aida
Asylum Information Database

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National Country Report

Hungary

ACKNOWLEDGMENTS

This report was written by Márta Pardavi, Grusa Matevzic, Júlia Iván and Anikó Bakonyi (Hungarian Helsinki Committee) and edited by ECRE.

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The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public and includes the development of a dedicated website which will be launched in the second half of 2013. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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Statistics

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

	Total applicants in 2012	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit *and* admissibility)	Otherwise closed / discontinued	Refugee rate	Subs.Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	F	B/(B+C+D+E)%	C/(B+C+D+E)%	D/(B+C+D+E)%	E/(B+C+D+E)%
Total numbers	2157	68	240	42	751	1110	6%	22%	4%	68%
Breakdown by countries of origin of the total numbers										
Afghanistan	880	32	128	15	298	449	7%	27%	3%	63%
Pakistan	327	1	11	0	131	176	1%	8%	0%	92%
Kosovo	226	5	0	0	38	175	12%	0%	0%	88%
Syria	145	1	29	15	30	65	1%	39%	20%	40%
Somalia	69	11	47	0	17	19	15%	63%	0%	23%
Algeria	59	0	0	0	26	35	0%	0%	0%	100%
Morocco	47	0	0	0	10	18	0%	0%	0%	100%
Iran	45	0	0	2	26	24	0%	0%	7%	93%
Turkey	30	0	3	0	19	5	0%	14%	0%	86%
Iraq	28	1	3	6	24	17	3%	9%	18%	71%
Others[1]										
Russia	4	0	1	0	1	4	0%	50%	0%	50%

Source: The Office of Immigration and Nationality

[1] Other main countries of origin of asylum seekers in the EU.

Table 2: Gender/age breakdown of the total numbers of applicants in 2012

	Number	Percentage
Total number of applicants	**2157**	
Men	1738	80.57%
Women	419	19.43%
Unaccompanied children	183	8.48%

Source: The Office of Immigration and Nationality

Overview of the legal framework

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

Title in English	Original title	Abbreviation	Weblink
Act LXXX of 2007 on Asylum	2007. évi LXXX törvény a menedékjogról	Asylum Act	http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=110729.234354
Act XCIII of 2013 on the amendment of certain law enforcement acts	2013. évi XCIII törvény az egyes rendészeti tárgyú törvények módosításáról	Act XCIII of 2013	http://www.kozlony.magyarorszag.hu/dokumentumok/cd7615df825472f45640e783541d020ef3e9ba39/megtekintes
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	http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=108621.239656

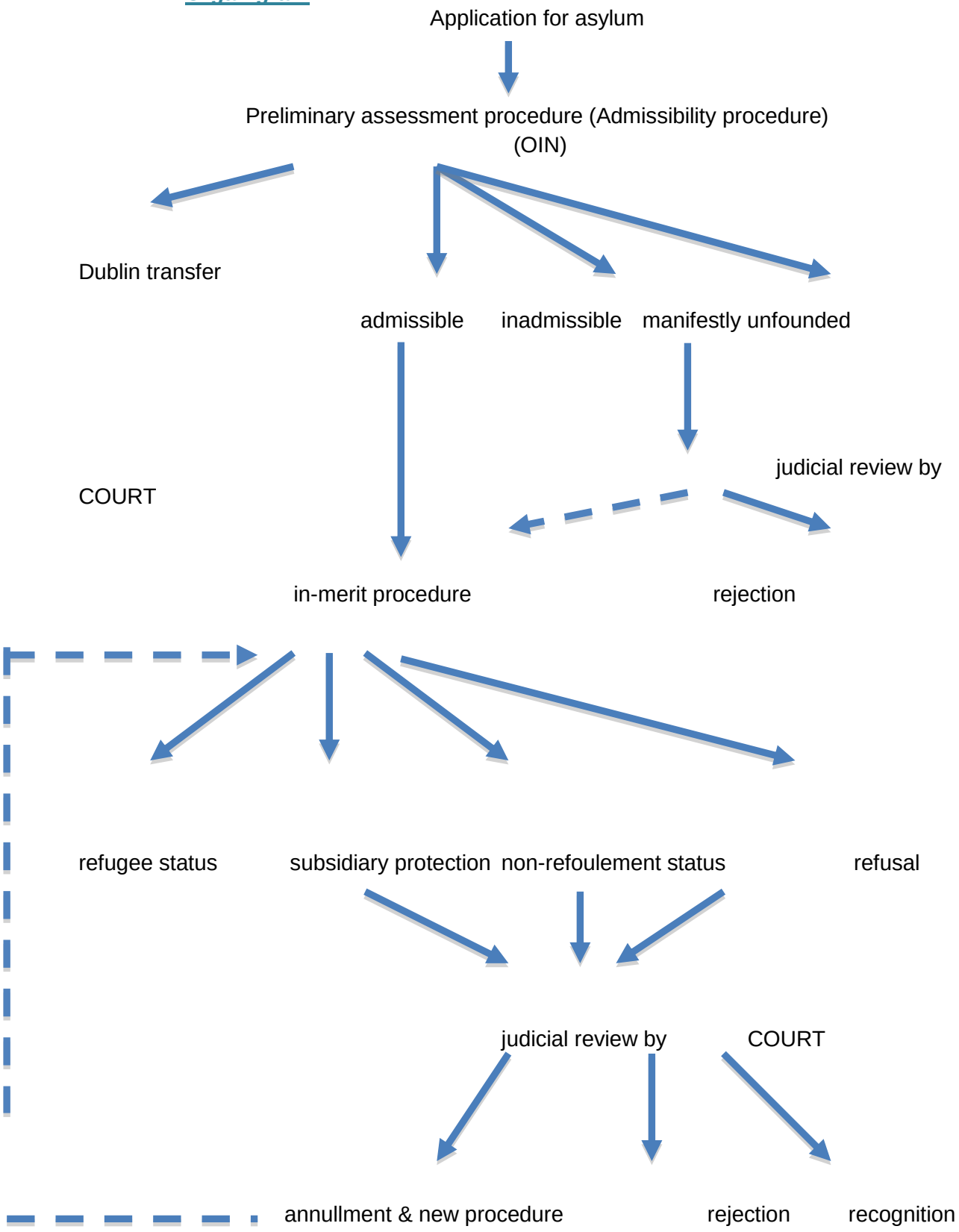
Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.

Title in English	Original title	Abbreviation	Weblink
Government Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum	301/2007. (XI. 9.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról	301/2007 Government Decree	http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=112508.239659

Asylum Procedure

A. General

1. Organigram



2. Types of procedures

Indicators:

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

- regular procedure: yes ☒ no ☐
- border procedure: yes ☒ no ☐
- admissibility procedure: yes ☒ no ☐
- accelerated procedure: yes ☐ no ☒
- Dublin Procedure yes ☒ no ☐

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)? No

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

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

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

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office of Immigration and Nationality (OIN)	45025-30 (in the OIN asylum department)	Ministry of the Interior	No

5. Short overview of the asylum procedure

The Office of Immigration and Nationality (OIN), a government agency under the Ministry of Interior, is in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The OIN is also in charge of operating open reception centres and closed asylum detention facilities for asylum seekers.

The asylum procedure is a single procedure where all claims for international protection are considered. The procedure consists of two instances. The first instance is a public administrative procedure carried out by the OIN, composed of a preliminary assessment (admissibility) phase and the in-merit phase. The second instance is a judicial review procedure carried out by regional appellate courts (not specialised in asylum). There is no accelerated procedure.

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

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

The decision to refuse the detailed examination of the application may be challenged in the course of judicial review at the regional appellate court in 3 calendar days. The request for judicial review has a suspensive effect on the OIN decision and any removal decision or measure, except in the case of a second application that has been submitted after a final negative decision. The court may decide to change the OIN decision. Asylum seekers are entitled to benefit from legal aid during the asylum procedure; which is, however, rather limited in practice.

The asylum authority should close the in-merit procedure in two months. The asylum authority should consider whether the applicant should be recognised as a refugee, or should be granted subsidiary protection. A personal interview is compulsory.

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

During the procedure, asylum applicants may be placed in an open reception centre or a closed asylum detention centre. Asylum detention may be ordered by the OIN and is reviewed by the court at 2-month intervals with a maximum time limit of 6 months (30 days for families with children). Unaccompanied minor asylum seekers may not be detained and are placed in a childcare facility.

B. Procedures

1. Registration of the Asylum Application

Indicators :

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

There is no time limit for lodging an asylum application. The application should be lodged in writing and in person by the person seeking protection at the asylum authority (Foreigners' Office of Immigration and Nationality - OIN). If the person seeking protection appears at another authority to lodge an application for asylum, that authority should inform the asylum seeker about where to turn to with their application. If the asylum claim is made in the course of immigration, petty offense or criminal procedures, the proceeding authority (police, immigration department of the OIN, local authorities or court) will record the statement and forward it to the asylum authority without delay.

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

In practice, detainees in immigration detention have sometimes faced difficulties in having their letters, in which they express an intention to seek asylum, transferred to the asylum authority. UNCHR found that

"[o]ne of the reasons for this may lie in the insufficient arrangements in administrative detention facilities for registering and forwarding requests or applications for protection, or other submissions, to competent Hungarian authorities."[3]

The Hungarian Helsinki Committee has also identified cases where migrants in immigration detention facilities could not lodge an asylum claim due to practical obstacles, such as communication difficulties with detention facility staff or delays in forwarding letters addressed to the OIN.[4]

2. Regular procedure

General (scope, time limits)

Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 1+2 months

[2] Annual reports published in the framework of the Tripartite Border Monitoring Project, e.g. HHC-National Police-UNHCR: Access to Territory and Asylum Procedure in Hungary (2011), Section VI.1. p. 9.
[3] UNHCR 2012 Report on Hungary, para. 19.
[4] Hungarian Helsinki Committee, *Stuck in Jail: Immigration Detention in Hungary (2010)*, April 2011.

- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
- As of 31st December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: no exact data, but likely to be very few

The asylum authority must make a decision in 30 days in the preliminary assessment procedure, and in 2 months in the in-merit phase of the procedure.[5] These time limits are generally respected in practice. In some cases, e.g. involving age assessment for unaccompanied minors, the Foreigners' Office of Immigration and Nationality (OIN) procedure can last longer, about 2-5 months.

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

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

On 31 December 2012, OIN had a case docket of 2604 undecided cases with a total of 3476 applicants. Since the beginning of 2013, the number of asylum seekers increased significantly (4288 new claims in the first 4 months), which poses a significant burden on the asylum authority but it continues to meet the time limits prescribed by the Asylum Act.

The OIN asylum authority does not prioritise cases and no such provisions exist in law either.

Appeal

Indicators:

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

Decisions taken by the asylum authority (Foreigners' Office of Immigration and Nationality - OIN) may be challenged in a single instance judicial review procedure. The Public Administrative and Labour Law Courts, organised at the level of regional courts (at the second-instance level) have jurisdiction over asylum cases, which are dealt with by single judges. Judges typically are not asylum specialists, nor are they specifically trained in asylum law.

Until 30 June 2013, the request for judicial review may be lodged in 15 days from the date of communication of the decision on the asylum application.[6] From 1 July 2013, the deadline for lodging a request for judicial review will be 8 days due to the Bill T/11207. The drastic decrease of the time limit to challenge the asylum authority's decision has been sharply criticised by UNHCR[7] and non-

5 Sections 47(2) and 56(3) of the Asylum Act.
6 Section 68 of the Asylum Act.
7 UNHCR, *UNHCR Comments and Recommendations on the Draft modification of certain migration-related legislative acts for the purpose of legal harmonisation*, 12 April 2013, p. 14.

governmental organisations, such as the Hungarian Helsinki Committee, which argued that this will jeopardise asylum seekers' access to an effective remedy.

The request for judicial review has suspensive effect.[8]

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

The court, proceeding in a litigious procedure, holds a hearing in the presence of the asylum seeker. This is subject to some exceptions, e.g. repeated applications with no new facts or when the asylum seeker's whereabouts are unknown. Interpreters are provided and paid for by the court. Hearings in asylum procedures are public. Individual court decisions in asylum cases are published on the Hungarian court portal;[9] however, the personal data - including citizenship - of the appellant are deleted from the published decisions.

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

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the regular procedure? ☒ Yes ☐ No
- If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
- Are interviews ever conducted through video conferencing? ☐ Yes ☒ No

Section 36 of the Asylum Act and Section 66 of the 301/2007 Government Decree set out rules relating to the right to use one's native language in the procedure and on gender-sensitive interviewing techniques.

A person seeking asylum may use their mother tongue or the language they understand orally and in writing during their asylum procedure. If the asylum application is submitted orally and the asylum seeker does not speak Hungarian, the asylum authority shall provide an interpreter speaking their mother tongue or another language understood by that person. There may be no need for using an interpreter if the asylum officer speaks the mother tongue of that person or another language understood by them, and the asylum seeker consents in writing to not having an interpreter.

A decision shall be communicated orally to the person seeking asylum in their mother tongue or in another language they understand. Together with this oral communication, the decision shall also be made available to the applicant in writing.[10]

Where it is considered not to hinder the asylum procedure and the asylum seeker has made a request of that nature, the interpreter and the asylum officer processing their application shall be of the same

8 With the exception of subsequent applications as set out in Section 54 of the Asylum Act.
9 Asylum cases published on the Hungarian court portal are available here.
10 The written decision will be communicated in Hungarian.

sex as the asylum seeker. If the asylum seeker declares that they are facing gender-based persecution, it shall be compulsory to designate an officer of the same sex as themselves for the processing of their case, upon the asylum seeker's request.

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

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

Interviews are not recorded by audio-video equipment.

Interviews are transcribed verbatim by the asylum officers conducting the interview. The interview transcript – translated by the interpreter – is shown to the asylum seeker who will have an opportunity to correct it before its finalisation and signature by all present persons.

In practice, asylum seekers have frequently reported that the interpreters were not sufficiently independent and reliable during preliminary interviews conducted in the southern regions of Hungary and at Békéscsaba Reception Centre.

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

Legal assistance

Indicators:

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

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

The Legal Aid Act[11] sets out the rules for free of charge, state-funded legal assistance provided to asylum seekers. Section 4(b) and 5(2)(d) provide that asylum applicants are entitled to free legal aid if they are entitled to receive benefits and support under the Asylum Act. Section 3(1)(e) provides that

[11] Act LXXX of 2003 on legal aid.

legal aid shall be available to those who are eligible for it, as long as the person is involved in a public administrative procedure and needs legal advice in order to understand and exercise their rights and obligations, or requires assistance with the drafting of legal documents or any submissions.. However, legal aid is not available for legal representation during public administrative procedures – in an asylum context, the asylum interview conducted by the Office of Immigration and Nationality (OIN).

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

Section 37(4) of the Asylum Act provides for the rights of the legal representative in the asylum procedure:

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

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

Legal aid providers[12] may be attorneys, NGOs or law schools who have registered with the Legal Aid Service of the Judicial Affairs Office of the Ministry of Justice and Public Administration. Legal aid providers may specify which main legal field they specialise, i.e. whether in criminal law, or civil and public administrative law. As a general rule, beneficiaries of legal aid are free to select a legal aid provider of their own choice, which is facilitated by the legal aid offices around the country, which maintain lists and advise clients according to their specific needs.

Although asylum seekers have been eligible for free legal aid since 2004, very few have availed themselves of this opportunity due to several practical and legal obstacles. Firstly, with very few exceptions, asylum seekers are not aware of the legal aid system and do not seek the services of legal aid providers. Second, the legal aid system does not cover translation and interpretation costs, hence the opportunity to seek legal advice in the asylum procedure is rendered almost impossible; in addition, most Hungarian lawyers based in towns where reception and detention facilities are located do not speak foreign languages.

In recent years, legal aid was made available to asylum seekers both as part of the general legal aid system (which was hardly ever used) and also through projects funded by the European Refugee Fund National Actions scheme. Between 2004 and 2012, the Hungarian Helsinki Committee was the NGO implementing a legal assistance project for asylum seekers funded by the European Refugee Fund (ERF), covering all reception centres and immigration detention facilities. As of January 2013, the Legal Aid Service carries out an ERF-funded legal assistance project.[13] ERF's contribution covers translation and legal representation costs in the first instance asylum procedure, while the state budget covers the legal aid costs. Although legal aid providers contracted for this project are in principle available in all detention and reception facilities, recourse is rarely made to their services as very few clients receive assistance from legal aid lawyers involved in the project.

12 Chapter VIII of the Legal Aid Act.
13 For further information on this project, see here.

A detailed report of asylum seekers' access to legal aid in Hungary was included in the 2010 European Legal Network on Asylum (ELENA) Survey on Legal Aid for Asylum Seekers in Europe.[14]

3. Dublin

Indicators:

- Number of outgoing requests in the previous year: 187 requests/64 info requests
- Number of incoming requests in the previous year: 1373 requests/457 info requests
- Number of outgoing transfers carried out effectively in the previous year: 126 persons
- Number of incoming transfers carried out effectively in the previous year: 335 persons

Procedure

Indicator:

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

Asylum seekers applying for asylum are systematically fingerprinted and checked in EURODAC.

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

The examination of whether the Dublin II Regulation is applicable is usually part of the preliminary assessment procedure, i.e. the admissibility procedure. If a Dublin procedure is initiated, the admissibility procedure is suspended until the issuance of a decision determining the country responsible for examining the asylum claim. Once the OIN issues a Dublin decision, the asylum seeker can no longer withdraw their asylum application. Even though a Dublin procedure can also be started after the case has been referred to the in-merit asylum procedure, Dublin procedures can no longer be initiated once the Office of Immigration and Nationality (OIN) has 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 II Regulation.

If another EU Member State accepts responsibility for the asylum applicant, the OIN has to issue a decision on the transfer within 8 calendar days. In practice it takes around a week for the applicant to be transferred to the responsible Member State.

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

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

[14] ECRE/ELENA, *Survey on Legal Aid for Asylum Seekers in Europe*, October 2010.

basis. According to information from the OIN, in 2012, Hungary applied the sovereignty clause in 49 cases (54 persons): 47 cases concerned Greece, 1 case concerned Switzerland and 2 cases concerned Norway. However, the application of the sovereignty clause in Greek cases is not automatic. The consent of the asylum seeker is required, which means that if a person wishes to return to Greece, the sovereignty clause is not applied.
Other Member States applied the sovereignty clause to cases concerning transfers to Hungary in a total of 13 cases (15 persons) in 2012.

According to Section 49 (5) of the Asylum Act, the OIN shall provide in a transfer decision that the foreigner may not leave the place of residence designated for them until the actual transfer has taken place. This detention period, however, cannot exceed 72 hours in order to ensure that the transfer actually takes place.

The transfer to the responsible Member State is organised by the Dublin Unit of the OIN, in cooperation with the receiving Member State, but the actual transfer is performed by the police. In case of air transfer, the police assists with boarding the foreigner on the airplane, and – if the foreigner's behaviour or their personal circumstances, e.g. age do not require it – the foreigner travels without escorts. Otherwise they will be accompanied by Hungarian police escorts. In case of land transfers, the staff of the police hands over the foreigner directly to the authorities of the other State. According to the Hungarian Helsinki Committee's experience, voluntary transfers are rare.

