activity relied on this funding had 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. In 2019, according to the Menedék Association, the increase of rental fees also contributed to the deteriorative conditions regarding accommodation.

The Evangelical Lutheran Church in Hungary arranged short-term crisis placement for 61 persons with international protection in 2018 and a total of 83 persons in the last year (however the latter number might be lower because of the overlapping aid forms provided to the same person). Out of the 83 people there were 20 single man and one women while the others were families. The people were placed either in hostels or in AirBnB flats or the Lutheran Church contributed with financial aid to the fee or the deposit of the apartment rental. Reportedly, the **Jesuit Refugee Service** is also of important help for beneficiaries of international protection regarding housing.

The Baptist Integration Centre provided housing to 81 persons with international protection at four shelters in 2018, whereas the number of residents dropped to 54 accommodated in three shelters in 2019.

Kalunba provided a housing programme for 280 persons in 2017 and 2018. This number included single beneficiaries of international protection and families, as well. The programme ceased to exist with the closure of the AMIF funding. Within the framework of the programme, Kalunba assisted beneficiaries in renting apartments lasting between half a year to one-year period of time (based on the individual needs of the person). After 30 June 2018, the organisation still supports eight families with apartment rents. In 2019, these families were further supported by the organisation, furthermore eight new apartments were rented by Kalunba providing accommodation to more people.

Besides NGOs, until 2019, there had been an important service provider, namely the Budapest Methodological Centre of Social Policy and Its Institutions (BMSZKI) targeting beneficiaries of international protection by its project. BMSZKI is the homeless service provider of Budapest Municipality.[486] The Institution offered a housing program for beneficiaries of international protection from 1 January 2016 until 30 June 2018, funded by AMIF and the Interior Ministry. The program aimed at, through an individual social worker, facilitating the access to housing (individual counselling, contacting landlords, assistance at the contract conclusion) and supporting financially the accommodation of beneficiaries (payment of the rent or the overheads). Indigent families and single persons were the target groups. In 2018, the programme provided support to 24 beneficiaries with

484 EASO, *Description of the Hungarian asylum system*, May 2015, 10.

485 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.

486 BMSZKI, *Leaflet*, available at: https://bit.ly/2XbnwNu.

finding an apartment and with the payment of the rent. With the end of the project, given the non-availability of the AMIF funding, BMSZKI is not able to offer specialized programs to refugees and persons with subsidiary protection anymore. The organisation 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 with 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.[487] In 2019, there were less than 10 refugees showing up at these homeless shelters but because of communication difficulties they left after a few days.

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.

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 he or she can use the address as his/her 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 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 is difficult due to language barriers and the lack of interpreters. BMSZKI in 2018 reported prejudices against refugees in the apartment market, as well.

According to the experiences of the Lutheran Church, a recent practice of the local government offices requires refugees to provide a copy of the property sheet and the consent of the owner not only as to the address registration but also to the justification of the person's full subsistence. Another case from 2018 was of a refugee who had been residing already in Hungary with a student residence permit before he received the refugee status. It took him around two months until he got an address card, as the government office did not accept his dormitory's address which was registered in his student residence permit.[488]

Reportedly, the lack of special housing for families persisted in 2019.

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.[489] This means that no labour market test is applicable regarding the employment of beneficiaries. There is only one provision established in the Asylum Act, which makes a difference as to beneficiaries of international protection. According to the Asylum Act, beneficiaries may not take up a job or hold an office or position, which is required by law to be fulfilled by a Hungarian citizen.[490] Typically, the positions of public servant and civil servant demand Hungarian citizenship.

487 Families and couples (apart from a limited number of places regarding the latter) cannot be placed together.

488 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.

489 See the general right to equal treatment in Section 10(1) Asylum Act.

490 Section 10(2)(b) Asylum Act.

There is no statistical data available on the employment of beneficiaries,[491] thus the effectiveness of their access to employment in practice cannot be measured. In practice, the main obstacle beneficiaries of international protection have to upon searching a job is the Hungarian language. There is no special existing state support for obtaining employment. Beneficiaries of international protection are entitled to use the services of the National Labour Office under the same condition as Hungarian citizens, even though it is hard to find an English-speaking case officer.

