



aida

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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 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

Kúria	Hungarian Supreme Court
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HHC	Hungarian Helsinki Committee
OIN	Office of Immigration and Nationality
UNHCR	United Nations High Commissioner for Refugees

Statistics

Table 1: Applications and granting of protection status at first instance: 2015 (January-September)

	Applicants in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Humanitarian protection	Rejection ¹	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	175,960	107,422	105	235	5	1,715	5.1%	11.4%	0.2%	83.3%

Breakdown by countries of origin of the total numbers

Syria	64,415	51,218	10	85	0	5	10%	85%	0%	5%
Afghanistan	45,870	28,253	20	45	0	195	7.8%	17.6%	0%	76.4%
Kosovo	24,370	814	0	0	0	1,120	0%	0%	0%	100%
Pakistan	15,055	11,127	5	0	0	60	7.7%	0%	0%	92.3%
Iraq	9,110	6,167	5	25	0	5	14.3%	71.4%	0%	14.3%
Iran	1,770	1,115	5	5	0	15	20%	20%	0%	60%
Palestine	1,035	28	5	5	0	0	50%	50%	0%	0%
Eritrea	540	354	10	0	0	0	100%	0%	0%	0%
Somalia	325	192	15	40	0	0	27.2%	72.8%	0%	0%
Sudan	275	208	0	15	0	10	0%	60%	0%	40%

Source: Eurostat (rounded). Note that due to rounding Eurostat figures on first instance decisions are not accurate for Afghanistan, Iraq, Iran, Eritrea and Sudan. Information on pending applications was provided by the OIN.

¹ Rejection should include *both* in-merit and admissibility negative decisions (including Dublin decisions).

Table 2: Gender/age breakdown of the total numbers of applicants: 2015 (January-September)

	Number	Percentage
Total number of applicants	175,960	100%
Men	139,745	79.4%
Women	36,215	20.6%
Children	30,720	17.4%
Unaccompanied children	8,762	5%

Source: Eurostat. Data on unaccompanied children is provided by the OIN.

Table 3: Comparison between first instance and appeal decision rates: 2015 (January-June)

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	2,065	100%	366	100%
<i>Positive decisions</i>	221	10.7%	28	7.6%
• <i>Refugee status</i>	67	3.2%	14	3.8%
• <i>Subsidiary protection</i>	151	7.3%	13	3.5%
• <i>Humanitarian protection</i>	3	0.1%	1	0.3%
<i>Negative decisions</i>	1,844	89.3%	338	92.3%

Source: OIN, Half-yearly report 2015, 1 January – 30 June.

Table 4: Applications processed under the accelerated procedure in 2015

As the accelerated procedure was introduced in August 2015, statistics are not yet available.

Table 5: Subsequent applications lodged in 2015 (January-June)

	Number	Percentage
Total number of subsequent applications	17	100%
Main countries of origin		
Syria	5	29.4%
Somalia	5	29.4%
Ivory Coast	2	11.7%
Pakistan	1	5.8%
Iran	1	5.8%

Source: OIN, Half-yearly report 2015, 1 January – 30 June.

Table 6: Number of applicants detained per place of detention: 2013-2015 (January-September)

Place of detention	2013	2014	2015
Békéscsaba	Not available	Not available	1,075
Debrecen	Not available	Not available	649
Nyírbátor	Not available	Not available	115
Total number of applicants detained	1,825	4,829	1,860

Source: OIN; Hungarian Helsinki Committee Brief, 8 October 2015; ECRE, *Crossing Boundaries*, October 2015.

Table 7: Number of applicants detained and subject to alternatives to detention: 2013-2015 (January-June)

Measure	2013	2014	2015
Detention	1,825	2,798	1,829
Alternatives to detention	Not available	360	11,373

Source: OIN.

Overview of the legal framework

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

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Act LXXX of 2007 on Asylum <i>Amended by:</i> Act XCIII of 2013 on the amendment of certain acts relating to law enforcement matters <i>Amended by:</i> Act CXXVII of 2015 on the temporary closure of borders and amendment of migration-related acts <i>Amended by:</i> Act CXL of 2015 on the amendment of certain Acts related to the management of mass migration	2007. évi LXXX Törvény a menedékjogról 2013. évi XCIII. Törvény az egyes rendészeti tárgyú törvények módosításáról 2015. évi CXXVII. Törvény az ideiglenes biztonsági határzár létesítésével, valamint a migrációval összefüggő törvények módosításáról 2015. évi CXL. törvény egyes törvényeknek a tömeges bevándorlás kezelésével összefüggő módosításáról	Asylum Act August 2015 amendments September 2015 amendments	< http://bit.ly/1IFdMk2 > (HU) < http://bit.ly/1F89p9n > (HU) < http://bit.ly/1CWxANR > (HU) < http://bit.ly/1HWXFcT > (HU)
Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról	TCN Act	< http://bit.ly/1S4bdd1 > (HU)
Act LXXX of 2003 on Legal Aid	2003. évi LXXX. törvény a jogi segítségnyújtásról	Legal Aid Act	< http://bit.ly/1QqHj5c > (EN) < http://bit.ly/1f4v65u > (HU)

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

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Government Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum	301/2007. (XI. 9.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról	Decree 301/2007	< http://bit.ly/1QLMdEM > (HU)
Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról, egységes szerkezetben a végrehajtásról szóló 114/2007 (V. 24.) Korm. rendelettel	Decree 114/2007	< http://bit.ly/1Gs2a1D > (HU)
Government Decree no. 9/2013 (VI.28.) on the rules of execution of asylum detention and bail	29/2013. (VI. 28.) BM rendelet a menekültügyi őrizet végrehajtásának szabályairól és a menekültügyi óvadékról	Decree 29/2013	< http://bit.ly/1I1uvbJ > (HU)

Government Decree no. 191/2015 (VII. 21.) on safe countries of origin and safe third countries	191/2015 (VII. 21.) A nemzeti szinten biztonságosnak nyilvánított származási országok és biztonságos harmadik országok meghatározásáról	Decree 191/2015	< http://bit.ly/1PNamgZ > (HU)
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Overview of the main changes since the previous report update

The report was previously updated in **February 2015**.

- Between January and September 2015, Hungary received 175,963 asylum applications, compared to 42,777 in the entire year 2014.

Procedure

- The Hungarian asylum system has been overhauled through a series of substantial legislative reforms over the summer of 2015. Amendments to the Asylum Act entering into force on 1 August 2015 have merged what were previously the preliminary assessment (i.e. admissibility) procedure and in-merit procedure into a single procedure. An accelerated procedure has also been established through this law, which may be applied on 10 grounds. Vulnerable applicants are not exempted from accelerated procedures.
- The new rules have also authorised the government to adopt a list of safe countries of origin and safe third countries. On that basis, Government Decree 191/2015 established such a list, designating countries such as Serbia as safe and leading all applications of asylum seekers coming through Serbia to be declared inadmissible.
- Further amendments entering into force on 15 September 2015 introduced additional restrictions to access to protection. The amended Asylum Act now provides for a border procedure in transit zones, subject to lower procedural guarantees and in practice lasting as short as one hour in certain cases, whereby asylum claims are summarily rejected as inadmissible. Vulnerable applicants are exempted from the border procedure in the transit zone.

Reception conditions

- The Debrecen reception centre was closed in October 2015.

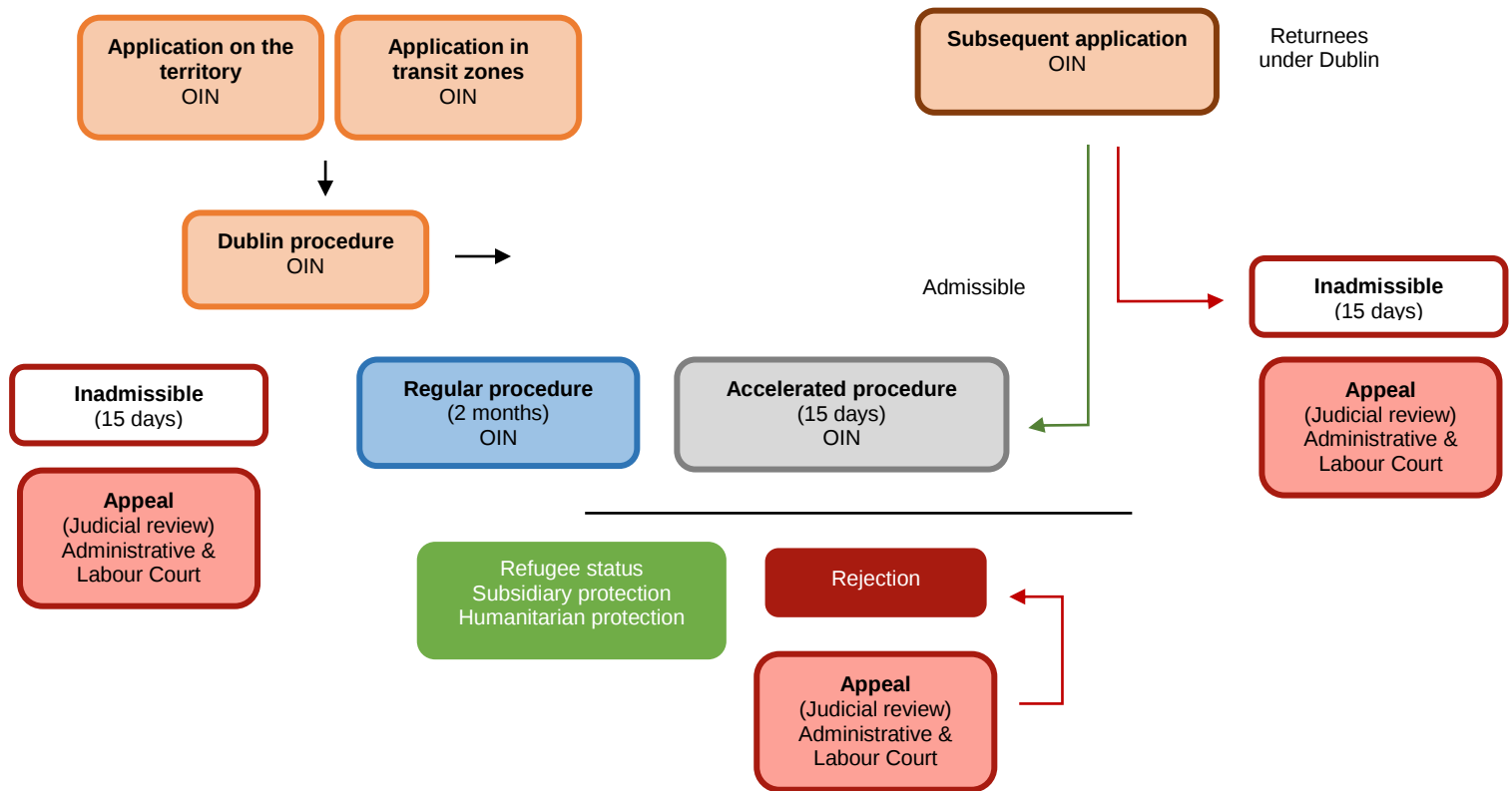
Detention

- Transit zones made up of containers were set up at border-crossing points on the Serbian border (Röszke, Tompa) in September 2015 and the Croatian border (Letenye, Beremend) in October 2015, when the respective borders were closed. The confinement of asylum seekers in these zones for the purpose of assessing their claim amounts to deprivation of liberty.
- The Debrecen asylum detention centre is set to be closed in December 2015.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination: ²	☒ Yes	☐ No
▪ Fast-track processing: ³	☒ Yes	☐ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure: ⁴	☒ Yes	☐ No

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

Section 35(7) of the Asylum Act provides that in the case of an unaccompanied child, the asylum procedure shall be conducted as a matter of priority, but in practice this is not always the case.