The asylum seeker is informed about the fact that a Dublin procedure had started, but after that, they are not informed about the different steps in the Dublin procedure. They only receive the decision on the transfer which includes the ground for application of the Dublin Regulation and against which they can appeal within 3 days. The OIN does not provide a written translation of the Dublin decision, but they do explain it orally in a language that the asylum seeker understands.

Until January 2013, there were serious obstacles for asylum seekers who were transferred back from another State to Hungary to re-access the asylum procedure. Asylum seekers returned under a take back procedure were not automatically considered by the Hungarian authorities as asylum seekers. They had to re-apply for asylum once they returned to Hungary. Applicants were required to show new elements in support of their claims, which they could not have raised in their initial applications. Subsequent applications did not trigger automatic suspension of transfers, if the OIN or a court in its previous decision decided that non-refoulement grounds were not applicable. The term "subsequent" referred to an application submitted once a previous asylum procedure has been closed with a final decision or has been discontinued, i.e. closed without a decision on the merits of the claim, e.g. because the person absconded during the processing of their application. In most cases, upon return to Hungary, the issuance of a deportation order was automatically followed by administrative detention. As a result, asylum seekers transferred to Hungary under the Dublin Regulation were generally not protected against deportation to third countries, even if the merits of their asylum claims had not yet been examined.

Following the changes in legislation, taking effect in January 2013, deportation can no longer be imposed on asylum seekers during the asylum procedure; they shall not be detained to ensure the execution of the deportation order where they submit their first asylum application immediately upon apprehension; in practice this would be before the end of their first interview undertaken by the police. Asylum seekers, who are returned to Hungary under the Dublin Regulation, shall not be detained either, unless they already have a closed case in Hungary.[15]

Before the changes in January 2013, even though a Dublin returnee was accepted into the asylum procedure, his application might not have been examined on the merits where they had originally

[15] Closed case means an in-merit negative decision, including manifestly unfounded applications, or withdrawal of the application in writing.

arrived in Hungary via Serbia, which the OIN considered a safe third country. In such cases the asylum application was rejected at the admissibility stage and deportation to Serbia ordered by OIN was carried out. The result of this policy was that asylum seekers were returned to Serbia without an in-merit examination of their claim in any EU Member State. However, in Autumn 2012, the OIN changed its position, no longer considering Serbia a safe third country.

From 1 July 2013, pursuant to Act XCIII of 2013, the Asylum Act will provide for "asylum detention". These amendments provide the grounds for detention of asylum seekers, applicable also to those who submit their first asylum application immediately upon apprehension or return in the Dublin procedure.

Appeal

Indicators:

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

Asylum seekers have the right to request judicial review of a Dublin decision within 3 days, before a regional court, depending on the place of their accommodation.[16] The court can examine the facts and the law of the case. The court and its judges are not specialised in asylum cases but deal with public administrative and labour law matters. The court examines the lawfulness of the Dublin decision and has to render a decision in 8 calendar days. In practice, it can take a few months for the court to issue a decision. A personal hearing is specifically excluded by law; therefore there is no oral procedure. Appeals do not have suspensive effect. Asylum seekers have the right to ask the court to suspend their transfer; however, according to the TCN Act and Asylum Act, this request does not have suspensive effect either.

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

Personal Interview

Indicators:

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

There is no special interview conducted in the Dublin procedure. The information necessary for the Dublin procedure is obtained in the first interview with the Office of Immigration and Nationality, during the preliminary procedure. This interview is obligatory and it cannot be omitted, unless a person is not fit to be heard.[17]

16 Section 49 of the Asylum Act.
17 Section 43 of the Asylum Act.

Legal assistance

Indicators:

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

Asylum seekers are automatically eligible for free legal aid (including during the Dublin procedure), unless they are deemed not to be indigent under the Legal Aid Act.[18]

There are no special rules on legal assistance in the Dublin procedure.

Suspension of transfers

Indicator:

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

Hungary has suspended transfers to Greece since 2011. Unaccompanied children have been exempted from return to Greece since April 2009. For other asylum seekers, the practice was inconsistent. Sometimes the Office of Immigration and Nationality (OIN) withdrew the Dublin decision before the court delivered a judgement in the appeal, and sometimes the transfers were stopped by the court. Since the *M.S.S.* case,[19] transfers to Greece have occurred only if a person consented to the transfer.

In case the transfer is suspended, Hungary assumes responsibility for examining the asylum application and the asylum seeker has the same rights as any other asylum seeker. In Hungary court judgments only have *inter partes* effect, the concept of precedent does not apply. The OIN does not have a legal obligation to take these judgments into account when deciding in similar cases.

An example of a case where the court decided to stop the transfer to Greece on human rights grounds is the case *J.M.A. v. the Office of Immigration and Nationality*[20]. The court stated that based on country information researched by the Court in other similar cases, the Greek asylum procedure and the situation of asylum seekers in Greece risk the violation of Article 3 of the European Convention on Human Rights. EU law has to follow international human rights documents, as these instruments were ratified by Member States. The reasoning refers to the Preamble of the Dublin II Regulation, the Lisbon Treaty and the Charter of Fundamental Rights, ruling that OIN has to take these documents into consideration when rendering asylum decisions. The authority should also take notice of UNHCR statements and recommendations.

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18 Section 37(3) of the Asylum Act.

19 *M.S.S. v Belgium and Greece*, Application no. 30696/09, 21 January 2011, available here.

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

4. Admissibility procedures

General (scope, criteria, time limits)

The Asylum Act provides for an admissibility procedure (Hungarian terminology uses 'preliminary assessment procedure').[21] The Office of Immigration and Nationality (OIN) is responsible for taking decisions on admissibility.

The admissibility procedure has to be completed within 30 calendar days and this deadline may not be extended.

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

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

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

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

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

Article 25(2)(g) of the Asylum Procedures Directive has not been transposed into Hungarian legislation (Article 25(2)(g) provides that an application should be deemed inadmissible if a dependant of the applicant lodges an application, after he/she has in accordance with Article 6 (3) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application).

All asylum seekers are subjected to an admissibility procedure; it is regularly and systematically applied in practice. The deadlines foreseen by the Asylum Act (30 days) are generally respected. The admissibility procedure examines the same factors and circumstances, regardless of whether the application is submitted within the territory or at the border; however, the deadline for airport procedures is significantly shorter with only 8 calendar days.[22]

[21] Chapter VIII, Sections 47-55 of the Asylum Act.
[22] Section 72(4) of the Asylum Act.

Appeal

Indicators:

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

A request for judicial review against the Office of Immigration and Nationality's (OIN) decision declaring an application inadmissible has suspensive effect for first time applicants. The deadline for seeking judicial review against a negative decision on admissibility is shorter with only 3 calendar days than against an in-merit decision.[23] Judicial review is carried out by the same regional Administrative and Labour Court (*Közigazgatási és Munkaügyi Bíróság*) that considers other asylum cases. Its review procedure differs from those in the regular procedure since the personal interview is not obligatory and the court has to render a decision in 8 calendar days.

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

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

i. the deadline for seeking judicial review (3 days) appears to be too short to be able to benefit from qualified and professional legal assistance,
ii. the procedure is in Hungarian and the decision on inadmissibility is only translated once, i.e. upon its communication to the applicant, in their mother tongue or in a language that the applicant may reasonably understand. This prevents the asylum seeker from having a copy of their own in a language they understand so that later they could recall the specific reasons why the claim was found inadmissible, and
iii. asylum seekers often lack basic skills and do not understand the decision and the procedure to effectively represent their own case before the court which only carries out a non-litigious procedure based on the files of the case and an oral hearing is rather exceptional.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the admissibility procedure? ☒ Yes ☐ No
- If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- Are personal interviews ever conducted through video conferencing? ☐ Yes ☒ No

A personal interview with the applicant without delay is compulsory in the admissibility procedure.[24] In practice, the personal interview in the admissibility procedure is conducted within 1-2 weeks from the submission of the application.

[23] Section 53(3) of the Asylum Act.
[24] Section 82 (1) of the 301/2007 Government Decree.

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

Legal assistance

Indicators:

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

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

All shortcomings and discrepancies with regards to state-funded legal aid during regular procedures are faced by asylum seekers also during the admissibility procedure.[25] Practical obstacles to have access to legal aid may be that in remote areas of the country there might not be legal aid providers for asylum cases; communication gaps exist between the legal aid provider and the asylum seeker due to Hungarian lawyers rarely speaking foreign languages, especially in small towns;, or that deadlines are too short.

5. Border procedure (border and transit zones)

General (scope, time-limits)

Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
- Are there any substantiated reports of refoulement at the border (based on NGO reports, media, testimonies, etc)? ☒ Yes ☐ No
- Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No

The only type of border procedure is the so called "airport procedure" regulated in Section 72 of the Asylum Act and Section 93 of the Government Decree no. 301/2007. Although there are approximately 100 to 200 asylum applications submitted at the airport each year, the airport procedure is rarely applied in practice. The airport procedure cannot be applied in case of persons with special needs.[26] Asylum seekers may not be held in the holding facility at the Budapest international airport transit zone for more than 8 calendar days. If the application is not deemed inadmissible or manifestly ill-founded in the preliminary procedure or 8 calendar days have passed, the asylum seeker has to be allowed entry into the country and a regular procedure will be carried out. The decision is taken by the same authority as in regular procedures, i.e. the Office of Immigration and Nationality.