In practice, having recognised that the absence of social capital and the knowledge of local language and culture pose major challenges for beneficiaries seeking jobs, as in the case of housing, NGOs fill in the role of the state in this sector as well.

Even though the "MentoHRing" programme of the Menedék Association[492] terminated with the end of the AMIF funding in June 2018, the organisation still had certain activities regarding the facilitation of job finding for beneficiaries of international protection in 2019.

The Maltese Care Nonprofit Ltd. services (individual labour market counselling, labour market training and personalized help with job seeking) targeted beneficiaries of international protection regarding job finding in 2018 within their project, called "Jobs for you". However, in 2019, the focus of the program changed, the target group was limited and despite that the theoretical possibility, there was no beneficiary of international protection recorded among those having received the services. The organisation would again broaden the program's target group in case a grant from AMIF was available.

Kalunba has a coaching programme within which similarly to 2018 (as of June 2018) it supported in the last year approximately 40 persons. The program entails job market counselling and mentoring.

Those who were supported by BMSZKI in 2018 within the housing programme also had access to the services of the Job seekers' Office. The social workers also cooperated with the Maltese Care.

Reportedly, due to language and cultural barriers access to employment is 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 they are provided only with a part-time contract), which renders integration of beneficiaries more difficult, since they have no free time besides work. There are no criteria stressed out in law to assess levels of professional education and skills. Assessment guidelines for cases where documentary evidence from the country of origin is unavailable either.[493] This is confirmed by the experiences of Menedék, according to which the lack of proper certification of education or trainings completed by refugees or persons with subsidiary protection often results in undertaking employment for they are overqualified. It is also important to note that employers usually treat beneficiaries of international protection less favourably than Hungarian citizens and they often lack trust towards foreigners. As for the Baptist Integration Centre, employment experiences for beneficiaries was diverse in 2019. Whereas there were cases without any difficulties regarding employment, there was one case recorded where the employer withdrew the job offer after having heard that the job-seeker is a refugee.

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.

491 Information provided by the Employment Department of Budapest Government Office, 14 March 2018.
492 See the programme at: http://menedek.hu/en/projects/mentohring.
493 Wolffhardt et al. 2019, 104.

Education for unaccompanied children is in practice provided by a limited number of public schools in Budapest. Access to effective education remained difficult in 2018. Since many unaccompanied children regard Hungary as a transit country for various reasons, they often drop out of school once enrolled. Schools that provide places find it hard to manage the high fluctuation of children in various classes due to the increased level of central control over educational management. This effectively creates a vicious circle: effective education may serve as a pull factor and encourage children to stay. The already limited number of schools however are reluctant to take unaccompanied minors for fear of them leaving Hungary and thus dropping out. The lack of access to education on the other hand serves as a push factor for many children who argue that staying in Hungary is not a realistic option for them since they cannot receive proper formal education.

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 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.[494]

In the case of children with families, the situation is also difficult. Hardly any school is ready to offer the specialised care and support that 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.

The Menedék Association used to provide a so-called school programme to all children hosted in **Fót**, which consists of games and learning through play. Though attendance was not compulsory, based on HHC lawyers' experience on the field children did make a point to attend since they considered it as a useful gateway to formal education. Menedék also offered preparatory classes for those who are about to enter formal education. Given the very low number of unaccompanied minors in Fót, the school programme ceased to operate in 2019.

Those unaccompanied children receiving a protection status before they turn 18 are eligible to aftercare services, that grants 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.[495]

As to the administrative barriers to education Wolffhardt et al. writes the following:[496] "*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*."