² For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law. See Article 31(8) APD.

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

Stage of the procedure	Competent authority in EN	Competent authority in original language (HU)
Application at the border	Police Office of Immigration and Nationality (OIN)	Rendőrség Bevándorlási és Állampolgársági Hivatal (BÁH)
Application on the territory	Office of Immigration and Nationality (OIN)	Bevándorlási és Állampolgársági Hivatal (BÁH)
Dublin (responsibility assessment)	Dublin Coordination Unit, 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 (Judicial review)	Regional Administrative and Labour Court	Közigazgatási és Munkaügyi Bíróság
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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office of Immigration and Nationality (OIN)	Approximately 1,000	Ministry of Interior	☐ Yes ☒ 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 an administrative procedure carried out by the OIN. The second instance is a judicial review procedure carried out by regional Courts of Appeal, which is not specialised in asylum. There is inadmissibility, and an accelerated procedure in addition to the normal procedure now. There is also a special border procedure, which is a type of accelerated procedure for asylum seekers entering Hungary through the transit zones.

Asylum may be sought at the border or in the country. If a foreigner expresses a wish to seek asylum at the border, the police authorities must contact the OIN accordingly. The asylum procedure starts with the submission of an application for asylum in person before the asylum authority.

The asylum procedure starts with assessment whether a person falls under a Dublin procedure. If this is not the case, the OIN proceeds with examination of whether the application is inadmissible or whether it should be decided in accelerated procedure. The decision on this shall be made within 15 days. If the application is not inadmissible and it will not be decided in accelerated procedure, the OIN has to make a decision on the merits within 60 days.

As of 1 August 2015 there are three types of procedures:

- ❖ The inadmissibility procedure should be used if somebody (a) is an EU citizen; (b) has protection status from another EU Member state; (c) has protection from a third country and this country is willing to readmit the applicant; (d) submits a subsequent application and there are no new circumstances or facts; and (e) has travelled through a safe third country.
- ❖ The accelerated procedure can be used if somebody; (a) has shared irrelevant information with the authorities regarding his or her asylum case; (b) comes from a safe country of origin; (c) gives false information about his or her name and country of origin; (d) destroys his or her travel documents with the aim to deceive the authorities; (e) provides contradictory, false and improbable information to the authorities; (f) submits a subsequent applicant with new facts and circumstances; (g) submits an application only to delay or stop his or her removal; (h) enters Hungary irregularly or extends his or her stay illegally and did not ask for asylum within reasonable time although he or she would have had the chance to do so; (i) does not give fingerprints; and (j) presents a risk to Hungary's security and order or has already had an expulsion order for this reason.
- ❖ The asylum application in the normal procedure 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 normal procedure is no longer divided into an admissibility and an in-merit phase, it consists of one interview only.

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

The applicant may challenge the negative OIN decision by requesting judicial review from the regional Administrative and Labour Court within 8 calendar days. The judicial review request will have suspensive effect on the OIN decision. The court should take a decision in 60 days in the normal procedure and in 8 days in the inadmissibility and the accelerated procedure. A personal hearing of the applicant is not compulsory. The court may uphold the OIN decision or may annul the OIN decision 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: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application? ☐ Yes ☒ No
2. If so, what is the time-limit for lodging an application?
3. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

There is no time-limit for lodging an asylum application. The application should be lodged in writing and in person by the person seeking protection at the OIN.⁵ If the person seeking protection appears before another authority to lodge an application for asylum, that authority should inform the asylum seeker about where to turn to with his or her application. If the asylum claim is made in the course of immigration, petty offence or criminal procedures e.g. at the border or in detention, the proceeding authority (police, Immigration Department of the OIN, local authorities or court) must record the statement and forward it to the asylum authority without delay.

Push backs

The barbed-wire fence along the 175km long border section with Serbia was completed on 15 September 2015. A similar barbed-wire fence erected a month later, on 16 October 2015, at the border with Croatia. So-called “transit zones” have been established, actually as parts of the fence. They consist of a series of containers which host actors in a refugee status determination procedure (see Border Procedure). The chain of authorities inhabiting the linked containers starts with the police who record the flight route, then, if an asylum application is submitted, a refugee officer to accept it, and finally, a judge (or a court clerk) in a “court hearing room”, who may only be present via an internet link.⁶ After the construction of the fences, the number of asylum seekers arriving in Hungary dropped significantly.

According to government statements, on 15-16 September 2015 only 185 asylum seekers were allowed to enter the transit zones, while in Röszke many hundreds of others – mainly Syrian war refugees – were waiting outside, without any services (food, shelter etc.) provided by either the Serbian or the Hungarian state. The information received by the HHC from various sources indicates that the transit zones are only able to register a maximum of 100 asylum claims per day. The HHC witnessed as well that only very few asylum seekers were allowed to enter the transit zone, sometimes literally not a single person was let in for hours. The above-described policy hinders access to the asylum procedure for most asylum seekers arriving at this border section of the EU.⁷

The HHC’s staff that visited the border area with Serbia reported that there were many asylum seekers whose asylum applications were declared inadmissible on “safe third country grounds” within few hours. Only less than half a dozen persons asked for judicial review. All others were expelled and physically “accompanied” by a police officer to the Serbian border, a few meters from the door of the “transit zone” container, expecting the refused persons to illegally cross the green border in the return direction and re-enter Serbia. Many told HHC that they did not appeal because they were told by the OIN that they will be detained. They rather returned back to Serbia.

That is clearly an illegal practice: according to the Asylum Procedures Directive (and the corresponding Hungarian rule) people to be returned to a “safe third country” must be equipped with a document in the language of the destination country explaining that no in-merit examination of the case took place. Also,

⁵ Section 35(1)-(2) Asylum Act.

⁶ B Nagy, ‘Parallel realities: Refugees seeking asylum in Europe and Hungary’s reaction’, 4 November 2015, available at: <http://bit.ly/1LjTq3S>.

⁷ HHC, *No country for refugees*, Information Note, 18 September 2015, available at: <http://bit.ly/1iQP8SC>.

the return should only occur once its terms have been agreed upon with the country taking back the applicant.⁸

The HHC is representing two asylum seekers at the ECtHR, whose asylum applications have been declared inadmissible in the transit zone, based on safe third country grounds. The request for judicial review was rejected as well. According to testimonies of the applicants and UNHCR staff member present at the time in the transit zone, the asylum office communicated the Administrative Court's rulings to the applicants and subsequently the applicants were escorted by the police to the gate and were told to leave the transit in the direction of Serbia. It is important to note that the side of the fence, the part of land where the applicants were pushed out to from the transit is still Hungary. The applicants were left there on their own by the Hungarian authorities. According to the testimonies of the applicants, they did not agree to leave Hungary voluntarily and they clearly said that they did not want to go back to Serbia. They said to the asylum officers that they want to appeal against the expulsion and tried to hand over the appeal document prepared in advance, but the officers refused to take their appeal. The next day their counsel received a letter from the asylum authority, stating that the applicants left the transit voluntarily in the direction of Serbia. This is clearly contrary to the statements of the applicants and the witness.

Border monitoring findings in 2013, in the context of the tripartite agreement between UNHCR, HHC and the Hungarian Police, show that according to the police records, a majority of minors did not launch an asylum application during the interview at the border. After the examinations of the persons' files, however, it was clear that based on information presented in the reports, certain conditions called for the need of international protection of these minors. Many of them arrived from war-ridden Syria who reported that they had left their country due to the war.⁹ The same findings apply to 2014.¹⁰

2. Regular procedure

2.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 2 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases as of 31 October 2015: Not available

The asylum procedure in Hungary starts with assessment whether a person falls under a Dublin procedure. If this is not the case, the OIN proceeds with examination of whether the application is inadmissible or whether it should be decided in accelerated procedure. The decision on this shall be made within 15 days.¹¹ If the application is not inadmissible and it will not be decided in accelerated procedure, the OIN has to make a decision on the merits within 60 days.¹² In some cases e.g. involving age assessment for unaccompanied children, the procedure can last longer up to 2-5 months. Due to the big increase of the asylum applications in 2013 as well as in 2014, there are cases where the time-

⁸ *Ibid.*

⁹ UNHCR, HHC & National Police Headquarters, *Asylum Seekers' Access to the Territory and to the Asylum Procedure in Hungary 2013*, July 2014, available at: <http://bit.ly/1FF1PYv>.

¹⁰ UNHCR, HHC & National Police Headquarters, *Asylum Seekers' Access to the Territory and to the Asylum Procedure in Hungary 2014*, July 2015, available at <http://bit.ly/1IsSTPH>.

¹¹ Section 47(2) Asylum Act.

¹² Section 56(3) Asylum Act.

limits are not respected. The drop in asylum applications only occurred recently, therefore there are still cases where the time-limits are not respected.

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

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

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. Due to the drop in asylum applications since mid-September 2015, the asylum procedures are now conducted faster.

In January-September 2015, 175,963 applications were lodged, while in 2014, a total of 42,777 asylum seekers applied for international protection in Hungary and 18,900 applications were recorded in 2013.¹³

2.2. Fast-track processing

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

2.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

The personal interview of the asylum seeker is mandatory in the asylum procedure. The OIN may omit the personal interview in the following cases, where the asylum seeker:¹⁴

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

Section 36 of the Asylum Act and Section 66 of the Decree 301/2007 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 he or she understands orally and in writing during his or her asylum procedure. If the asylum application is submitted orally and the asylum seeker does not speak Hungarian, the asylum authority must provide an interpreter speaking the applicant's mother tongue or another language understood by that person. There may be no need for using an interpreter if the asylum officer speaks the mother tongue of that person or another language understood by him or her, and the asylum seeker consents in writing to not having an interpreter.

¹³ OIN, *Asylum Statistics 2013*, available at: <http://bit.ly/1BYStSW>; *Statistics 2014*, available at: <http://bit.ly/1BYShT>.

¹⁴ Section 43 Asylum Act.

The asylum seeker has a first interview in the admissibility procedure usually within a few days after his or her arrival. During the in-merit procedure, the asylum seeker can have one or more substantive interviews, where he or she is asked to explain in detail the reasons why he or she had to leave his or her country of origin.

Where the applicant requests so, a same-sex interpreter and interviewer must be provided, where this is considered not to hinder the completion of the asylum procedure.¹⁵ For asylum seekers who are facing gender-based persecution and make such a request, this designation is compulsory.¹⁶ Nevertheless, HHC is not aware of any gender or vulnerability-specific guidelines applicable to eligibility officers conducting interviews.

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

There is no specific code of conduct for interpreters in the context of asylum procedures. Many interpreters are not professionally trained, however, and this causes in particular problems with regard to languages which are not widely spoken in Hungary. For example, in Bicske refugee camp, it is still happening that the OIN does not call professional translators for interviews or when they communicate the decisions to the asylum seekers. They instead ask asylum seekers in the camp to help with the translation. The HHC finds this practice highly problematic.

Interviews are not recorded by audio-video equipment. The questions and statements are transcribed verbatim by the asylum officers conducting the interview. The interview transcript is orally translated by the interpreter to the asylum seeker who will have an opportunity to correct it before its finalisation and signature by all present persons. However, in certain cases where lawyers provided by the HHC represented the asylum seeker in the interview, it turned out that the quality of the interview transcript was unsatisfactory. This has in turn led courts to annul the OIN's first instance decision and to order a new procedure to be carried out in several cases.