[25] ECRE/European Legal Network on Asylum), *Survey on Legal Aid for Asylum Seekers in Europe*, October 2010.

[26] Section 72 (6) of the Asylum Act.

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

From 1 July 2013, applicants who have made an asylum application in the airport procedure will be detained in asylum detention.[27]

Appeal

Indicators:

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

In all aspects not specified in Section 72 of the Asylum Act the rules of the regular procedures apply; therefore, the decision on admissibility may be challenged under the same provisions applicable during the "regular" admissibility procedure.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in a border procedure? ☒ Yes ☐ No
- If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- Are personal interviews ever conducted through video conferencing? ☐ Yes ☒ No

The OIN does not use video conferencing, however, it is known that a video-interpretation system has been established. It is not clear how often video-interpretation is used. There is no difference between the airport procedure and the regular admissibility procedure as regards the conduct of interviews, e.g. availability and quality of interpreters.

Legal assistance

Indicators:

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

The Legal Aid Act[28] provides for access to free legal assistance during the airport procedure. All shortcomings and discrepancies are valid for the state-funded legal aid in the airport procedure as in the regular procedure.

[27] Section 31/A (e) of the Asylum Act.
[28] Act no LXXX of 2003 on Legal Aid.

6. Accelerated procedures

Hungarian law does not provide for accelerated procedures.

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

Indicators:

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

The Office of Immigration and Nationality (OIN) is obliged to provide written information to the asylum seeker upon submission of the application. The information concerns the applicant's rights and obligations in the procedure and the consequences of violating these obligations. [29]

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

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

The same level and sources of information are used in all stages of the asylum procedure. Asylum seekers receive information about the Dublin Regulation. The level of understanding of the information varies a lot amongst asylum seekers, in some instances the functioning of the Dublin II system is too complicated to comprehend.

Frequently, information is not provided in user-friendly language, and written communication is the main means of information provision although it has been shown to be less effective than video material.

Asylum seekers in detention centres usually have access to information provided by both the management of the detention centre, i.e. the police, and HHC's lawyers who visits these detention facilities on a weekly basis. In the past it proved to be difficult in some facilities to have access to and an opportunity to communicate with lawyers, as the detainee had to submit a formal written request in order to see NGO (HHC) lawyers. visiting the jails even with the purpose of oral consultation because the detainee had to submit a written request on a form distributed by the guards expressing their wish to see the NGO (HHC) lawyer. NGOs face difficulties in ensuring detainees' access to information leaflets since in some facilities the leaflets cannot be on display in all parts of the detention facility due to

[29] Section 37 of the Asylum Act.

security reasons. It is then up to the police to allow access to those areas (outside the interview room) where information materials are available in dispensers. NGOs usually hand over their leaflets to those interested.

With the support of the UNHCR and the European Refugee Fund, the HHC published information leaflets providing information on the procedure and the rights and obligations of the applicants in 10 languages for adult asylum seekers[30] and another illustrated leaflet adapted for minors in 9 languages.[31]

As the EU Fundamental Rights Agency (FRA) presented in its thematic study on asylum seekers' access to information,[32] the two main sources of information are the state authorities (OIN and police) and NGOs.
According to the FRA study, some asylum seekers, however, claimed that they either did not receive any information or the information they received was not accessible for them - mainly due to illiteracy or language barriers. As regards the quality of official information provided by authorities, some asylum seekers stressed that the language of information leaflets is perceived as being very technical and complex, using legal terminology that is difficult to understand without specific knowledge of the legal system of the host country.
As the FRA study summarises, "[*s]ome cases were reported from Cyprus, Hungary and Romania where respondents had received information just before or during the asylum interview*." Therefore, the timing of the information provision may be problematic in some instances.

D. Subsequent applications

Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?
  ☒ Yes ☐ No
- Is a removal order suspended during the examination of a first subsequent application?
  ☐ Yes ☒ No
- Is a removal order suspended during the examination of a second, third, subsequent application? ☐ Yes ☒ No

Section 54 of the Asylum Act deals with subsequent applications:

1. *If an applicant submits his/her second application after the adoption of a final and absolute decision of discontinuation with respect to his/her previous application (except for the withdrawal of the application in writing), the refugee authority shall examine whether new circumstances or facts relating to the recognition of the applicant as a refugee or beneficiary of subsidiary protection have arisen.*
2. *If in accordance with Subsection (1), the refugee authority finds the application inadmissible or manifestly unfounded, the applicant is not entitled to the rights referred to in Section 5(1)a-c).*
3. *If an applicant submits his/her application following the adoption of a final and absolute decision of refusal of or final and absolute resolution on the discontinuation with respect to his/her previous application and the Hungarian authority or court in its latest decision so decided that the prohibition of refoulement was not applicable,*
   a) the submission of the application shall have no suspensive effect
      aa) on the execution of the expulsion;
      ab) on the extradition of the foreign national;

30 Hungarian Helsinki Committee, *Information leaflets for asylum seekers*, 19 January 2012, available here.
31 Hungarian Helsinki Committee, Info leaflets for young asylum seekers, 27 December 2012, available here.
32 European Union Agency for Fundamental Rights, *The duty to inform applicants about asylum procedures: The asylum-seeker perspective*, Thematic Report September 2010, available here.

b) the foreign national shall not be entitled to the rights referred to in Section 5 (1) a)–c).

4. *The provision of Subsection (3) is without prejudice to rights and benefits stipulated by other legal instruments.*[33]

Subsequent applications are (like first time asylum applications) dealt with by the Office of Immigration and Nationality (OIN). The main differences in the procedure concerning subsequent applications are:

- There is no automatic suspensive effect of the request for judicial review, and
- reception conditions are not the same as for first time applicants (e.g. they receive less assistance and they are accommodated in different facilities).

As of 1 July 2013, due to Act XCIII of 2013, asylum seekers in subsequent procedures may be subject to immigration detention under the TCN Act, since they do not have the right to remain in the territory.

There is no time limit on submitting a subsequent application. Not much guidance is provided by the law as to what can be considered as new elements, the Government Decree 301/2077 only stipulates in Section 86 that the refugee authority shall primarily assess whether the person seeking recognition was able to substantiate any new facts or circumstances as grounds for the recognition of the applicant as a refugee or as a beneficiary of subsidiary protection.

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

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

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

The request for judicial review against a decision rejecting the repeated application shall be lodged at the regional court, which will deal with it in a non-litigious procedure under the same rules as for the request for judicial review against the decision in the admissibility procedure in the first asylum application (deadline to submit the request is 3 calendar days, the court has to decide within 8 calendar days, personal hearing only if necessary). An important difference is that the request for judicial review does not have suspensive effect in subsequent procedures.[34] The court is entitled to review both the facts and the points of law in its procedure. The rules and the practice on access to legal aid are the same as in the admissibility procedure in the case of the first application.

The main obstacles asylum seekers face when intending to submit a subsequent application is that given the lack of clear and publicly available guidelines, the OIN may interpret "new facts and elements" in a restrictive and arbitrary way. It should be mentioned, however, that it is not a large-scale problem as most asylum seekers with new evidence or information about their relatives or the country of origin are granted access to the in-merit procedure. Since asylum seekers with subsequent asylum claims are

[33] Section 54 of the Asylum Act.
[34] Section 54 (2) of the Asylum Act.

accommodated separately from those in their first asylum procedure, they have to deal with different reception conditions as regards access to basic services and legal assistance. In June 2013, asylum seekers in the first procedure are placed in the reception centre in Debrecen, while those with repeated applications are in Balassagyarmat. Until October 2012, these applicants were basically left without legal assistance due to the limited capacities of the HHC to organise its activities there. Since November 2012 an attorney is present every second week, which significantly improved the situation in having access to protection.

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

1. Special Procedural guarantees

Indicators:

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

Under the Asylum Act, a person with special needs can be an "*unaccompanied minor or a vulnerable person, in particular, a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has suffered from torture, rape or any other grave form of psychological, physical or sexual violence, found, after proper individual evaluation, to have special needs because of his/her individual situation"*.[35]

Although both the Asylum Act[36] and the 301/2007 Government Decree provide that the needs of asylum seekers with special needs should be addressed, there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons.

According to the Hungarian Helsinki Committee (HHC), in the reception centre in Debrecen where the majority of asylum applicants are staying, it depends on the asylum officer in charge whether the applicant's vulnerability will be examined and taken into account. An automatic screening and identification mechanism is lacking; applicants need to state that they require special treatment, upon which asylum officers consider having recourse to an expert opinion to confirm vulnerability.

Persons making gender-based applications have the right to have their case considered by an asylum officer of the same sex if they so request,[37] and this right is respected in practice.

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

The airport procedure cannot be applied in case of vulnerable asylum seekers.[38]

35 Section 2(k) of the Asylum Act
36 Section 4(3) of the Asylum Act
37 Section 66(3) of the 301/2007 Government Decree
38 Section 72(6) of the Asylum Act

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.[39] .

For unaccompanied minors, the asylum authorities as a general rule have to trace the person responsible for the minor, except if it is presumed that there is a conflict or if the tracing is not justified in light of the minor's best interest.[40] The asylum authority may ask assistance in the family tracing from other member states, third countries, UNHCR, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and other international organisations engaged in supporting refugees

In certain cases of vulnerable asylum seekers who lack full legal capacity (primarily children or due to mental health reasons), the OIN has to either involve their statutory representative or appoint a guardian. In case of children, the guardian should be appointed without delay (unless it is likely that the applicant would turn 18 before the in-merit decision is taken). [41]

There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the OIN.[42]

If the asylum seeker *is not able to write this fact and his/her statement shall be included in the minutes*,[43] however this procedural guarantee is ineffective as it does not call for witnesses to confirm the content of the minutes .