Young adults and adults have the same access to vocational trainings as nationals. However, the access is hindered by the fact that the trainings granted by law are only available in Hungarian, thereby the law does not take into account the specific needs of beneficiaries of international protection as a vulnerable group.[497] On the other hand though, beneficiaries of international protection face no administrative obstacles when accessing such trainings.[498]

Apart from that, young adults and adults have access only to a limited number of courses offered by NGOs. Until the termination of AMIF funding, Kalunba Charity provided free of charge accredited Hungarian language course with different levels ranging from illiteracy to intermediate language exam. Since June 2018, the organisation is still capable to provide language course for free of charge for those

494 Wolffhardt et al. 2019, 141.
495 Section 77(1)(d), (2) and Section 93 Child Protection Act.
496 Wolffhardt et al. 2019, 139.
497 Wolffhardt et al. 2019, 113.
498 Wolffhardt et al. 2019, 114.

refugees who have just been granted status. Everyone else needs to pay 1,000 HUF per hour. The organisation provides supervision of children for the time being of the courses. Additionally, Kalunba also provides so-called afterschool program, which targets children and young adults, including correspondence with the schools and support of education. Within this programme the organisation supports 35 persons per semester.

In 2018, BMSZKI organised volunteers who once a week taught Hungarian language for mothers in their homes. Later on, as a result of the big number of volunteers the target group was broadened. There is no report on that concerning 2019. After the project of BMSZKI had ended, and many of the employees working with refugees left the centre, the organisation had no capacity left to maintain the volunteer network in 2019.

MigHelp Association is an adult education institute. According to their website, the association has provided beginners with classes in Hungarian, German, French, and English, computer training, classes in vehicle driving, and child day care for migrants and refugees.[499]. Their programmes are free of charge although according to the organisation, those not speaking English on an intermediate level are not able to attend their courses. It frequently happens that beneficiaries of international protection cannot finish the courses due to their precarious employment and housing situation.

The Central European University terminated its Open Learning Initiative (OLIve) programme specifically targeting asylum seekers and refugees in the autumn semester of 2018 as a result of the ambiguity of the so-called "Stop Soros" legislation package,[500] that came into force in August 2018 levying a 25% tax on financing or activities "supporting" immigration or "promoting" migration in Hungary.[501] Whereas the program was on a pause in 2019, the University relaunches the OLIve Weekend program for the summer term of 2020 offering courses for asylum seekers and beneficiaries of international protection.[502]

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.[503] Therefore, beneficiaries of international protection are entitled to attendance of persons in active and retired age, limited public health care and unemployment benefit, amongst other entitlements e.g. family allowances, sickness and maternity benefits.[504] Social welfare is provided to beneficiaries under the same conditions and on the same level as for nationals.

Nevertheless, there are several forms of social assistance offered by the local government, which require the beneficiary to have already a certain number of years of established domicile. The rules set out by local governments can vary. For example, pursuant to decrees of local governments only those people who have been residing for certain years in the area of the local government are able to justify it with an address card are entitled to apply for social housing provided by local governments. Obviously, beneficiaries of international protection cannot comply with the requirement right after they get out of reception facilities or transit zones. Furthermore, job seekers' benefit requires at least 365 days of coverage (being employed or self-employed) in the last three years that is hardly the case for beneficiaries of international protection right after receiving protection.

499 See http://bit.ly/37f0hG7, and http://bit.ly/2SdRuQf.
500 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.
501 The programme continues as of January 2019.
502 See http://bit.ly/2Sz9WSh.
503 Ministry of Human Resources, *Tájékoztató a szociálisellátásokról*, 2017, available in Hungarian at: http://bit.ly/2EI1PPm.
504 For a summary, see US Social Security Administration, *Social Security Programs Throughout the World; Europe 2018*, September 2018, available at: https://bit.ly/2GOgIiU.

Social assistance is provided by either the competent district government offices or the local governments.

As to managing social welfare issues, difficulties mainly stem from the common slowness and tardiness of the administration system and from the general language barriers owing to the lack of interpreter provided to refugees or persons with subsidiary protection.