2.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	☒ Yes	☐ No
❖ If yes, is it suspensive	☒ Judicial	☐ Administrative
	☒ Yes	☐ No
2. Average processing time for the appeal body to make a decision: 2 months

A decision must be communicated orally to the person seeking asylum in his or her mother tongue or in another language he or she understands. Together with this oral communication, the decision shall also be made available to the applicant in writing, but only in Hungarian.

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

From 1 July 2013 onwards, the deadline for lodging a request for judicial review is only 8 days, following amendments to the Asylum Act.¹⁷ The drastic decrease of the time-limit to challenge the OIN's decision has been sharply criticised by UNHCR and NGOs such as HHC, which have argued that this will

¹⁵ Section 66(2) Decree 301/2007.

¹⁶ Section 66(3) Decree 301/2007.

¹⁷ Section 68 Asylum Act. Before 1 July 2013, the time-limit for applying for judicial review was 15 days.

jeopardise asylum seekers' access to an effective remedy.¹⁸ For example, the short deadline is problematic when a person receives subsidiary protection and is not sufficiently informed about the opportunity to appeal and about the benefits the refugee status would bring him or her (e.g. possibility of family reunification under beneficial conditions). Within 8 days, it is sometimes impossible to meet a lawyer and the person might miss the deadline for the appeal.

The request for judicial review has suspensive effect.

Section 68(3) of the Asylum Act provides that the court should take a decision on the request for judicial review within 60 days. Moreover, if the applicant is deprived of his or her liberty, the court should prioritise the case. However, in practice, these requirements are rarely met and court procedures may take 4 to 9 months until a judgment is reached, depending on the number of hearings the court holds in a case. Due to the recent sharp decrease in asylum applications, it is expected that the delays will be shorter or none.

The hearing is only mandatory if the person is in detention. And even this is subject to some exceptions, where:¹⁹

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

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.²⁰ However, the personal data, including nationality, of the appellant are deleted from the published decisions.

The court carries out an assessment of both points of fact and law. The court may not alter the decision of the refugee authority; it shall annul any administrative decision found to be against the law – with the exception of the breach of a procedural rule not affecting the merits of the case – and it shall order the refugee authority to conduct a new procedure if necessary.²¹

2.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
☐ Yes ☒ With difficulty ☐ No
❖ Does free legal assistance cover:²² ☒ Representation in interview
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
☐ Yes ☒ With difficulty ☐ No
❖ Does free legal assistance cover ☒ Representation in courts
☒ Legal advice

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

¹⁸ UNHCR, *UNHCR Comments and Recommendations on the Draft modification of certain migration-related legislative acts for the purpose of legal harmonisation*, 12 April 2013, available at: <http://bit.ly/1B8gZG5>, 14.

¹⁹ Section 68(4) Asylum Act.

²⁰ Asylum cases published on the Hungarian court portal are available in Hungarian at: <http://bit.ly/1IwxZWq>.

²¹ Section 68(5) Asylum Act.

²² This refers both to state-funded and NGO-funded legal assistance.

income or financial situation, merely on the basis of their statement regarding their income and financial situation.²³

The Legal Aid Act sets out the rules for free of charge, state-funded legal assistance provided to asylum seekers. Sections 4(b) and 5(2)(d) provide that asylum applicants are entitled to free legal aid if they are entitled to receive benefits and support under the Asylum Act. Section 3(1)(e) provides that legal aid shall be available to those who are eligible for it, as long as the person is involved in a public administrative procedure and needs legal advice in order to understand and exercise his or her rights and obligations, or requires assistance with the drafting of legal documents or any submissions. Legal aid is not available for legal representation during public administrative procedures. Therefore, in the asylum context, the presence of a legal representative during the asylum interview conducted by OIN is not covered by the legal aid scheme. However, legal aid in the administrative phase of the asylum procedure is available through the national allocation of European Refugee Fund (ERF) projects.

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

Section 37(4) of the Asylum Act provides that legal aid providers may attend the personal interview of the asylum seeker, have access to the documents produced in the course of the procedure and have access to reception and detention facilities to contact their client.

Legal aid providers may be attorneys, NGOs or law schools who have registered with the Legal Aid Service of the Judicial Affairs Office of the Ministry of Justice and Public Administration.²⁴ Legal aid providers may specify which main legal field they specialise in, i.e. whether in criminal law, or civil and public administrative law. As a general rule, beneficiaries of legal aid are free to select a legal aid provider of their own choice. This is facilitated by the legal aid offices around the country, which maintain lists and advise clients according to their specific needs.

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. Secondly, 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 ERF National Actions scheme. Between 2004 and 2012, HHC was the NGO implementing a legal assistance project for asylum seekers funded by ERF, covering all reception centres and immigration detention facilities. As of January 2013, free legal aid for asylum seekers is provided through a project funded by the ERF National Actions scheme, run by the Legal Aid Service of the Ministry of Public Administration and Justice. ERF's contribution covers translation and legal representation costs in the first instance asylum procedure, while the state budget covers the legal counselling costs.

The figures show that very few clients actually receive assistance from legal aid lawyers involved in this project. There were some problems with the recruitment of lawyers, while the asylum seekers still do not have sufficient information about the lawyers' existence. Lack of language skills among certain lawyers

²³ Section 5(2)(d) Legal Aid Act.

²⁴ Chapter VIII Legal Aid Act.

was also reported. In general the trust needed between lawyers and asylum seekers has not yet been developed.

After one year of implementation of this scheme, there is still lack of legal assistance in several reception and detention centres. According to the statistics, in 2013 the lawyers working under this scheme provided only 312 legal consultations and 155 legal representations to asylum seekers.²⁵ After two years of implementation of this project, still only a limited number of asylum seekers benefited from free legal service (only 9% of asylum seekers received state legal aid in the first half of 2014). Legal aid providers are not at all available in 2 reception centres (Vámosszabadi and Balassagyarmat) and in Debrecen, which is the biggest reception centre in the country, as well as in the asylum detention facility. Only 24 persons benefited from State legal assistance in first half of 2014 in Debrecen.²⁶

The above mentioned project funded by the European Refugee Fund officially failed, as the grantee (the Office of Administration and Justice) decided to cease the project due to insurmountable difficulties. Thus, in 2015 legal assistance to asylum seekers is still entirely dependent on the HHC.

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

HHC continues to provide legal assistance in all reception centres, as well as in all immigration and asylum detention facilities. This legal assistance however is project based and its sustainability is not assured. In 2014, the HHC's lawyers provided legal counselling to 924 asylum seekers. Between January and September 2015, the HHC Refugee Programme provided 1,201 foreigners in need with free-of-charge legal assistance, 390 of whom ($\frac{1}{3}$) were in detention. Among these beneficiaries 912 were asylum seekers (assisted in their asylum procedure), 56 refugees (in family reunification), 273 detained irregular migrants (concerning their alien policing procedure and detention) and 14 Hungarian citizens (in family reunification with foreign relatives).

3. Dublin

3.1. General

Indicators: Dublin: General

1. Number of outgoing requests in 2015:	Not available
2. Number of incoming requests in 2015:	Not available
3. Number of outgoing transfers in 2015:	Not available
4. Number of incoming transfers in 2015 (24 September): ²⁷	1,081
❖ Top 3 sending countries:	AT, SK, DE

²⁵ Statistics provided by the Ministry of Interior upon request of the Hungarian Helsinki Committee, April 2014.

²⁶ Statistics provided by the Ministry of Interior upon request of the Hungarian Helsinki Committee, September 2014.

²⁷ Statistics provided by the Dublin Unit. See ECRE, *Crossing Boundaries*, October 2015, 10.

Application of the Dublin criteria

The Dublin procedure is applied whenever the criteria of 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.

There is no available information on the way the criteria are applied in practice.

The discretionary clauses

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. There are no available statistics on the use of the humanitarian clause in 2015.

OIN's practice does not have any formal criteria defining the application of the sovereignty clause. The sovereignty clause is not applied in a country-specific manner; cases are examined on a case-by-case basis. There are no available statistics on the use of the sovereignty clause in 2015. 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.

3.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

Asylum seekers are systematically fingerprinted and their data is stored in Eurodac by the police authorities. However, during the huge influx of asylum seekers in 2014 and 2015, the OIN did not have the capacity to systematically store the fingerprints of those applying for asylum under the "asylum seeker" category ("Category 1") in Eurodac, in particular in case large groups have been apprehended at the same time. The police authorities stored the fingerprints of those apprehended under the category of "irregular migrants" ("Category 2 and 3") in the Eurodac system.

Some asylum seekers reported in 2015 that they were forced to give fingerprints. They reported that they were denied water until they agreed to give fingerprints. Where an asylum seeker refuses to have his or her fingerprints taken, this can be a ground for an accelerated procedure,²⁸ or the OIN may proceed with taking a decision on the merits of the application without conducting a personal interview.²⁹

The Dublin Coordination Unit has 10 OIN staff members. In its description, EASO mentions that caseworkers are not specialised in dealing with outgoing or incoming requests.³⁰

If a Dublin procedure is initiated, the procedure is suspended until the issuance of a decision determining the country responsible for examining the asylum claim,³¹ subject to no possibility of legal challenge.³² 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 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 III Regulation.

²⁸ Section 51(7)(i) Asylum Act.

²⁹ Section 66(2)(f) Asylum Act.

³⁰ EASO, *Description of the Hungarian asylum system*, May 2015, 5.

³¹ Section 49(2) Asylum Act.

³² Section 49(3) Asylum Act.

The asylum seeker is informed about the fact that a Dublin procedure had started, but after that, he or she is not informed about the different steps in the Dublin procedure. If the Dublin procedure takes a long time, this creates frustration, especially for those asylum seekers who are detained. HHC lawyers have reported that this information is not even contained in the applicants' files. In order to obtain such information, the legal representatives need a special power of attorney. Asylum seekers only receive the decision on the transfer which includes the ground for application of the Dublin Regulation and against which they can appeal within 3 days. The OIN does not provide a written translation of the Dublin decision, but they do explain it orally in a language that the asylum seeker understands. Some asylum seekers have told HHC that they were not informed about the possibility to appeal the Dublin decision when they were given the decision.

Individualised guarantees

The HHC is not aware of cases where the OIN seeks individualised guarantees from the receiving Member State prior to a transfer.

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. Once the OIN issues a Dublin decision ("resolution"), the asylum seeker can no longer withdraw his or her asylum application.³³

Transfers

In practice, asylum seekers in the Dublin procedure are sometimes detained or can be prohibited from leaving their place of residence until the actual transfer (see Duration of Detention).³⁴ The prohibition to leave their place of residence, cannot exceed 72 hours and is applied in order to ensure that the transfer actually takes place.

The transfer procedure 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 his or her personal circumstances such as age do not require it – the foreigner travels without escorts. Otherwise the person will be accompanied by Hungarian police escorts. In case of land transfers, the staff of the police hand over the foreigner directly to the authorities of the other state. According to HHC's experience, voluntary transfers are rare. There is no official information on the duration of the transfer.

The situation of Dublin returnees

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

The following situations are applicable to Dublin returnees:

- (a) Persons who had not previously applied in Hungary and persons whose applications are still pending are both treated as first-time asylum applicants.
- (b) For persons whose applications are considered to have been tacitly withdrawn (i.e. they left Hungary and moved on to another EU Member State) and the asylum procedure had been terminated, the asylum procedure may be continued if the person requests such a continuation

³³ Section 49(4) Asylum Act.