In case the applicant cannot be interviewed because of being unfit to be heard, the OIN may decide not to carry out a personal interview. If in doubt about the asylum seeker's fitness, the asylum authority will seek the opinion of a doctor or psychologist. If the doctor confirms this, the asylum applicant can be given an opportunity to make a written statement or the applicant's family members can be interviewed.[44]

The OIN is obliged to conduct an individual examination of the asylum claim by examining "[*t]he social standing, personal circumstances, gender and age of the person […] to establish whether the acts which have been or could be committed against the person applying for recognition qualify as persecution or serious harm*."[45]

2. Use of medical reports

Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
  ☐ Yes ☒ Yes, but not in all cases ☐ No
- Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

39 Section 3 of the Government Decree 301/2007
40 Section 4 of the Government Decree 301/2007
41 Section 35 of the Asylum Act.
42 Section 36(7) of the Asylum Act
43 Section 62 (2) of the Government Decree 301/2007
44 Section 43(2) of the Asylum Act and Sections 77(1) and (2) of the Government Decree 301/2007
45 Section 90 of the Government Decree 301/2007

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. [46]

In case the asylum seekers' statements are incoherent and contradictory it is possible to prove with the aid of a medical expert report that this is due to the applicant's health or psychological condition due to previous trauma); therefore the credibility of the asylum seeker should not be doubted based on their statements.[47]

The Hungarian Helsinki Committee's (HHC) experience shows that medical reports are frequently used in practice but mostly at the request of the applicant. The Office of Immigration and Nationality (OIN) has the possibility to order a medical examination *ex officio* in case the applicant consents to it; however, this is rarely the case. It is usually the legal representative who obtains and submits the medical opinion in order to substantiate the applicant's well-founded fear of persecution. In case the applicant obtains a private medical opinion, they have to cover the costs; while if the medical opinion is requested by the OIN the latter covers the costs. The only NGO that deals with psycho-social rehabilitation of torture victims is the Cordelia Foundation,[48] which prepares medical reports on applicants' conditions in line with the requirements set out in the Istanbul Protocol. The psychiatrists of this NGO, however, are not forensic experts and in some cases their opinion is not recognised by the OIN or courts, since according to the Act CXL of 2004 on the General Rules of Public Administration Procedures, the expert opinion may only be delivered by a forensic expert registered by the competent ministry.[49]

No criteria are set out in law or established by administrative practice indicating when a medical examination for the purpose of drafting a medical report should be carried out.

3. Age assessment and legal representation of unaccompanied children

Indicators:

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

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

The applicant (or their statutory representative or guardian) has to consent to the age assessment examination. The asylum application cannot be refused on the ground that the person did not consent to the age assessment, however, in this case most of the provisions relating to children may not be applied in the case.[50]

[46] Section 3 (2) of the Government Decree 301/2007
[47] Section 59 of the Asylum Act
[48] Cordelia Foundation's website.
[49] Section 58 (3) of the Asylum Act.
[50] Section 44 of the Asylum Act

When age assessment is ordered by the police at an initial stage of the immigration procedure, i.e. upon interception, the main method employed is the mere observation of the physical appearance, e.g. weight, height etc., and the child's sexual maturity. In some cases the OIN requests the opinion of a dentist but this is not general practice. In the course of age assessment ordered by the OIN, the examination includes the opinion of a radiologist expert that consults x-rays of the child's collarbone or wrist, often without meeting the applicant in person.[51] In the context of age assessment, the OIN does not use a psycho-social assessment. To this day, no protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the OIN. The police is working on a protocol for the purpose of police-ordered age assessment examinations that would provide a checklist to be followed by doctors who are commissioned to carry out the examination. This protocol, to be published in 2013, will not take into account the psycho-social or intercultural elements of age assessment either.

The age assessment opinion usually does not specify the exact age; instead, it gives an interval of at least two years, e.g. 17-19 or 16-18 years of age. In these cases the benefit of the doubt is usually given to the applicant. The age assessment carried out by doctors consulted by the police at the beginning of the procedure, however, is less thorough -- it already happened that the opinion only stated whether the person under consideration was to be treated as an adult or a child, without specifying any age.

The law provides for the appointment of a legal representative upon identification of unaccompanied children. In all phases of the asylum procedure, the OIN has to appoint without delay a guardian to represent the unaccompanied child, unless it is likely that the applicant will turn 18 before an in-merit decision is taken about the asylum application.[52] There is no deadline set for appointment of a guardian, the law only prescribes that such needs to be done "without delay", which may be interpreted as immediately or within a few days. In practice unaccompanied children are provided with a guardian within a week. In some cases, when the police intercept the child at the green border during the night in remote areas, it might be difficult to have a guardian appointed immediately to represent the child from the very beginning of the procedure.

There are no requirements as regards the qualification of the guardian, although the law foresees that the guardian should be a lawyer, if possible.[53] The guardian is usually a local lawyer, who generally have no training in refugee law, no foreign language skills and whose capacities are very limited – hence the quality of representation in the asylum procedure for unaccompanied children is far from effective. In some cases it may be a social worker working at the childcare institution where the child is accommodated.

The guardian replaces the parental authority to represent the legal interests of the child. They have to be present at the personal interview and receive all documents related to the case. The age assessment examination may only be performed with the authorisation of the guardian. The legal representative is entitled to submit motions and evidence on behalf of the applicant and they may ask questions to the asylum seeker during the interview.

[51] This examination is undertaken in line with the Greulich-Pyle method.
[52] Section 35(6) of the Asylum Act
[53] Section 136 (2) of the Government Decree 149/1997 (IX.10.) on guardianship and child protection

F. The safe country concepts (if applicable)

Indicators:

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

The 'first country of asylum' concept

Asylum Act Section 51(2)(c) explains this concept as the situation where "*the applicant was recognised by a third country as a refugee, provided that this protection exists at the time of the assessment of the application and the third country in question is prepared to admit the applicant* […]."

The 'safe third country' concept

According to Section 2(i) of the Asylum Act, a safe third country is "*any country in connection to which the refugee authority has ascertained that the applicant is treated in line with the following principles*:

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

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

The 'safe country of origin' concept

Asylum Act Section 2(h) explains a 'safe country of origin' as follows: "*the country included in the shared minimum list of third countries regarded as safe countries of origin approved by the Council of the European Union or in the national list stipulated by a Government Decree or part of these countries; the presence of the country of origin on any of such lists is a rebuttable presumption with regard to the applicant according to which no persecution is experienced in general and systematically in that country or in a part of that country, no torture, cruel, inhuman or degrading treatment or punishment is applied, and an efficient system of legal remedy is in place to address any injury of such rights or freedoms*."

If the applicant's country of origin is regarded 'safe', the application will be rejected in the in-merit procedure.[54]

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

G. Treatment of specific nationalities

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

In spring 2013, Syrians usually received subsidiary protection status.

[54] Section 59(1) of the Asylum Act

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators:

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

Asylum seekers who are first-time applicants are entitled to material reception conditions during the entire asylum procedure until the final and effective conclusion of the asylum procedure.[55] First-time applicants are entitled to housing, food allowance and pocket money. Subsequent applicants or asylum seekers who have spent the maximum 12 months in immigration detention and submitted repeated applications can receive reduced material conditions, which means housing in the open community shelter with three meals per day.

With the Act XCIII of 2013, set to enter into force on 1 July 2013 which is a major amendment of the Asylum Act, the Hungarian Government has decided to transpose the Recast Reception Conditions Directive first and foremost with respect to the provisions concerning detention of asylum-seekers whereas for instance provisions conferring obligations on Member States in relation to the assessment of the special reception needs of vulnerable persons are not yet being transposed.[56] The adoption of the Act XCIII of 2013 therefore preceded the Directive's promulgation and thus also the beginning of the two years' time limit for its transposition into national law.

Only those asylum seekers who are deemed indigent are entitled to material reception conditions free of charge.[57] If an asylum seeker is not indigent, the asylum authority may decide to order that the applicant pay for the full or partial costs of material conditions and health care. Access to reception conditions can be reduced or withdrawn in case it can be proven that the applicant deceived the authorities regarding their financial situation. The level of resources is however not established in the Asylum Act and applicants have to make a statement regarding their financial situation. Presently this condition does not

55 Section 27 of the Asylum Act.
56 Artcile 22 of Bill T/11207.
57 Section 26(2) of the Asylum Act

pose an obstacle to accessing reception conditions but the Act CXIII of 2013 uses a stricter terminology and only its application will show whether this will reveal practical obstacles.

2. Forms and levels of material reception conditions

Indicators:

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

Asylum seekers residing in reception centres receive accommodation, three meals per day (or food allowance if they wish to cook for themselves), a monthly allowance for purchasing hygienic items and pocket money.[58] The amount of food allowance is set by week and by person by the Office of Immigration and Nationality (OIN). The hygienic allowance is distributed on a monthly basis together with the pocket money. The amount of the pocket money is set in law and it is tied to the sum of the minimum amount of monthly old-age pension.[59] In the case of children, single parents or persons above 60, it is 25% of the lowest monthly pension (HUF 28 500 / EUR 95), in the case of other adults it is 10% of this amount. The pocket money can be requested only after the decision is made to refer the application to the in-merit phase. The amount is either HUF 2850 / EUR 9.5 or HUF 7125 / EUR 24 per month per person which is extremely low, taking into account Hungarian living standards.