G. Health care

According to the Hungarian Health Act,[505] beneficiaries of international protection fall under the same category as Hungarian nationals. Although for 6 months (before June 2016, this period was 1 year) after refugees and persons with subsidiary protection are granted 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 Menedék Association's experience, in practice this is not accepted by the health care service provider, therefore the asylum authority in the reception centres files the request for the health insurance card on the basis of destitution. However, this takes quite a long time. Since 2018 the card (unlike earlier) is delivered by post which makes it even longer than receiving it in person 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 too long, it is not even requested immediately upon the granting of the status in Vámosszabadi but only after the person establishes a domicile out of the reception facility. Furthermore, the recent amendments of the Social Insurance Act has unfavourable effect on those beneficiaries of international protection who left the country and later on they are returned by another EU Member State. According to the 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 on billed to the patient.

In practice, similarly to asylum seekers, 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 to that. The obstacles furthermore, might be due to administrative difficulties or simply to the lack of law awareness. According to a research from 2017, which is based on interviews carried out with 18 refugees and 4 social workers, refugees generally feel marginalised regarding the healthcare system.[506] 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.

Not only adult refugees but also unaccompanied children who were granted international protection face the same difficulties explained above. In case of children, Menedék Association has witnessed an incident in 2017 when the hospital raised serious doubts about the child's age and attempted to get rid of the responsibility to treat the patient even though the children's age had been established by a forensic medical examiner in the asylum procedure.

As to the issuance of health insurance card besides the cited research, SOS Children's Villages noted in 2018 that it is extremely problematic since it takes long time until the beneficiary of international protection is provided with the card. As per the Evangelical Lutheran Church, there was a case in 2018 that a person with subsidiary protection requested to be registered as homeless and to be issued with a health insurance card but was not been provided with that up to more than a year. On the other hand,

505 Section 3(s) Act CLIV of 1997 on Health Care.

506 Mangeni Akileo, *Marginalization of refugees and asylum seekers in the healthcare system*: *A Hungarian case study*, Central European University, 2017.

the experiences of the Baptist Aid showed the opposite so that beneficiaries were usually within one week provided with the health insurance card. However, they noted that it took longer if firstly the health insurance status of the person had to be clarified.

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			
Directive 2013/32/EU Recast Asylum Procedures Directive	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 his or her case. EU law also provides that asylum seekers should – as a general rule with very strict exceptions – be provided with the right to stay in the Member State's territory pending a decision by the competent asylum authority. Under the 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. Further, on, extremely limited acceptance into the transit zone is incompatible with Article 6(2) of the recast 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.

	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 the transit zones is hindered.
	15(2)		Confidentiality during the interviews was not always ensured in the transit zones, when because of the heat the doors of a container were opened and the policeman standing in front of the door could hear everything, or asylum authority officers who were not conducting the interview would be coming in and going out during the interview.
	15(3)(c)		Interpreters are not always adequate.
	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 an 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 his or her age, he or she may request a new expert to be designated by the refugee authority. In case of contradicting expert opinions, it is up to the refugee authority to decide whether to appoint another expert or to determine which expert opinion shall be used regarding the age of the applicant. This provision is not in alignment to the Directive provision as if Member States still have doubts concerning the applicant's age after the age assessment, they shall assume that the applicant is a minor.
	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).
	26		Asylum seekers are automatically detained in transit zones and no speedy judicial review is available.
	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.

	33(2)	Section 51(2)(f) Asylum Act	The newly established inadmissibility ground is 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.
	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). This decision contradicts the UNHCR’s currently valid position, according to which Serbia is not a safe third country for asylum seekers, and the guidelines of the Hungarian Supreme Court (Kúria) and the clear-cut evidence provided by the reports of several NGOs. Currently there is no other EU Member State that regards Serbia as a safe third country for asylum seekers. - The amendment to the Asylum Act obliges the NDGAP to reject as inadmissible all asylum claims lodged by applicants who came through a safe third country, since the applicant “could have applied for effective protection there” as referred to in Sections 51(2)(e) and 51(4)(a)-(b) Asylum Act. As over 99% of asylum seekers entered Hungary at the Serbian-Hungarian border section in 2015, this means the quasi-automatic rejection at first glance of over 99% of asylum claims, without any consideration of protection needs. This is in violation of Article 10(3)(a) of the recast Asylum Procedures Directive as well which requires Member States to ensure that applications are examined and decisions are taken individually, objectively and impartially. - 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.
	46(1)(b)	Section 80/K(4) Asylum Act	The Asylum Act offers no possibility to appeal against the termination of the procedure