³⁴ Section 49(5) Asylum Act.

within 9 months of the withdrawal of the original application.³⁵ Where that time-limit has expired, the person is considered to be a subsequent applicant (see section on Subsequent Applications). However, imposing a deadline in order for the procedure to be continued is contrary to the Dublin III Regulation, as the second paragraph of Article 18(2) states that when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive. This is also recalled in Article 28(3) of the Recast Asylum Procedures Directive, which explicitly provides that the aforementioned 9-month rule on withdrawn applications “shall be without prejudice to [the Dublin III Regulation].”

- (c) Persons who withdraw their application in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore they will have to submit a subsequent application and present new facts or circumstances (see section on Subsequent Applications). This is also not in line with above-described second paragraph of Article 18(2) of the Dublin III Regulation, which should be applied also in cases of explicit withdrawal in writing and not only in cases of tacit withdrawal. This is problematic in the view of recent practices in Hungary when detained asylum seekers withdraw their applications in order to be released from asylum detention. By imposing detention on asylum seekers returned under the Dublin III Regulation, in practice the OIN promotes the option of withdrawal amongst them. This practice can be interpreted as a disciplinary use of detention against those who lodge an asylum claim in Hungary.
- (d) The asylum procedure would also not continue, when the returned foreigner had previously received a negative decision and did not seek judicial review. This is problematic when the OIN issued a decision in someone's absence. The asylum seeker who is later returned under the Dublin procedure to Hungary will have to submit a subsequent application and present new facts and evidence in support of the application (see section on Subsequent Applications). According to Article 18(2) of the Dublin III Regulation, the responsible Member State that takes back the applicant whose application has been rejected only at the first instance shall ensure that the applicant has or has had the opportunity to seek an effective remedy against the rejection. According to the OIN, the applicant only has a right to request a judicial review in case the decision has not yet become legally binding. Since a decision rejecting the application becomes binding once the deadline for seeking judicial review has passed without such a request being submitted, the HHC believes that the Hungarian practice is in breach of the Dublin III Regulation because in such cases Dublin returnee applicants are not afforded an opportunity to seek judicial review after their return to Hungary.

Especially problematic will be the case of returned asylum seekers who have crossed Serbia before arriving in Hungary. In case they will have to submit a subsequent application, their application will be likely declared inadmissible based on an application of the “safe third country” notion, without the possibility for these persons to be heard beforehand. Since there is no effective remedy against the unlawful decision of the OIN, such transfers to Hungary are exposing applicants to a real risk of chain deportation to Serbia, which may trigger a practice of indirect *refoulement* (see section on Safe Country Concepts).

Given that the list of safe third countries entered into force on 1 August 2015, the “safe third country” rule should only apply to asylum applicants who had entered the territory of Hungary after that date. However, the OIN stated that the notion of safe third country would apply to persons currently returning under the Dublin III Regulation, including those who had entered Hungary prior to 1 August 2015. The OIN argued that, since the legal provision establishing the safe third country concept had already

³⁵ Section 66(6) Asylum Act.

existed in the Asylum Act, and the national list was aimed at facilitating the work of the OIN, the notion can be applied to old cases as well as new ones.³⁶ The HHC witnessed several such cases.

Actual return of the foreigner, however, will no longer be possible if more than one year has passed since the Dublin returnee's entry into Hungary from Serbia had taken place. This is because, according to the EU-Serbia Readmission Agreement, the readmission has to take place within a maximum of 1 year from the person's entry to Hungary from Serbia.³⁷

3.3. Personal interview

Indicators: Dublin: Personal Interview

☒ Same as regular procedure

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

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

However, the HHC has noticed several cases, where asylum seekers were not asked about the reasons for leaving another EU Member State. This is particularly problematic because the OIN takes the decision on transfer without being aware of any potential problems that the applicant could have experienced in the responsible Member State.

3.4. Appeal

Indicators: Dublin: Appeal

☐ Same as regular procedure

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

Asylum seekers have the right to request judicial review of a Dublin decision before the competent Regional Administrative and Labour Court within 3 days.³⁸ The extremely short time-limit of 3 days for challenging a Dublin transfer does not appear to reflect the "reasonable" deadline for appeal under Article 27(2) of the Dublin III Regulation or the right to an effective remedy under Article 13 ECHR.³⁹

The court can examine points of fact and law of the case, although as stated above, its judges are not specialised in asylum cases but deal with public administrative and labour law matters generally. The

³⁶ ECRE, *Crossing Boundaries*, October 2015, 35-36.

³⁷ See Article 10 Council Decision 2007/819/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, OJ 2007 L334/45.

³⁸ Section 49(7) Asylum Act.

³⁹ UNHCR has also criticised the effectiveness of Dublin appeals, citing CJEU, Case C-69/10 *Diouf*, Judgment of 28 July 2011, paras 66-68. See UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <http://bit.ly/1GvunEz>, 20.

court has to render a decision within 8 calendar days.⁴⁰ In practice, however, it can take a few months for the court to issue a decision.

A personal hearing is specifically excluded by law; therefore there is no oral procedure.⁴¹ This is particularly problematic since the asylum seeker is usually not asked in the interview by the OIN about the reasons why he or she left the responsible Member State and, since the court does not hold a hearing, this information never reaches the court either.

Appeals against Dublin decisions do not have suspensive effect. Asylum seekers have the right to ask the court to suspend their transfer. Contrary to the Dublin III Regulation,⁴² according to the TCN Act and Asylum Act this request does not have suspensive effect either.⁴³ However, the Director-General of the OIN issued an internal instruction, stating that if a person requests for suspensive effect, the transfer should not be carried out until the court decides on the request for suspensive effect.⁴⁴ However, it seems worrying that despite the clear violation of the Dublin III Regulation, the controversial provision was not amended in the scope of the last amendments of the Asylum Act in August and September 2015.

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 HHC's knowledge, so far the transfers have only been suspended in relation to Greece.

3.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

☐ Yes

☒ With difficulty

☐ No

❖ Does free legal assistance cover:

☒ Representation in interview

☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

☐ Yes

☒ With difficulty

☐ No

❖ Does free legal assistance cover

☒ Representation in courts

☒ Legal advice

Asylum seekers have the same conditions and obstacles to accessing legal assistance in the Dublin procedure as in the regular procedure (see section on [Regular Procedure: Legal Assistance](#)). What is particularly problematic for asylum seekers in the Dublin procedure are short deadlines (only 3 days to lodge an appeal) and no right to a hearing before the court. In such a short time it is hard to get access to legal assistance, which seems even more crucial since there is no right to a hearing.

3.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?

☒ Yes

☐ No

❖ If yes, to which country or countries? Greece

⁴⁰ Section 49(8) Asylum Act.

⁴¹ Section 49(8) Asylum Act.

⁴² Article 27(3) Dublin III Regulation.

⁴³ Section 49(9) Asylum Act.

⁴⁴ OIN, *Information provided by the Dublin Unit based on the Hungarian Helsinki Committee's request*, March 2014. See also EASO, *Description of the Hungarian asylum system*, May 2015, 6.

Since the European Court of Human Rights (ECtHR)'s ruling in *MSS v Belgium and Greece*,⁴⁵ transfers to Greece have occurred only if a person consented to the transfer. Hungary has not suspended transfers to Bulgaria, even after UNHCR's call in January 2014 to temporarily suspend such transfers because of the risk of inhuman and degrading treatment due to systemic deficiencies in reception conditions and asylum procedures in Bulgaria.⁴⁶

In case the transfer is suspended, Hungary assumes responsibility for examining the asylum application and the asylum seeker has the same rights as any other asylum seeker. However, the asylum seekers are not immediately informed about this. They only become aware of this fact when they receive the decision on referral to the in-merit procedure, which can be several weeks after the decision of the OIN to assume responsibility for examining the asylum application was made.

4. Admissibility procedure

4.1. General (scope, criteria, time limits)

The admissibility of an application should be decided within 15 calendar days and this deadline may not be extended; there is no longer a separate admissibility procedure. However in practice, due to the high influx of asylum seekers in 2015 and 2014, this took a few weeks longer. Since the drop of asylum applications after the fences at Serbian and Croatian borders, the deadline is again respected.

Under Section 51(2) of the Asylum Act, an application is inadmissible where:

- (a) The applicant is an EU citizen;
- (b) The applicant was granted international protection by another EU Member State;
- (c) The applicant is recognised as a refugee by a third country and protection exists at the time of the assessment of the application and the third country is prepared to readmit him or her;
- (d) The application is repeated and no new circumstance or fact occurred that would suggest that the applicant's recognition as a refugee or beneficiary of subsidiary protection is justified; or
- (e) There exists a country in connection with the applicant which qualifies as a safe third country for him or her.

The "safe third country" concept may only be applied as an inadmissibility ground where the applicant (a) stayed or (b) travelled there and had the opportunity to request effective protection; (c) has relatives there and may enter the territory of the country; or (d) has been requested for extradition by a safe third country (see section on Safe Country Concepts below).⁴⁷ In the event of applying the "safe third country" concept, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe third country.⁴⁸ In case the application is declared inadmissible on safe third country grounds, the OIN shall issue a certificate in the official language of that third country to the applicant that his or her application for asylum was not assessed on the merits.⁴⁹ Where the safe third country fails to take back the applicant, the refugee authority shall withdraw its decision and continue the procedure.⁵⁰ Article 32(2)(e) of the recast Asylum Procedures Directive, providing that an application by a dependant of the applicant who has consented to his or her case being part of an application made on his or her behalf, has not been transposed into Hungarian legislation.

4.2. Personal interview

⁴⁵ *MSS v Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

⁴⁶ See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014, available at: <http://bit.ly/1dsMr2Y>.

⁴⁷ Section 51(4) Asylum Act.

⁴⁸ Section 51(11) Asylum Act.

⁴⁹ Section 51(6) Asylum Act.

⁵⁰ Section 51A Asylum Act.

Indicators: Admissibility Procedure: Personal Interview☒ Same as regular procedure

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

4.3. Appeal**Indicators: Admissibility Procedure: Appeal**☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?

- | | | |
|------------------------------|--|---|
| ❖ If yes, is it | ☒ Yes | ☐ No |
| ❖ If yes, is it suspensive | ☒ Judicial | ☐ Administrative |
| ○ Safe third country grounds | ☒ Yes | ☐ No |
| ○ Other grounds | ☐ Yes | ☒ No |

The deadline for seeking judicial review against a negative decision on admissibility is shorter than in the regular procedure, as the request must be filed within only 7 calendar days.⁵¹ Judicial review is carried out by the same Regional Administrative and Labour Court that considers other asylum cases. Both points of facts and law may be assessed during a judicial review procedure. However, the scope of the review is limited to the grounds of admissibility and the merits of the case are not examined. Moreover, the review procedure in admissibility differs from those in the regular procedure, since the court must render a decision within 8 days and a hearing is not mandatory; a hearing only takes place “in case of need”.⁵² In the judicial review request submitted against the inadmissibility decision, new facts or new circumstances cannot be referred to.⁵³

A request for judicial review against the OIN decision declaring an application inadmissible has no suspensive effect, except for judicial review regarding inadmissible applications based on safe third country grounds.⁵⁴

The court may not alter the decision of the refugee authority; it shall annul any administrative decision found to be against the law, with the exception of the breach of a procedural rule not affecting the merits of the case, and it shall oblige the refugee authority to conduct a new procedure.⁵⁵

In practice, asylum seekers may face obstacles to lodging a request for judicial review against inadmissibility decisions for the following reasons:

- The 7-day deadline for applying for judicial review appears to be too short for an applicant to be able to benefit from qualified and professional legal assistance, and does not appear to satisfy the requirements of Article 13 ECHR on the right to an effective remedy.⁵⁶ Without a functioning and professional legal aid system available for asylum seekers, the vast majority of them have no access to legal assistance when they receive a negative decision from the OIN. Many asylum seekers may fail to understand the reasons for the rejection, especially in case of complicated legal arguments, such as the safe third country concept, and also lack awareness about their right to turn to court. The excessively short deadline makes it difficult for the asylum seeker to exercise her or his right to an effective remedy.