In 2012, the average length of time asylum seekers spend in the reception facility in Debrecen is around 6 months. However, due to the change in legislation that came into force on 1 January 2013 persons seeking asylum immediately upon being apprehended are no longer being detained but accommodated in an open facility, which resulted in a drastic increase in numbers of asylum seekers in Debrecen. Therefore, the authorities may not be able to respect procedural time limits for processing the asylum applications, thus the average time spent in Debrecen is likely to increase in the first part of 2013.

Recognized refugees and beneficiaries of subsidiary protection are transferred to the 'pre-integration reception centre" in Bicske and can stay there for 6 months.[60] This six-month period can be extended once for another 6-month period upon request. Persons with tolerated stay can remain in Debrecen or can be placed in the community shelter in Balassagyarmat. The Bill T/11207, however, foresees only a 2-month period of stay in Bicske for recognized refugees and beneficiaries of subsidiary protection.

A comparison of material support afforded to Hungarian nationals and asylum seekers is rather difficult since asylum seekers receive mostly in-kind assistance supplemented with financial support. In contrast, nationals do not receive in-kind assistance and the level of social and financial assistance varies according to previous employment, family status and health status. Unaccompanied children receive somewhat more financial assistance than Hungarian children in state care because they are entitled to a monthly pocket money of HUF 7125 / EUR 24.

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

58 Section 21 of the Government Decree 301/2007.
59 Section 22 of the Government Decree 301/2007.
60 Section 41 (1) of the Government Decree 301/2007.

3. Types of accommodation

Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 1763
- Number of places in private accommodation: n/a
- Number of reception centres: 4
- Are there any problems of overcrowding in the reception centres? ☒ Yes ☐ No
- What is, if available, the average length of stay of asylum seekers in the reception centres? 6 months
- Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

As of June 2013, there are four reception centres and two homes for unaccompanied children in Hungary. From July 2013 onwards, the number of open reception centres are expected to change as well as facilities for implementing asylum detention will be opened up.

The four reception centres are: Debrecen - the largest reception centre with a capacity for 1170 asylum seekers; Balassagyarmat - the community shelter for 105 asylum seekers with a subsequent application and persons tolerated to stay; and buildings in the former immigration detention facilities which have been recently handed over to the Office of Immigration and Nationality (OIN) in Békéscsaba and Kiskunhalas és Nyírbátor (mostly in preparation for the entry into force of asylum detention in 'closed reception centres'). All such facilities belong to the OIN. Presently, due to the legislative changes that entered into force on 1 January 2013, allowing first-time applicants to be accommodated in an open facility, there is significant overcrowding in Debrecen. Given the very high numbers of asylum seekers arriving since January 2013, the placement arrangements are subject to quick changes.

Asylum seekers can request to stay in private accommodation at their own cost; however, they are then not entitled to most of the material reception conditions.[61]

Migrants asking for asylum at the border zones or at the airport are transferred to the Debrecen reception centre. In Debrecen there is a separate wing in one of the buildings for single women and traumatised asylum seekers. The level of overcrowding however might prevent the actual separation of vulnerable asylum seekers.

Unaccompanied children are not placed together with adults but are accommodated in Fót in a children's home, in a separate building designated for unaccompanied children under the age of 18. The maximum capacity of the home is 24 but a new building with an additional capacity to house 32 children is to be opened in June 2013. The home for unaccompanied children belongs to the Ministry of Human Resources.[62] Furthermore, under a contract with the Ministry, a Catholic charity maintains a small house with 18 places for unaccompanied child asylum seekers in Hódmezővásárhely.

4. Reduction or withdrawal of reception conditions

Indicators:

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

[61] Section 20(1) of the Government Decree 301/2007
[62] The Ministry of Human Resources' website.

Section 30 of the Asylum Act[63] lays down the grounds for reducing and withdrawing material reception conditions.
These include:

- leaving the reception centre for longer than 24 hours without prior permission granted by the authorities;
- repeatedly and grossly violating the rules of the reception centre;
- leaving the private housing designated for the asylum seeker for an unknown destination when a period of fifteen days lapsed after departure;
- deceiving the authorities regarding the person's financial situation and thus unlawfully benefiting from reception;
- showing grossly violent behaviour; and
- repeatedly submitting an asylum application on the same factual ground.

A decision of reduction or withdrawal is made by the Office of Immigration and Nationality (OIN) and is based on a consideration of the individual circumstances of the person. The reduction can be in the form of retaining the monthly financial allowance. The reduction or the withdrawal should be proportionate to the violation committed and can be ordered for a definite or for an indefinite period of time with a possibility of judicial review. If circumstances have changed, reception conditions can be provided again.

In practice if asylum seekers turn out to have substantial assets or funds, they will be required to reimburse OIN for the costs of reception. The reduction or the withdrawal of material reception conditions happens most often when a person leaves the reception centre for longer than 24 hours unannounced or when somebody violates the rules of the reception centre.

5. Access to reception centres by third parties

Indicators:

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

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

UNHCR and NGOs can also access the reception centres without any problem provided that they submit a written request to the Office of Immigration and Nationality (OIN) in advance of their planned visit. The Hungarian Helsinki Committee (HHC), the only NGO providing legal assistance to asylum seekers in Hungary has a cooperation agreement with OIN granting it access to asylum seekers for the provision of legal assistance. HHC lawyers and staff have authorisation letters providing them entry to these facilities. The Debrecen reception centre has a full-time HHC staff member working in its premises providing legal assistance to asylum seekers.

[63] As amended by Act XCIII of 2013.

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

6. Addressing special reception needs of vulnerable persons

Indicators:

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

Section 2(k) of the Asylum Act identifies persons with special needs as including unaccompanied children or vulnerable persons, in particular, minor, elderly, disabled persons, pregnant women, single parents raising minor children or persons suffering from torture, rape or any other grave form of psychological, physical or sexual violence. Furthermore, the Asylum Act provides that in case of persons requiring special treatment due consideration shall be given to their specific needs.[64]

It is the duty of the Office of Immigration and Nationality (OIN) to ascertain whether the rules applying to vulnerable asylum seekers are applicable to the individual circumstances of the asylum seeker. In case of doubt, the OIN can request expert assistance by a doctor or a psychologist.[65] There is no protocol however to identify vulnerable asylum seekers upon reception in a facility and therefore it depends very much on the actual asylum officer whether the special needs of a particular asylum seeker are identified at the beginning of the procedure.

The OIN needs to ensure separated accommodation for asylum seekers with identified special needs.[66] In Debrecen there is a separate wing available for traumatised asylum seekers but its capacity is limited and the person falling into this category may not wish to identify themselves at the beginning, therefore, ending up at placement other than those wings.[67] The Cordelia Foundation provides psychological assistance for torture survivors and traumatised asylum seekers in the Debrecen reception centre but their capacity is also limited. Referral to their services is done on an *ad hoc* basis, dependent on the professional level and goodwill of the asylum officer assigned to the asylum seeker's case.

Unaccompanied asylum-seeking children are placed in special homes in Fót and Hódmezővásárhely, designated specifically for unaccompanied children as social and psychological services are available. However, it is the responsibility of the authorities to conduct an age assessment and if it results in the person being considered an adult, then this poses an obstacle to accessing the services that a minor would need.

7. Provision of information

Asylum seekers are informed about their rights and obligations, according to Section 17(3) of the Government Decree 301/2007. After the submission of their asylum application, the Office of Immigration and Nationality (OIN) shall inform the person seeking asylum in their mother tongue or in another language understood by them, in writing, without delay and within maximum fifteen days, of all provisions and assistance to which they are entitled under the law[68], as well as of the obligations with which they must comply in respect to reception conditions and information as to organisations providing legal or other individual assistance.

64 Section 4(3) of the Asylum Act.
65 Section 3(1)(2) of the Government Decree 301/2007.
66 Section 33 (1) of the Government Decree 301/2007
67 Information provided by an HHC lawyer working the Debrecen reception centre, during an interview.
68 Asylum Act and the Government Decree 301/2007

Information is provided to asylum seekers orally on the day when they arrive at the reception centre, in addition, to an information leaflet. Information thus supplied includes the house rules of the reception centre, the material assistance they are entitled to, information on the refugee status determination procedure, and on access to education, health care and the labour market. The information is communicated both orally and in written form, in a language that the asylum seeker understands. However some written information is only available in Hungarian, which is of little help to a foreigner. Asylum seekers interviewed during the UNHCR-led Age and Gender Diversity Monitoring in September 2012 stated that the information shared with them on their very first day at the reception centre is overwhelming and many times difficult to understand.[69]

8. Freedom of movement

Asylum seekers who are not detained can move freely within the country, but may only leave the reception centre where they are accommodated for less than 24 hours, unless they notify the authorities in writing about their intention to leave the facility. Reception conditions can be reduced or withdrawn if they fail to request leave. Furthermore, the condition for receiving material assistance in the reception centre in Debrecen is that the asylum seeker stayed there at least 25 days in a given month.

In the Balassagyarmat community shelter - where people with a subsequent application are staying - the house rules introducing a curfew from 10 pm to 6 am became part of the amendments to the government decree, implementing the TCN Act on 1 January 2013. Disobeying the house rules is regarded as a petty offence, according to the petty offence of breaching alien policing rules, and is punishable by a fine up to 150.000 HUF (approximately EUR 500) and 180 hours of public work. This poses a serious restriction on the freedom of movement of asylum seekers accommodated in Balassagyarmat.

B. Employment and education

1. Access to the labour market

Indicators:

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

Asylum seekers have restricted access to the labour market. They may work in the premises of the reception centre within the 9 months after having submitted their asylum application and according to the general rules applicable to foreigners thereafter.