	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 restrictions introduced to the judicial review of admissibility decisions taken in border procedures in the transit zones, in particular regarding the scope of the review and the possibility of a hearing do not meet the requirements for an effective remedy under the recast Asylum Procedures Directive.
	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)). Instead, pursuant to Section 45(6) of the Asylum Act, the refugee authority in its decision refusing the application for recognition, withdraws the foreigner's residence permit issued for humanitarian purposes, orders his or her expulsion and deportation based on Act II of 2007 on the entry and stay of third country nationals and determines the period of prohibition of entry and residence.
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.
	3		The recast Reception Conditions Directive is not fully applied in the transit zones. This is against the Article 3 of the Directive, which provides that the Directive should apply also at the border.
	8(1)		Automatic detention of asylum seekers in the transit zone is clearly not in line with the Directive.
	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. Also “house arrest” imposed on those asylum seekers who are under criminal procedure due illegal crossing of the border does not constitute a less coercive alternative to detention. By automatically detaining every asylum seeker (except unaccompanied minors below 14 years of age, the Hungarian legislation is clearly not in line with the Reception Conditions Directive.
	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. There are no alternatives to the detention in the transit zones.
	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. Detention in the transit zone lasts until the end of asylum procedure, which is definitely not for the shortest time possible. 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. All families with children as well as unaccompanied minors above the age of 14 are automatically detained in the transit zones for an indefinite period of time.
	9(2)		Asylum seekers detained in the transit zones receive no detention order.
	9(3), (4) and (5)		There is no possibility to appeal against the placement to the transit zones until the final decision in the asylum procedure is issued. The applicants are not informed of this possibility, since it does not exist.

	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(2) and (3)		Minors are not detained as a last resort, but automatically if they are below 14 years of age or with a family. Their best interest is not taken into consideration and there are no activities appropriate to their age for teenage unaccompanied minors.
	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.
	14(1)		Education provided in transit zones definitely does not meet the standards required by the Directive.
	15		This Article is clearly breached with regard to the asylum seekers in the transit zone, since only asylum seekers that are not held in the transit zones or in asylum detention centres have a right to work after 9 months.
	17(2)		The conditions in the transit zone are clearly not adequate.
	18(2)(c)		Several professional NGOs active in the field of asylum for decades are not allowed to enter the transit zones.
	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 or in the transit zones.
	20(5)		Not providing food to the subsequent asylum applicants detained in the transit zone it is not in line with Article 20(5) of recast Reception Conditions Directive, according to which even in case of withdrawal or reduction of material conditions, the authorities shall ensure a dignified standard of living for all applicants.

	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.
	23		Placement of minors in transit zone is not in compliance with this provision. No rehabilitation services are provided.
	24(1)		The system of temporary guardians appointed in the transit zones is not in line with this provision.
	24(2)		Transit zones are not an appropriate accommodation for unaccompanied minors.
	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, immigration detention or transit zones.
	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.
	26		Domestic law does not provide any legal remedy to complain against the conditions in the transit zone.
	28		No appropriate monitoring of transit zones 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. 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 his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive. 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. 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.
	28	Article 31/A(1)(f) Asylum Act	Article 28 of the Dublin Regulation provides that the person shall no longer be detained when the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph. Despite this fact, the Asylum Act does not exclude Dublin detainees from the scope of Article 31/A(6) of the Asylum Act which means that the maximum length of detention may reach 6 months in their case as well.