⁵¹ Section 53(3) Asylum Act.

⁵² Section 53(4) Asylum Act.

⁵³ Section 53(2a) Asylum Act.

⁵⁴ Section 53(2) Asylum Act.

⁵⁵ Section 53(5) Asylum Act.

⁵⁶ See e.g. ECtHR, *IM v France*, Application No 9152/09, Judgment of 2 February 2012; *Singh v Belgium*, Application No 33210/11, Judgment of 2 October 2012; *AC v Spain*, Application No 6258/11, Judgment of 22 April 2014. See also CJEU, *Diouf*, paras 66-68, finding that a 15-day time-limit is not sufficient for preparing an appeal.

- The procedure is in Hungarian and the decision on inadmissibility is only translated once i.e. upon its communication to the applicant, in his or her mother tongue or in a language that the applicant may reasonably understand. This prevents the asylum seeker from having a copy of his or her own decision in a language he or she understands so that later he or she could recall the specific reasons why the claim was found inadmissible. The judge has to take a decision in 8 days on a judicial review request. The 8-day deadline for the judge to deliver a decision is insufficient for “a full and *ex nunc* examination of both facts and points of law” as prescribed by EU law. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter.
- The lack of an automatic suspensive effect on removal measures is in violation of the principle established in the consistent case-law of the European Court of Human Rights, according to which this is an indispensable condition for a remedy to be considered effective in removal cases. While rules under EU asylum law are more permissive in this respect and allow for the lack of an automatic suspensive effect in case of inadmissibility decisions and accelerated procedures, the lack of an automatic suspensive effect may still raise compatibility issues with the EU Charter of Fundamental Rights. The lack of an automatic suspensive effect is in clear violation of EU law with regard to standard procedures, as the Asylum Procedures Directive allows for this option only in certain specific (for example accelerated) procedures. In all cases where the suspensive effect is not automatic, it is difficult to imagine how an asylum-seeker will be able to submit a request for the suspension of her/his removal as she/he is typically without professional legal assistance and subject to an unreasonably short deadline to lodge the request. To make it even worse for asylum-seekers, the rules allowing for a request to grant a suspensive effect to be submitted are not found in the Asylum Act itself, but they emanate from general rules concerning civil court procedures. The amended Asylum Act lacks any additional safeguards for applicants in need of special procedural guarantees with regard to the automatic suspensive effect, although this is clearly required by EU law.
- Finally, 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 where an oral hearing is rather exceptional. Applicants are not informed that they have to specifically request a hearing in their appeal. The unreasonably short time limit and the lack of a personal hearing may reduce the judicial review to a mere formality, in which the judge has no other information than the documents provided by the OIN.

4.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

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

5. Border procedure (border and transit zones)

5.1. General (scope, time-limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Can an application made at the border be examined in substance during a border procedure?
 - ❖ Airport procedure ☒ Yes ☐ No
 - ❖ Transit zones ☐ Yes ☒ No
3. Is there a maximum time-limit for border procedures laid down in the law? ☒ Yes ☐ No
 - ❖ If yes, what is the maximum time-limit? 8 days to decide on admissibility

There are two types of border procedures: (a) the so called “airport procedure” and (b) the procedure in transit zones. Both procedures cannot be applied in case of persons with special needs.⁵⁷ However, given the general absence of a mechanism to properly identify vulnerability, the authorities only establish the existence of special needs for persons with clearly visible vulnerabilities, thereby leaving asylum seekers with trauma or mental health problems or victims of trafficking to be processed in the border procedure.

Airport procedure

The airport procedure is regulated in Section 72 of the Asylum Act and Section 93 of Decree 301/2007. The procedure is also handled by the OIN. Although there are approximately 100 to 200 asylum applications submitted at the airport each year, the airport procedure is rarely applied in practice.

As of July 2013, applicants who have made an asylum application in the airport procedure are detained in asylum detention.⁵⁸ However, 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 unfounded in the admissibility procedure or no decision has been taken after 8 days, the asylum seeker has to be allowed entry into the country and a regular procedure will be carried out.⁵⁹

Procedure in the transit zones

The border procedure in transit zones was introduced in September 2015 and is regulated in Article 71A of the Asylum Act. The transit zones were established at Serbian and Croatian borders. The transit zone is where immigration and asylum procedures are conducted and where buildings required for conducting such procedures and housing migrants and asylum seekers are located. Asylum seekers could be held there for a maximum period of 4 weeks.

The HHC has serious concerns regarding the legal status of the transit zones. The official government position, as communicated in the press, is that asylum seekers admitted to the transit zone are on “no man’s land”, and that persons who were admitted and later “pushed back” in the direction of Serbia have never really entered the territory of Hungary. Consequently, such “push backs” do not qualify as acts of forced return. This position has no legal basis, as there is no “no man’s land” in international law; the concept of extraterritoriality of transit zones was clearly rejected by the ECtHR in the *Amuur* case as well.⁶⁰ The transit zone and the fence are on Hungarian territory and even those queuing in front of the

⁵⁷ Sections 71A(7) and 72(6) Asylum Act.

⁵⁸ Section 31/A(e) Asylum Act.

⁵⁹ Section 72(5) Asylum Act.

⁶⁰ ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996, para 52.

transit zone's door are standing on Hungarian soil – as also evidenced by border stones clearly indicating the exact border between the two states.⁶¹

The border procedure is a specific type of admissibility procedure; therefore the assessment of the claim is limited to a limited set of circumstances, in most cases to the sole fact whether the applicant entered Hungary from a safe third country. The applicant's actual need of international protection is not assessed at all in the border procedure.

The OIN has to deliver a decision within a maximum of 8 calendar days. In the cases directly witnessed by the HHC, the OIN actually delivers an inadmissibility decision at the transit zone in less than an hour. Such speedy decision-making gives rise to evident concerns regarding the quality and the individualisation of asylum proceedings as required by EU law⁶² and the application of even the most basic due process safeguards.

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

The law provides that the asylum seeker,

“[A]fter being informed [about the application of the safe third country notion in her/his case can, without delay and in any case not later than within 3 days, make a declaration concerning why in her/his individual case the given country cannot be considered as safe.”⁶³

In principle, this provision could function as a safeguard, if – with the help of professional legal advisors – asylum seekers had sufficient time to collect and present arguments to challenge the OIN's decision. In practice, however, asylum seekers are deprived of the opportunity to challenge the application of the safe third country concept on the merits. In all cases witnessed by the HHC after 15 September 2015, except for a few families, asylum seekers were quickly informed about the application of the safe third country notion. Immediately after this, the OIN offered them the possibility to challenge this preliminary conclusion by signing a simple statement according to which they disagree. Then the OIN immediately took a decision without considering the applicant's statement. Asylum seekers thus had neither the opportunity to consult a legal advisor, nor to collect any supporting in-merit argument. This procedure therefore reduces the possibility to challenge the safe third country argument in the administrative procedure to a purely formal and ineffective safeguard, which can have no impact whatsoever on the decision. This constitutes a violation of the right to be heard embedded in the EU Charter of Fundamental Rights,⁶⁴ as interpreted by the Court of Justice of the European Union (CJEU).⁶⁵

5.2. Personal Interview

Indicators: Border Procedure: Personal Interview

☒ Same as admissibility procedure

The same rules as in the Regular Procedure: Personal Interview apply.

5.3. Appeal

⁶¹ HHC, *No country for refugees*, Information Note, 18 September 2015; AIDA, *Crossing Boundaries, The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, available at: <http://bit.ly/1NxI9IP>.

⁶² Article 10(3)(a) recast Asylum Procedures Directive; Article 4(3)(c) recast Qualification Directive.

⁶³ Section 51(11) Asylum Act, in force as of 1 August 2015.

⁶⁴ Article 41(2) EU Charter.

⁶⁵ Cf. CJEU, Case C-277/11 *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, Judgment of 22 November 2012.

Indicators: Border Procedure: Appeal

☐ Same as admissibility procedure

1. Does the law provide for an appeal against the decision in the border procedure?

❖ If yes, is it

☒ Yes

☐ No

❖ If yes, is it suspensive

☒ Judicial

☐ Administrative

○ Safe third country grounds

☒ Yes

☐ No

○ Other grounds

☐ Yes

☒ No

Regarding the appeal in border procedure, the same rules apply as in case of appeal against inadmissible decisions or decisions in the accelerated procedure, with an additional lower standard which is that judicial clerks can also proceed and decide in these cases.⁶⁶ Clerks are not yet appointed as judges and have significantly less judicial experience.

Asylum seekers who submit the appeal are obliged to wait for the outcome of the judicial review process in the transit zone.

According to the HHC, the border procedure does not offer an effective remedy against negative first-instance decisions. Asylum seekers usually arrive at the border following a painful journey of several weeks or months. They are exhausted, many of them traumatised. As rejections are passed in less than an hour, they have no time to have a rest and get prepared for the interview, and even less for preparing a proper appeal. The asylum seekers the HHC interviewed after rejection did not understand the reasons for the rejection (an easily understandable consequence given the complexity of the legal question at stake – the safe third country concept – for anyone without specific training in refugee law), and their right to turn to court. In such a context, the 7-day time limit to submit a judicial review request is excessively short. The excessively short deadline makes it difficult for the asylum-seeker to exercise her/his right to an effective remedy and thus it questions the rule's compliance with EU law.⁶⁷

The asylum seekers who did not use the opportunity to appeal immediately after rejection still have 7 days under the law for submitting the request for judicial review to the OIN.⁶⁸ At the same time, they are immediately “pushed back” from the transit zone in the direction of Serbia – yet to what is still Hungarian territory. It is highly questionable whether these rejected asylum seekers can have any access to the legal remedy they are entitled to, as they cannot even physically contact the asylum authority, being on the other side of the fence. On 15 September 2015, the HHC monitors assisted a number of asylum seekers in submitting their appeal. When requesting information about the practical modalities for this, an OIN officer informed the HHC that the asylum seekers in question can submit their appeal but they should “stand in the queue again” and wait for being admitted to the transit zone, like any other asylum seeker. In light of the extremely limited access to the transit zone (see section on Registration) this may easily be equal to the deprivation of the right to appeal and thus a violation of EU law.⁶⁹

The personal hearing is not mandatory. Eventual hearings are to be held in the transit zone, and remote audio and video connection can also be used (for example for interpreting).⁷⁰

5.4. Legal assistance

⁶⁶ Section 71A(9) Asylum Act.

⁶⁷ Article 46(4) recast Asylum Procedures Directive.

⁶⁸ Section 53(3) Asylum Act.

⁶⁹ Article 46(1) recast Asylum Procedures Directive; Article 47 EU Charter.

⁷⁰ Section 71A(10) Asylum Act.