According to information provided by Office of Immigration and Nationality (OIN), there are currently 25 employment positions available to asylum seekers at the Debrecen reception centre, which is clearly insufficient. After the 9 month waiting period, asylum seekers have access to the labour market.

[69] UNHCR, *Age and Gender Diversity Monitoring* September 2012, available here.

In practice, however, they face a variety of difficulties in finding employment due to the high unemployment rate in Hungary, their lack of knowledge of the Hungarian language and with regards to their foreign certificates, diplomas or degrees recognized by the Hungarian authorities.

2. Access to education

Indicators:

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

Children above the age of 5 have to be prepared to participate in public education, according to Section 21 of the Government Decree 301/2007. In practice, they have to be enrolled in kindergarten and at the age of 6 they have to attend school. According to the experiences gathered during the UNHCR-led project 'Age and Gender Diversity Monitoring (AGDM)' in September 2012,[70] the Debrecen kindergarten is quite far away from the reception centre; but the travel is worthwhile. The kindergarten welcomes the children warmly and through their special internationally praised 'step-by-step' methodology the children integrate well, learn the language relatively fast and enjoy their time there. This kindergarten is regarded as a best practice in Hungary; it succeeds not only to integrate asylum-seeking children but also to include disabled children.

Children at the age of 6 are enrolled in a local school, which hosts a special preparatory language learning class in order for children to later join regular classes. The school, however, has a limited number of places available for asylum-seeking children, with only 32 for the school year of 2012-2013. Therefore, those children arriving after the start of the school year may not be able to join due to capacity problems.[71] Children attending the preparatory classes spend only 4 hours in school, in a separate building, which neither enhances their development, nor their integration. Other schools are reluctant to receive foreign children for two reasons: 1) they lack the necessary capacity and expertise to provide additional tutoring to asylum-seeking children and 2) parents would voice their adversarial feelings towards the reception of asylum-seeking children.

Schooling is only compulsory until the age of 16, according to a recent legislative change.[72] As a consequence, asylum-seeking children above the age of 16 cannot attend school in Debrecen and have to stay in the reception centre during the entire day without any education-related opportunities.

C. Health care

Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?
  ☒ Yes ☐ No
- In practice, do asylum seekers have adequate access to health care?
  ☐ Yes ☒ with limitations ☐ No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☒ Yes ☒ No

70 UNHCR, *Age and Gender Diversity Monitoring* September 2012, available here.
71 Information gathered during interviews conducted in September 2012 during the AGDM visits.
72 Section 45(3) of Act CXC of 2011 on public education.

Access to health care is provided for asylum seekers as part of material reception conditions.[73] It covers essential medical services and corresponds to free medical services provided to legally residing third country nationals.[74]

According to the law[75], asylum seekers are "*eligible for free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person's state of health*." In practice there are no guidelines for identifying vulnerable asylum seekers and a lack of specialised medical services. Furthermore, only few experts speak foreign languages and even fewer have experience in dealing with torture or trauma survivors. Cordelia Foundation, an NGO, is the only organisation with the necessary experience in providing psychological assistance to torture survivors and traumatised asylum seekers in both Debrecen and Bicske reception centres. Their capacity is, however, limited and every year the question arises of whether it will continue to provide these much needed services as its activities are funded on a project basis and not under the framework of a regular service provider contracted by Office of Immigration and Nationality (OIN).

Asylum seekers have access to a general physician within all reception centres several times per week and to nurses on a daily basis. However, their access to effective medical assistance is hindered by language problems because translators are not always available or provided by OIN, as well as due to capacity problems. Specialised health care is provided in nearby hospitals in all three towns where, however, similar language problems occur in case of the unavailability of social worker to accompany asylum seekers to the hospital to assist in the communication with doctors.

73 Section 26 of the Asylum Act.
74 A detailed list is provided under Section 26 of the Government Decree 301/2007.
75 Section 34 of the Government Decree 301/2007

Detention of Asylum Seekers

A. General

Indicators:

- Number of asylum seekers who entered detention in the previous year: This statistics is not available. The only available data is that 1266 asylum seekers applied for asylum from detention in 2012 (UNHCR 2012 AGDM report on Hungary).
- Number of asylum seekers detained or an estimation at the end of the previous year: UNHCR reports that in 2011, on average, 93 asylum seekers were detained on any given day.[76] The HHC estimates that the number is more or less the same for 2012.
- Number of detention centres: 5
- Total capacity: 405

The number of asylum seekers who entered detention in 2012 is not available. The only available data is that 1266 persons applied for asylum while being detained in 2012. UNHCR reports show that in 2011, on average, 93 asylum seekers were detained on any given day.[77] The Hungarian Helsinki Committee estimates that the number is more or less the same for 2012.

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

As of June 2013, there are 5 immigration detention facilities: Budapest Airport Police Directorate, Nyírbátor, Kiskunhalas, Győr and Békéscsaba. These facilities are maintained by the police. Their total capacity was around 600 places in mid-2012 and in the past two years the detention centres were often used to their maximum capacity. Due to changes in detention practice from 1 January 2013, which led to most asylum seekers not being detained in immigration detention, some buildings were closed or have been handed over to the Office of Immigration and Nationality (OIN) which will use these facilities for the purpose of asylum detention from July 2013. Further changes in preparation for the entry into force of Act XCIII of 2013 reduced the capacity of immigration detention facilities to about 160 places.

[76] UNCHR, *Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, available here.

[77] UNCHR, *Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, available here.

B. Grounds for detention

Indicators:

- In practice, are asylum seekers automatically detained
  - on the territory: ☒ Yes ☐ No
  - at the border: ☒ Yes ☐ No
- Are asylum seekers detained in practice during the Dublin procedure? ☒ Yes ☐ No
- Are asylum seekers ever detained during a regular procedure? ☒ Yes ☐ No
- Are unaccompanied asylum-seeking children ever detained?
  ☐ Yes ☐ Yes, but only in border/transit zones ☒ No
- Are asylum seeking children in families ever detained?
  ☒ Yes ☐ Yes, but rarely ☐ No
- What is the maximum detention period set in the legislation (inc extensions): 12 months for asylum seekers with subsequent asylum applications (immigration detention), 6 months for asylum seekers with first asylum applications (asylum detention) and 30 days for families with children (first and subsequent applications)
- In practice, how long in average are asylum seekers detained? 4-5 months

Immigration detention

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

In the last quarter of 2012, the change in Hungary's immigration detention policy was envisaged due to vivid criticism from the HHC, the UNHCR and the European Commission, as well as the 3 judgments issued by the European Court of Human Rights.[78] Following the changes in legislation in January 2013, expulsion/deportation can no longer be imposed on asylum seekers during the processing of their asylum application. As a consequence, where they submit their first asylum application immediately upon apprehension – in practice this will be moment before their first interview with the police – they shall no longer be detained in order to ensure the execution of an expulsion or deportation order. Asylum seekers returned to Hungary under the Dublin Regulation shall not be detained either, unless they already have a closed case in Hungary, i.e. an in-merit negative decision - including manifestly unfounded applications - or withdrawal of the application in writing.

As of 1 July 2013, pursuant to legal changes brought about by Act XCIII of 2013, first time asylum applicant can be detained in asylum detention, while immigration detention will be used again for asylum seekers submitting subsequent asylum applications.

[78] ECtHR, *Lokpo et Touré v. Hungary* Application no. 10816/10, 20 September 2011; *Hendrin Ali Said and Aras Ali Said v. Hungary*, Application no. 13457/11, 23 October 2012; *Al-Tayyar Abdelhakim v. Hungary*, Application no. 13058/11, 23 October 2012.

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

TCN Act Section 54(1):
In order to secure the expulsion, or transfer in a Dublin procedure, of a third-country national the immigration authority shall have powers to detain the person in question if:

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

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

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

Asylum detention

In July 2013, by means of Act XCIII of 2013, amendments to the Asylum Act will enter into force, providing grounds for detention of asylum seekers. According to the new provisions of the Asylum Act:

Section 31/A: The refugee authority may detain a person seeking recognition whose right of residence is only based on the submission of an application for recognition if:

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

The maximum period of asylum detention will be 6 months. Families with children under 18 years of age may not be detained for more than 30 days. Asylum seekers submitting subsequent applications will remain subject to immigration detention.

Alternatives to detention, called "measures ensuring availability" will be available in the form of

i) bail,[79]
ii) designated place of stay[80] and
iii) periodic reporting obligations[81].

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.

Asylum seekers in a Dublin procedure may be detained prior to their transfer to the responsible Member State[82]. The OIN shall provide in its transfer decision that the foreigner may not leave the place of residence designated for them until the completion of the transfer. This, however, cannot exceed 72 hours in order to ensure that the transfer actually takes place. At the moment this provision is not used.

Unaccompanied children are excluded from asylum and immigration detention by law.[83] Despite the clear ban on immigration detention of unaccompanied children, in 2011 both the HHC and the UNHCR identified cases where separated children had been detained due to incorrect age assessment.[84] The age assessment carried out by a police-employed doctor is generally a simplified examination based on their physical appearance.[85] No other categories of vulnerable asylum seekers are excluded from detention.

C. Detention conditions

Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
- Do detainees have access to health care in practice? ☒ Yes ☐ No
- Is access to detention centres allowed to
  - Lawyers: ☒ Yes ☐ Yes, but with some limitations ☐ No
  - NGOs: ☒ Yes ☐ Yes, but with some limitations ☐ No
  - UNHCR: ☒ Yes ☐ Yes, but with some limitations ☐ No

Situation until 30 June 2013

Asylum seekers are detained in immigration detention, together with other third country nationals. They are not detained in regular prisons, unless they have been charged with a crime.

For the past four years, detainees in the majority of the immigration detention facilities -- with the exception of Békéscsaba, which always fell under a different regime given the fact that families with

79 Section 2 (lc) and Section 31/H of the Asylum Act
80 Section 2 (lb) of the Asylum Act
81 Sectin 2(la) of the Asylum Act
82 Section 49(5) of the Asylum Act
83 Section 56 of the TCN Act and Section 31B(2) of the Asylum Act.
84 HHC visit to the Kiskunhalas immigration jail on 13 December 2011, further information available here.
85 UNCHR, *Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, p. 10, available here.

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

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

Despite the gradually improving detention conditions, the widespread police brutality reported in immigration detention centres, unregulated use of isolated detention as a disciplinary measure, poor health assistance, collective punishment, shortening of time allowed to be spent outdoors, for meals or use of internet, are all areas of concern.[86] The Commissioner for Fundamental Rights (ombudsperson) examined the situation of detainees in the immigration detention centre in Nyírbátor between 16-17 July 2012 and found several instances of unlawful or worrying practices that might amount to inhuman or degrading treatment or otherwise prevent detainees from exercising their fundamental rights.[87] It should be also noted that the police staff working in the immigration detention facilities continue to carry batons, handcuffs and pepper spray in a visible manner while performing their duties. This practice has already been criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its report in relation to its periodic visits conducted in 2005 and 2009.[88]

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

Asylum seekers are entitled only to basic medical care. The detainees have access to health care in immigration jails, since continuous presence of paramedical nurses is assured and general practitioners and psychologists regularly visit the facilities. However, medical care provided in the immigration detention facilities is often criticised by detainees. They rarely have access to specialist medical care when requested and are only taken to hospital in emergency cases. They complain about receiving the same medication for a range of different medical problems (e.g. sleeping pills, aspirin). Language barrier is also an issue.

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86 The reports addressing these issues of concern are: HHC visit to the Kiskunhalas immigration jail on 13 December 2011, further information available here; ProAsyl , Ungarn - *Fluechtlinge zwischen Haft und Obdachlosigkeit* ("*Refugees between Detention and Homelessness*"), Report based on one-year research, February 2012; UNCHR, *Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, p. 10; and UNHCR, *Age and Gender Diversity Monitoring*, September 2012.

87 Report on case 1953/2012 by the Commissioner for Fundamental Rights, (in Hungarian).

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

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

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

Asylum seekers detained have a right to legal assistance, therefore lawyers can visit detention centres. In practice they need to inform the commander of the detention facility in advance about the time of their visit. Certain NGOs have concluded agreements with the detention centres regarding access. HHC concluded a detention centre monitoring agreement in 2002. According to this agreement, HHC staff is allowed to conduct visits, with prior notice of 2 days. UNHCR has unlimited access to the detention centres due to its mandate.

Situation after 1 July 2013

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

Section 31/E

1. *The detained person seeking recognition shall be informed about his or her rights and obligations in his or her mother tongue or in another language that he or she speaks.*
2. *The authority that has ordered detention shall immediately arrange, by way of a temporary measure, the accommodation of the applicant's dependent family members or the family members who are left without supervision, and for the safekeeping of any valuables of the applicant that are left unattended.*

Section 31/F

1. *The refugee authority shall implement the asylum detention at a place designated for this purpose.*
2. *During the execution of the detention, the following persons shall be separated:*
    a. *men from women – with the exception of spouses; and*
    b. *families with minors from other detainees, ensuring the appropriate protection of privacy.*
3. *The accommodation of persons requiring special treatment shall be arranged in view of their specific needs – in particular their age and health condition (including their mental condition).*
4. *The detained person seeking recognition*
    a. *in addition to the material conditions of reception, shall be entitled to the following:*
        aa. *to have unsupervised contact with his or her relatives and a member of his or her consular representation;*
        bb. *to receive and send packages and letters and to receive visitors according to the legal provisions;*
        cc. *to supplement his or her food at his or her own cost;*
        dd. *to practice his or her religion;*
        ee. *to take advantage of any available public educational opportunities;*
        ff. *to make objections, complaints and public announcements and to submit requests; and*

gg. *to spend at least one hour per day outdoors; and*

b. *he or she shall must abide by the following:*

aa. *to observe the rules of the institution where the detention is implemented and to comply with the relevant instructions;*

bb. *to behave in a manner that does not disturb other detainees and does not violate their rights;*

cc. *to contribute to keeping clean the areas used by him or her, without compensation;*

dd. *to subject himself or herself to the examinations concerning him or her and to tolerate the inspection of his or her clothing as well as the confiscation of any personal items whose possession is not permitted; and*

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

The amendments to Government Decree 301/2007,[89] relating to asylum detention, provide that detention shall be carried out in "closed asylum reception centres" that cannot be established on the premises of police jails or penitentiary institutions. The new rules specify minimum requirements for such facilities, including material conditions such as freedom of movement, access to open air, as well as access to recreational facilities, internet and phones, and a 24-hour availability of social assistance - social workers.

D. Judicial Review of the detention order

Indicators:

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

Immigration detention

A judicial review of the administrative decision imposing detention on foreigner is conducted by first instance courts in case of a decision for the purpose of extending the duration of detention. Detention may be ordered by the Office of Immigration and Nationality (OIN) for a maximum duration of 72 hours, and it may be extended by the court of jurisdiction upon the request of the OIN, which should be filed within 24 hours from the time it has been ordered. The court may grant an extension of immigration detention for a maximum duration of 60 days, which OIN needs to request 8 working days prior to the due date for extension.

Asylum detention

The Asylum Act's amendments on asylum detention, contained in Act XCIII of 2013, also provide for the rules on the judicial review of asylum detention (Sections 31/C and 31/D).

Section 31/C

1. *The person seeking recognition may not request the suspension of the procedure for ordering asylum detention or for using a measure ensuring availability.*
2. *There are no legal remedies against the ruling ordering asylum detention or the use of a measure ensuring availability.*

[89] Sections 36/A to 36/F of the amended Government Decree 301/2007.

3. *The person seeking recognition may file an objection against an order of asylum detention or the use of a measure ensuring availability if the refugee authority has not fulfilled its obligation determined in sections 31/E and 31/F.*
4. *The objection shall be decided upon by the district court having jurisdiction based on the place of residence of the person seeking recognition within eight days.*
5. *Based on the decision of the court, the omitted measure must be carried out or the unlawful situation must be terminated.*

Section 31/D

1. *The court shall act as a sole judge and pass its decision in the form of an order in the procedure related to the judgment on the objection and the extension of detention.*
2. *If the court has rejected the objection or the motion, no other objection or motion can be submitted on the same grounds.*
3. *The person seeking recognition may only be represented by a legal representative in the court procedure.*
4. *The court shall appoint a guardian ad litem for the person seeking recognition if he or she does not speak Hungarian and is unable to arrange his or her representation by an authorized representative.*
5. *With the exception determined in subsection (7), a personal hearing must be held in the following cases:*

a. when the detention period is extended by the court in excess of seventy-two hours for the first time; and

b. in the procedure related to an objection or the further extension of the detention, if the person concerned has requested a personal hearing.

6. *The personal hearing can be held at the place of detention and also in the absence of the legal representative of the person seeking recognition.*
7. *The court may dispense with the personal hearing if*
    - *a. the person seeking recognition is unable to attend a hearing because he or she is treated as an inpatient in a health-care institution; or*
    - *b. the objection or the motion has not been submitted by a person entitled to do so.*
8. *At the personal hearing the person seeking recognition and the refugee authority may submit evidence in writing or present the same verbally. Those present shall be given an opportunity to familiarize themselves with the evidence, unless otherwise prescribed by law. If the person seeking recognition or the representative of the refugee authority which filed the motion has not appeared but has submitted his or her comments in writing, the court shall present such comments.*
9. *The court's order must be communicated to the person seeking recognition and the refugee authority as well as to the legal representative and the guardian ad litem. The order must be communicated by announcement and it must be delivered immediately after it hasbeen committed to writing.*
10. *No further legal remedies against the decision of the court are available.*
11. *Any costs of the court procedure will be borne by the state.*

Judicial reviews of immigration detention (and from July 2013, asylum detention) are conducted mostly by criminal law judges. Judicial review of immigration detention has been found to be ineffective, as Hungarian courts fail to address the lawfulness of detention in individual cases, or to provide individualised reasoning based upon the applicant's specific facts and circumstances.

The Hungarian Helsinki Committee (HHC) has reported a case where, in the immigration detention facility in Kiskunhalas in December 2011, the court decided on detention in groups of 5, 10, or 15 detainees within 30 minutes, thus significantly decreasing the likelihood of a fair and individual review.

According to a current survey conducted by the Curia, which is the highest court in Hungary, out of some five thousand court decisions made in 2011 and 2012, only three discontinued immigration detention, while the rest simply prolonged detention without any specific justification.

E. Legal assistance

Indicators:

- Does the law provide for access to free legal assistance for the review of detention?
  ☒ Yes ☐ No
- Do asylum seekers have effective access to free legal assistance in practice? ☐ Yes ☒ No

Under the TCN Act, in the court proceedings representation for the third-country national may only be provided by a legal representative, i.e. a lawyer who is a member of the bar.[90] The court shall appoint a representative *ad litem* for any third-country national who does not understand the Hungarian language and is unable to seek services of a legal representative by themselves. According to the Hungarian Helsinki Committee's experience, 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.[91]

[90] Section 59 (3) and (4) of the TCN Act.
[91] Information is based on an interview with HHC legal officer on 14 March 2013