Indicators: Border Procedure: Legal Assistance

☒ Same as regular procedure

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

In such extremely accelerated procedures, facilitated access to quality legal assistance is a crucial requirement. Yet, there is no permanent access to professional legal advice in the transit zone. The OIN staff in Röszke had initially refused access to these sites for the HHC, the only Hungarian NGO providing free-of-charge legal assistance to asylum seekers. The HHC could only obtain access to the transit zones following an intervention by UNHCR. Moreover, given the remote location of the transit zone, the HHC is not present at all times in the premises. None of the asylum seekers interviewed by the HHC after rejection had been provided with legal assistance.⁷¹

6. Accelerated procedure

6.1. General (scope, grounds for accelerated procedures, time-limits)

The amended Asylum Act introduces an accelerated procedure as of August 2015, where the OIN is expected to pass a decision within short timeframe of 15 days.⁷²

The law provides 10 different grounds for referring an admissible asylum claim into an accelerated procedure,⁷³ where the applicant:

- (a) Discloses only information irrelevant for recognition as both a refugee and a beneficiary of subsidiary protection;
- (b) Originated in a country listed on the European Union or national list of safe countries of origin as specified by separate legislation;
- (c) Misled the authorities by providing false information on his or her identity or nationality
 - by providing false information;
 - by submitting false documents; or
 - by withholding information or documents that would have been able to influence the decision-making adversely;
- (d) Has destroyed or thrown away, presumably in bad faith, his or her identity card or travel document that would have been helpful in establishing his or her identity of nationality;
- (e) Makes clearly incoherent, contradictory, clearly false or obviously unlikely statements contradicting the duly substantiated information related to the country of origin that makes it clear that, on the basis of his or her application, he or she is not entitled to recognition as a refugee or beneficiary of subsidiary protection;
- (f) Submitted a subsequent application that is not inadmissible;
- (g) Submitted an application for the only reason of delaying or frustrating the order of the alien policing expulsion or carrying out of the expulsion ordered by the refugee authority, the alien police authority or the court;

⁷¹ HHC, *No country for refugees*, Information Note, 18 September 2015; ECRE, *Crossing Boundaries*, October 2015.

⁷² Section 47(2) Asylum Act.

⁷³ Section 51(7) Asylum Act.

- (h) Entered into the territory of Hungary unlawfully or extended his or her period of residence unlawfully and failed to submit an application for recognition within a reasonable time although he or she would have been able to submit it earlier and has no reasonable excuse for the delay;
- (i) Refuses to comply with an obligation to have his/her fingerprints taken; or
- (j) For a serious reason may pose a threat to Hungary's national security or public order, or he or she was expelled by the alien policing authority due to harming or threatening public safety or the public order.

The application cannot be rejected solely on the grounds of failing to submit an application within a reasonable time.⁷⁴

In accelerated proceedings, the OIN, with the exception of the case when the applicant originates from the safe country of origin, shall assess the merits of the application for recognition in order to establish whether the criteria for recognition as a refugee or beneficiary of subsidiary protection exist.⁷⁵

In the event of applying accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe country of origin.⁷⁶ Where the safe country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.⁷⁷

The HHC is of the opinion that there is a high risk that the use of accelerated procedures is not going to be limited to obviously unfounded or in some way "abusive" asylum claims, but may even be used as the general rule and not as an exception.⁷⁸

15 days for processing a first-time asylum application is – as a general rule – insufficient time for ensuring the indispensable requirements of such a procedure, including finding the right interpreter, conducting a proper asylum interview, obtaining individualised and high-quality country information, obtaining – if necessary – medical or other specific evidence, and an eventual follow-up interview allowing the asylum-seeker to react on adverse credibility findings or legal conclusions.⁷⁹ This extremely short deadline is therefore in breach of EU law, which requires reasonable time limits for accelerated procedures, "without prejudice to an adequate and complete examination being carried out" and to the applicant's effective access to basic guarantees provided for in EU asylum legislation.⁸⁰

Also in contradiction to the relevant EU rule, the amended Hungarian law does not set forth any specific safeguard that would prevent the undue application of accelerated procedures to asylum seekers in need of special procedural guarantees.⁸¹

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

⁷⁴ Section 51(8) Asylum Act.

⁷⁵ Section 51(9) Asylum Act.

⁷⁶ Section 51(11) Asylum Act.

⁷⁷ Section 51A Asylum Act.

⁷⁸ HHC, *Building a legal fence – Changes to Hungarian asylum law jeopardise access to protection in Hungary*, Information Note, 7 August 2015, available at: <http://bit.ly/1KZYGEg>.

⁷⁹ The latter being mandatory under EU law as interpreted by the CJEU. See Case C-277/11 *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, Judgment of 22 November 2012 and Case C-349/07 *Sopropé – Organizações de Calçado Lda v Fazenda Pública*, Judgment of 18 December 2008.

⁸⁰ Recital 20, Article 31(2) and (9) recast Asylum Procedures Directive.

⁸¹ Recital 30 recast Asylum Procedures Directive.

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

Indicators: Information and Access to NGOs and UNHCR

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

❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

The 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.⁸² According to EASO, the OIN provides general information and hands an information note once approached by the applicant.⁸³

The same level and sources of information are used in all stages of the asylum procedure. Asylum seekers also receive information about the Dublin Regulation. The level of understanding of the information varies a lot amongst asylum seekers, while in some instances the functioning of the Dublin III system is too complicated to comprehend. Common leaflets drawn up by the Commission are already used in practice, although the parts where information particular to Hungary should have been inserted are left blank.

The main factors that render access to information difficult are: (a) untimely provision of the information enabling asylum seekers to make an informed choice; (b) language barriers; (c) illiteracy; (d) failure to address specific needs of asylum seekers, e.g. by using child- and disability-friendly communication; and (e) highly complex and technical wording of official information material.⁸⁴ 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.

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

With the support of UNHCR and the ERF, HHC has published information leaflets providing information on the procedure and the rights and obligations of the applicants in 10 languages for adult asylum seekers,⁸⁵ and another illustrated leaflet adapted for children in 9 languages.⁸⁶

⁸² Section 37 Asylum Act.

⁸³ EASO, *Description of the Hungarian asylum system*, May 2015, 4.

⁸⁴ See also the highly technical language used in OIN's website on the asylum procedure, available at: <http://bit.ly/1e5AtBi>, and Dublin, available at: <http://bit.ly/1L3fA7b>. No tailored information to children is provided online.

⁸⁵ HHC, *Asylum in Hungary*, 2013, available at: <http://bit.ly/1KZhrGI>.

⁸⁶ HHC, *You could be a refugee! Info leaflets for young asylum seekers*, 27 December 2012, available at: <http://bit.ly/1MsA1Ye>.

Asylum seekers in the transit zones receive an information sheet explaining the border procedure and their obligations. This sheet does not contain contact details of NGOs, however.⁸⁷

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

Detainees' access to the HHC information leaflets is sometimes hindered, since in some facilities the leaflets cannot be on display in all parts of the detention facility due to security reasons. It is then up to the police to allow access to those areas (outside the interview room) where information materials are available in dispensers. NGOs present in the detention centres or while visiting the centres usually hand over their leaflets to those interested.

D. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance ☒ Yes ☐ No
 - ❖ At the appeal stage ☒ Yes ☒ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance ☐ Yes ☒ No
 - ❖ At the appeal stage ☒ Yes ☒ No

A subsequent application is considered as an application following a final termination or rejection decision on the former application. New circumstances or facts have to be submitted in order for a subsequent application to be admissible.⁸⁸ For persons whose applications are considered to have been tacitly withdrawn (i.e. they left Hungary and moved on to another EU Member State) and the asylum procedure had been terminated, the asylum procedure may be continued if the person requests such a continuation within 9 months of the withdrawal of the original application. Where that time-limit has expired, the person is considered to be a subsequent applicant.⁸⁹ Persons who withdraw their application in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore they will have to submit a subsequent application and present new facts or circumstances (see section [Dublin: Procedure](#)).

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

- (a) New facts or circumstances have to be presented in order for the application to be admissible;⁹⁰
- (b) Admissible subsequent applications are examined in an accelerated procedure;⁹¹
- (c) The court hearing of subsequent applicants who are detained can be dispensed if their subsequent application is based on the same factual grounds as the previous one;⁹²

⁸⁷ See ECRE, *Crossing Boundaries*, October 2015, Annex II.

⁸⁸ Section 54 Asylum Act.

⁸⁹ Section 66(6) Asylum Act.

⁹⁰ Section 54(1) Asylum Act.

⁹¹ Section 51(7)(f) Asylum Act.

⁹² Section 68(4)(c) Asylum Act.

- (d) The OIN hearing can be dispensed if a person failed to state facts or to provide proofs that would allow the recognition as a refugee or beneficiary of subsidiary protection in the subsequent application;⁹³
- (e) The right to remain on the territory and reception conditions throughout the examination of application are not provided for the third asylum application following a final rejection of the second one;⁹⁴
- (f) Judicial review of rejected subsequent applications has suspensive effect, except if the subsequent application took place directly before the implementation of the applicant's expulsion and is found inadmissible on the ground that it presents no new elements. In this case the applicant has no right to remain on the territory and is not entitled to reception conditions during the judicial review procedure.⁹⁵

There is no time limit on submitting a subsequent application or explicit limitation on the number of asylum applications that may be lodged, however when lodging a third application, the applicant no longer has a right to stay on the Hungarian territory.

Not much guidance is provided by the Asylum Act as to what can be considered as new elements. Section 86 Decree 301/2077 only stipulates that the refugee authority shall primarily assess whether the person seeking recognition was able to substantiate any new facts or circumstances as grounds for the recognition of the applicant as a refugee or as a beneficiary of subsidiary protection. The existence or not of new facts or circumstances is determined in the admissibility procedure.

Given the lack of clear and publicly available guidelines, the OIN may interpret the concept of “new facts or circumstances” 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.

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

1. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ For certain categories ☒ No
❖ If for certain categories, specify which:
2. Are there special procedural arrangements/guarantees for vulnerable people? ☒ Yes ☐ For certain categories ☐ No
❖ If for certain categories, specify which:

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”.⁹⁶

Identification

⁹³ Section 43(2)(b) Asylum Act.

⁹⁴ Section 54(3) Asylum Act.

⁹⁵ Section 54(2) Asylum Act.

⁹⁶ Section 2(k) Asylum Act.

Although both the Asylum Act and Decree 301/2007 provide that the special needs of certain asylum seekers should be addressed,⁹⁷ there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons. The Decree only foresees the obligation of the authority to consider whether the special rules for vulnerable asylum seekers are applicable in the given individual case, however, no procedural framework was elaborated to implement this provision in practice.⁹⁸

According to HHC, it generally depends on the asylum officer in charge whether the applicant's vulnerability will be examined and taken into account. An automatic screening and identification mechanism is lacking; applicants need to state that they require special treatment, upon which asylum officers consider having recourse to an expert opinion to confirm vulnerability.

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.⁹⁹ According to the HHC's lawyers it is up to the legal representative to argue that the applicant is vulnerable, which may be then considered by the case worker or it may still be disregarded. In the latter case the lack of proper assessment of the facts of the case (such as individual vulnerability) may lead to the annulment of the decision in the judicial review phase.

Special procedural guarantees

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."¹⁰⁰ 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,¹⁰¹ and this right is respected in practice.

There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the OIN.¹⁰² If the asylum seeker is not able to write, this fact and his or her statement shall be included in the minutes.¹⁰³

In case the applicant cannot be interviewed due to 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.¹⁰⁴

Besides this, however, 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 OIN have received training in relation to interviewing techniques with regard to vulnerable persons, i.e. traumatised victims and unaccompanied minors.

⁹⁷ Section 4(3) Asylum Act.

⁹⁸ Section 3(1) Decree 301/2007.

⁹⁹ Section 3 Decree 301/2007.

¹⁰⁰ Section 90 Decree 301/2007.

¹⁰¹ Section 66(3) Decree 301/2007.

¹⁰² Section 36(7) Asylum Act.

¹⁰³ Section 62 (2) Decree 301/2007.

¹⁰⁴ Section 43(2) Asylum Act and Sections 77(1) and (2) Decree 301/2007.

The airport procedure and procedure in the transit zones cannot be applied in case of vulnerable asylum seekers.¹⁰⁵ However, in practice only asylum seekers with physically visible special needs (pregnant women, families) are exempted from the border procedure.¹⁰⁶

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.¹⁰⁷ 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. Practice shows, however, that this tracing is not carried out in practice by the OIN.

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).¹⁰⁸ However, in practice it can take several months to appoint the guardian. After 1 August 2015, the guardian has to be appointed within 8 days.¹⁰⁹

2. Use of medical reports

Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
☒ Yes ☐ In some cases ☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
☒ Yes ☐ No

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.¹¹⁰ However, no criteria are set out in law or established by administrative practice indicating when a medical examination for the purpose of drafting a medical report should be carried out.

In case the asylum seeker's statements are incoherent and contradictory, it is possible to prove with the aid of a medical expert report that this is due to the applicant's health or psychological condition or due to previous trauma. Therefore the credibility of the asylum seeker should not be doubted based on his or her statements.¹¹¹

HHC's experience shows that medical reports are frequently used in practice but mostly at the request of the applicant. The 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, he or she have to cover the costs; the OIN covers the costs only for medical opinions it requests itself.

¹⁰⁵ Sections 71A(7) and 72(6) Asylum Act.

¹⁰⁶ ECRE, *Crossing Boundaries*, October 2015, 17.

¹⁰⁷ Section 4 Decree 301/2007.

¹⁰⁸ Section 35 Asylum Act.

¹⁰⁹ Section 35(6) Asylum Act.

¹¹⁰ Section 3(2) Decree 301/2007.

¹¹¹ Section 59 Asylum Act.

The only NGO that deals with psycho-social rehabilitation of torture victims is the Cordelia Foundation,¹¹² 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.¹¹³ For the reasons above (the lack of an official forensic expert standing in proceedings), sometimes both the OIN and the courts disregard the medical opinion issued by the Cordelia Foundation.

3. Age assessment and legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

Age assessment

The law does not provide for an identification mechanism for unaccompanied children. The Asylum Act only foresees that an age assessment can be carried out in case there are doubts as to the alleged age of the applicant.¹¹⁴ 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 his or her 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.¹¹⁵ However, as a consequence most of the provisions relating to children may not be applied in the case.¹¹⁶

When age assessment is ordered by the police at an initial stage of the immigration procedure, i.e. upon apprehension, the main method employed is the mere observation of the child's physical appearance, e.g. weight, height etc., and the child's sexual maturity. In 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.¹¹⁷ In the context of age assessment, the OIN does *not* use a psycho-social assessment. HHC has come across the fact that the OIN no longer requests a new age assessment, but takes the result of the physical appearance assessment ordered by the police as granted.

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. On several occasions (conferences, roundtables etc.) the OIN denied its responsibility to adopt such a protocol, stating that age assessment is a medical question, which is beyond its professional scope or competence. The police elaborated a non-binding protocol for the purpose of police-ordered age assessment examinations that provide a checklist to be followed by doctors who are commissioned to carry out the examination.¹¹⁸ This protocol, which was

¹¹² See Cordelia Foundation's website at: <http://www.cordelia.hu/index.php/en/>.

¹¹³ Section 58(3) Asylum Act.

¹¹⁴ Section 44(1) Asylum Act.

¹¹⁵ Section 44(2) Asylum Act.

¹¹⁶ Section 44(3) Asylum Act.

¹¹⁷ This examination is undertaken in line with the Greulich-Pyle method.

¹¹⁸ The protocol is available in Hungarian at: <http://bit.ly/1X53QT6>.

published in 2014, would *not* take into account the psycho-social or intercultural elements of age assessment either. The protocol only foresees that in case the applicant (the subject of the age assessment) is suspected to be a victim of sexual violence, follow-up assistance from a psychologist may be requested (but this is not an automatism and the HHC never assisted a case where the authorities would refer the applicant to a psychologist *ex officio*).

The age assessment opinion usually does not specify the person's exact age; instead, it gives an estimation if the person is above or under 18 or margin of error of at least 2 years e.g. 17-19 or 16-18 years of age. In these cases, the benefit of the doubt is usually given to the applicant. The age assessment carried out by doctors consulted by the police at the beginning of the procedure, however, is less thorough. It has happened that the opinion only stated whether the person under consideration was to be treated as an adult or a child, without specifying any age.

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

Guardianship

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 on the asylum application.¹¹⁹ Until recently, a temporary guardian was appointed by the competent Guardianship Authority to unaccompanied children,¹²⁰ who was not only responsible for their legal representation in the asylum procedure but also the child's overall care property management.

Due to legislative changes introduced in Section 84(1)(c) of the Child Protection Act In January 2014, a child protection guardian has to be appointed to unaccompanied children by the Guardianship Authority, who is legally responsible for the overall care, property management and legal representation of the child. The child protection guardian is employed by the Department of Child Protection Services (TEGYESZ) and can ensure the guardianship of a maximum of 30 children. The child protection guardian can no longer be the head of the Department of Child Protection Services, nor can it be the head of the child protection facility, as was the case until January 2014. The legislator's aim was to prevent possible conflicts of interest that could arise among the interests of the person in charge of the child's care, the child protection facility and the child.¹²¹

As of 1 August 2015, the law prescribes that the child protection guardian has to be appointed within 8 days from the arrival of the child. In practice, even after 1 August unaccompanied children were provided with a guardian after an extensive delay that can amount even to 3 to 6 months; this was, for instance, the case for an unaccompanied child represented by the HHC, who was transferred to a protection shelter in June 2015 and whose guardian was not appointed until October. Delays in the appointment of guardians in the asylum procedure result in lengthy asylum procedures which hinder the efficient implementation of the legal obligation stating that asylum applications of unaccompanied children have to be treated as a matter of priority.¹²² As a result it can occur that a confirmed asylum seeking unaccompanied child becomes 18 before a decision regarding their asylum claim has been taken. In such cases they will be excluded from after-care arrangements according to existing

¹¹⁹ Section 35(6) Asylum Act.

¹²⁰ Section 136(1) Decree 149/1997 and Section 98(1) Family Code.

¹²¹ Dr. Katonáné Dr. Pehr Erika, 'Változások a gyámság szabályozásában, különös tekintettel a gyámrendelésre', June 2014, Családi Jog, available at: <http://bit.ly/1GBEFF2>.

¹²² Section 35(7) Asylum Act.

legislation.¹²³ Lengthy procedures may also contribute to the child's decision to leave Hungary before a decision is taken on the application.

As of 1 January 2014, a legislative change has been undertaken in the general child protection scheme which affects unaccompanied children as well. In terms of appointment of guardians for children without parental care, the child protection guardian (*gyermekvédelmi gyám*) has taken over the guardianship, in order to prevent eventual conflicts of interests between the child and the head of the child protection facility previously appointed as guardian.

The child protection guardian is a child care professional, who is typically not familiar with asylum law or immigration law. Although some trainings on asylum law and treatment of unaccompanied children was delivered to case guardians by UNHCR, Menedék Migrant Association, Cordelia Foundation and HHC in recent years, they still lack the necessary legal expertise with regard to asylum and immigration law.¹²⁴

The child protection guardians are public servants, who are professionals, employed by the regional child protection services in full time and cannot undertake other duties related to the accommodation of the child being taken care of. As Section 84(6) of the Child Protection Act sets forth. The child protection guardian may not undertake the guardianship of more than 30 children.

The role of the child protection guardian consists of supervising the care for the child, following and monitoring his or her physical, mental and emotional development.¹²⁵ In order to fulfil his or her duties, the child protection guardian has a mandate to generally substitute the absent parents. He or she:

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

The child care guardian cannot give his or her consent to the adoption of the child. The child protection guardian may give consent to a trained legal representative to participate in the asylum procedure. Both the guardian and the legal representative are entitled to submit motions and evidence on behalf of the applicant and they may ask questions to the asylum seeker during the interview.

¹²³ EMN, *Policies, practices and data on unaccompanied minors in 2014: Hungary*, 2014, available at: <http://bit.ly/1FNS871>.

¹²⁴ EMN, *Policies, practices and data on unaccompanied minors in 2014: Hungary*, 2014.

¹²⁵ Section 86 Child Protection Act.

F. The safe country concepts

Indicators: Safe Country Concepts

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

First country of asylum

Under Section 51(2)(c) of the Asylum Act, the “first country of asylum” concerns cases where “the applicant was recognised by a third country as a refugee, provided that this protection exists at the time of the assessment of the application and the third country in question is prepared to admit the applicant”. The “first country of asylum” is a ground for inadmissibility.

Safe third country

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

“[A]ny country in connection to which the refugee authority has ascertained that the applicant is treated in line with the following principles:

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

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

In the event of applying the “safe third country” concept, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe third country.¹²⁶ The law does not specify in which format and language this information should be communicated to the applicant, if an interpreter should be made available, or if a written record should be prepared. Equally, the law does not specify the format or language, the availability of interpreters, and the preparation of a written record pertaining to applicants’ “declaration” either. No mandatory, free-of-charge legal assistance is foreseen for this process. Due to the lack of a functioning legal aid system accessible to asylum seekers, the vast majority of them have no access to professional legal aid during the asylum procedure.

In case the application is declared inadmissible on safe third country grounds, the OIN shall issue a certificate in the official language of that third country to the applicant that his or her application for asylum was not assessed on the merits.¹²⁷ Where the safe third country fails to take back the applicant,

¹²⁶ Section 51(11) Asylum Act.

¹²⁷ Section 51(6) Asylum Act.

the refugee authority shall withdraw its decision and continue the procedure (see section on Border Procedure in transit zones, where problems regarding the use of these safeguards are described).¹²⁸

The “safe third country” concept may only be applied as an inadmissibility ground where the applicant (a) stayed or (b) travelled there and had the opportunity to request effective protection; (c) has relatives there and may enter the territory of the country; or (d) has been requested for extradition by a safe third country.¹²⁹

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe third Countries,¹³⁰ which are the following:

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

The list includes amongst others Serbia. However, in August 2012, UNHCR has said that it “recommends that Serbia not be considered a safe third country of asylum, and that countries therefore refrain from sending asylum-seekers back to Serbia on this basis”, a position it maintains still today.¹³¹ Moreover, the designation as a safe third country contradicts the guidelines of the Hungarian Supreme Court and the evidence provided by the reports of the HHC¹³² and Amnesty International.¹³³ Currently there is no other EU Member State that regards Serbia as a safe third country for asylum seekers.

The Supreme Court of Hungary (“Kúria”) issued an official opinion on 10 December 2012 in order to promote a harmonised practice within Hungarian courts regarding the application of the safe third country concept in asylum cases.¹³⁴ The concrete reason for issuing such a guidance document was that, in recent years, different Hungarian regional courts applied different approaches upon reviewing inadmissibility decisions on that ground. This also meant a diverging evaluation of the asylum situation in Serbia, the target country of most “safe third country” returns of asylum seekers from Hungary.

On the issue of the country of origin information used to determine if a country is safe, the Supreme Court stated that:

“When reviewing administrative decisions regarding the application of the safe third country concept the court shall *ex officio* take into consideration the precise and credible country information at its disposal at the time of deciding, obtained in any of its procedures. In this context, the country information issued by the UNHCR shall always be taken into consideration. In case of doubt, [...] the court may approach the country information service of the Office of Immigration and Nationality or it may obtain information from other reliable sources. [...]”

¹²⁸ Section 51A Asylum Act.

¹²⁹ Section 51(3) Asylum Act.

¹³⁰ Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries.

¹³¹ UNHCR, *Serbia as a country of asylum: Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, August 2012, available at: <http://bit.ly/1V6O23l>, 22.

¹³² HHC, *Serbia as a Safe Third Country: Revisited: An update of the Hungarian Helsinki Committee's 2011 report*, June 2012, available at: <http://bit.ly/1N9p2lo>.

¹³³ Amnesty International, *Europe's Borderlands*, 6 July 2015, available at: <http://bit.ly/1dLK66T>.

¹³⁴ Supreme Court of Hungary, Opinion no. 2/2012 (xii.10) KMK on certain questions related to the application of the safe third country concept, 10 December 2012, available at: <http://bit.ly/1dAn6YJ>.

The Supreme Court also stated that the fact that a certain country ratified the relevant international treaties is per se irrelevant when assessing the 'safety' of a country, since the application of these treaties in practice shall also be examined.

The Asylum Act obliges the OIN to reject as inadmissible all asylum claims lodged by applicants who came through a safe third country, since the applicant "could have applied for effective protection there". As over 99% of asylum seekers entered Hungary at the Serbian-Hungarian border section until September 2015, this means the quasi-automatic rejection at first glance of over 99% of asylum claims, without any consideration of protection needs.

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

- The law requires the applicant to prove that he or she could not present an asylum claim in Serbia.¹³⁵ This represents an unrealistically high standard of proof (as compared to the lower standard of "to substantiate", which is generally applied in Hungarian asylum law). An asylum seeker typically smuggled through a country unknown to him or her is extremely unlikely to have any verifiable, "hard" evidence to prove such a statement;
- The impossibility to have access to protection in Serbia does not stem from individual circumstances, but from the general lack of a functioning asylum system. Therefore, it is absurd and conceptually impossible to expect an asylum seeker to prove that, for individual reasons, he or she had no access to a functioning system in Serbia which in reality does not exist;
- If the claim is considered inadmissible, the OIN has to deliver a decision in maximum 15 days.¹³⁶ This extremely short deadline adds to the presumption that no individualised assessment will be carried out.
- In addition, the National List of Safe Countries declares that all EU Member States are safe third countries. On the one hand, this absurd provision (under EU law, third countries are those which are not members of the Union) confirms the questionable professional quality of the entire legislative process. On the other hand, it may confirm the government's intention – frequently repeated in the press in recent months – to again start considering Greece as a safe country for asylum seekers and resume applying the Dublin III Regulation towards that EU Member State;
- These amendments not only breach the definition of "safe third country" under EU and Hungarian law,¹³⁷ but they are also likely to lead, in practice, to the massive violation of Hungary's *non-refoulement* and protection obligations enshrined in the 1951 Refugee Convention, Article 3 ECHR, and Articles 18 and 19 of the EU Charter of Fundamental Rights. Since early 2015, the vast majority of asylum seekers have come to Hungary from the worst crises of the world (Afghanistan, Syria and Iraq). It is expected that most of them will no longer have an opportunity to explain why they had to flee. Instead, they will be exposed to the risk of an immediate removal to Serbia, a country where protection is currently not available. This means that they will be deprived of the mere possibility to find protection and at the real risk of chain refoulement.

Safe country of origin

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

The presence of a country in such a list is "a rebuttable presumption with regard to the applicant according to which no persecution is experienced in general and systematically in that country or in a

¹³⁵ Section 51(5) Asylum Act.

¹³⁶ Section 47(2) Asylum Act.

¹³⁷ Recital 46 and Article 38 recast Asylum Procedures Directive; Section 2(i) Asylum Act.

part of that country, no torture, cruel, inhuman or degrading treatment or punishment is applied, and an efficient system of legal remedy is in place to address any injury of such rights or freedoms."

If the applicant's country of origin is regarded as "safe", the application will be rejected in the accelerated procedure (see section on Accelerated Procedure).¹³⁸ In the event of applying the accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe country of origin.¹³⁹ Where the safe country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.¹⁴⁰

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Countries of Origin,¹⁴¹ which are the following:

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

G. Treatment of specific nationalities

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No
❖ If yes, specify which: Syria, Eritrea
2. Are applications from specific nationalities considered manifestly unfounded?¹⁴² ☒ Yes ☐ No
❖ If yes, specify which: EEA countries, EU candidate countries, Albania, Bosnia-Herzegovina, FYROM, Kosovo, Montenegro, Serbia, Canada, Australia, New Zealand, US states that do not have the death penalty

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

According to the information provided in 2013 by the Hungarian ELENA coordinator, no official public statement has been issued by the Hungarian government in relation to the treatment of Syrian asylum seekers. However, the OIN uses country of origin information in relation to Syrian nationals that recognises that the situation is dangerous for all i.e. within the meaning of "indiscriminate violence" under Article 15(c) of the Qualification Directive, regardless of the asylum seeker's personal circumstances. No policy of "freezing applications" or postponing the taking of decisions applies.¹⁴³

¹³⁸ Section 59(1) Asylum Act

¹³⁹ Section 51(11) Asylum Act.

¹⁴⁰ Section 51A Asylum Act.

¹⁴¹ Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries.

¹⁴² Whether under the "safe country of origin" concept or otherwise.

¹⁴³ ECRE/ELENA, *Information Note on Syrians seeking protection in Europe*, 29 November 2013.

According to the statistics of the OIN, in 2015, 12 Syrian applicants were granted refugee status, while 64 people were granted subsidiary protection at the administrative instance. 21 were rejected.

There are no particular treatments for Syrians with regards to rights granted after being granted a status. According to the HHC's experience, family members of the Syrian nationals, provided with protection in Hungary, are facing difficulties with getting family reunification visas where they have no valid passports.¹⁴⁴ These difficulties are faced by other nationalities as well, not just Syrians. Recently family reunification became more difficult since the authorities are even stricter regarding the documents. Now they request that all the documents bear an official stamp from the authorities, proving that they are originals, as well as an official stamp from the Hungarian consulate. All documents have to be translated into English or Hungarian, which is very costly.

Under Hungarian law, the applicants for family reunification are the family members of the refugee in Hungary, not the refugees themselves. The family members have to apply at the Hungarian consulate. According to the law, applicants for family reunification shall lawfully reside in the country where they submit the claim.¹⁴⁵ Refugees' family members are often themselves refugees in countries neighbouring the country of origin. In most cases, the family members stuck in the first country of asylum are unable to obtain there a legal status (and documentary proof thereof) that would be considered as "lawful stay" in the sense of Hungarian law. This is particularly problematic for Palestinians from Syria who are refused legal entry into Lebanon and Jordan.

In Hungary only refugees are entitled to family reunification under favourable conditions within six months following the recognition of their status (they are exempted from fulfilling the usual material conditions: livelihood, accommodation, health insurance). No preferential treatment is applied for beneficiaries of subsidiary protection. Most persons who received subsidiary protection in 2013-2014 in Hungary were Afghan, Syrian, Somali and Eritrean nationals, whose reasons for fleeing their countries of origin were very similar to those of refugees. They hardly ever have the means to fulfil the strict material conditions for family reunification. Consequently, the lack of any preferential treatment *de facto* excludes beneficiaries of subsidiary protection from the possibility of family reunification, which often has a harmful impact on their integration prospects as well.

Hungary does not accept certain travel documents, such as those issued by Somalia for example. Nevertheless, unlike other EU Member States, Hungary refuses to apply any alternative measure that would enable for a one-way travel with the purpose of family reunification in such cases.¹⁴⁶ Consequently, certain refugee families are *de facto* excluded from any possibility of family reunification based on their nationality or origin.

¹⁴⁴ *Ibid.*

¹⁴⁵ Section 47(2) Decree 114/2007.

¹⁴⁶ Alternative measures applied by other Member States include the issuance of a specific temporary *laissez-passer* for foreigners (e.g. Sweden, Netherlands, France, Austria, Italy), the acceptance of specific travel documents issued by the Red Cross for the purpose of family reunification (e.g. Austria, UK) and the use of the so-called EU Uniform Format Form, based on Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (e.g. UK, Germany).

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Border procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Subsequent application	☒ Yes	☐ Reduced material conditions	☐ No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

☒ Yes	☐ No
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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.¹⁴⁷ They are entitled to the reception conditions immediately after claiming asylum and not only when they receive a document for asylum seekers. First-time applicants are entitled to housing, food allowance and pocket money. Certain subsequent applicants do not have the right to material reception conditions (see section on Subsequent Applications).

With the amendments to the Asylum Act that entered into force on 1 July 2013, the Hungarian Government has decided to transpose the recast Reception Conditions Directive first and foremost with respect to the provisions concerning detention of asylum seekers whereas for instance provisions conferring obligations on Member States in relation to the assessment of the special reception needs of vulnerable persons have not yet been transposed.¹⁴⁸ The adoption of the amendments therefore preceded the Directive's adoption and thus also the beginning of the 2-year 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.¹⁴⁹ 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. The level of resources is, however, not established in the Asylum Act and applicants have to make a statement regarding their financial situation. Presently, this condition does not pose an obstacle to accessing reception conditions. Access to reception conditions can be reduced or withdrawn in case it can be proven that the applicant deceived the authorities regarding his or her financial situation.

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

¹⁴⁷ Section 27 Asylum Act.

¹⁴⁸ Article 22 Act XCIII of 2013.

¹⁴⁹ Section 26(2) Asylum Act.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2015 (in original currency and in €):¹⁵⁰
 - ❖ Single adult men: HUF 4,400 – 4,650 (€14-15)
 - ❖ Children, single parents or elderly: HUF 8,675 – 8,925 (€27-28)

Asylum seekers residing in reception centres receive:¹⁵¹

- Accommodation;
- 3 meals per day, although in some reception centres they can receive the food allowance instead, if they wish to cook for themselves;
- A monthly allowance for purchasing hygienic items; and
- Pocket money.

The amount of food allowance was previously set by week and by person by the OIN. During June-August 2015, asylum seekers were no longer entitled to food allowance, due to the big increase in asylum applications, but since September 2015 this option is once again available. They can either have the meals provided at the reception centres or cook for themselves, buying the ingredients at their own expenses.

The hygienic allowance is distributed on a monthly basis together with the pocket money and covers HUF 1,550 / €5 for men and HUF 1,880 / €5.70 for women. The amount of pocket money is set in law and it is tied to the sum of the minimum amount of monthly old-age pension.¹⁵² In the case of children, single parents or persons above 60, it is 25% of the lowest monthly pension (HUF 28 500 / €95) i.e. HUF 7,125 / €24, while in the case of other adults it is 10% of this amount i.e. HUF 2,850 / €9.50. This amount is extremely low, taking into account Hungarian living standards.

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 7,125 / €24. In general, it cannot be stated that asylum seekers are treated less favourably than nationals in this regard.

3. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:¹⁵³ 4
2. Total number of places in the reception centres: 1,105
3. Total number of places in private accommodation: N/A
4. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

¹⁵⁰ This includes hygienic items allowance and pocket money only.

¹⁵¹ Sections 21-22 Decree 301/2007.

¹⁵² Section 22 Decree 301/2007.

¹⁵³ Both permanent and for first arrivals.

As of 1 November 2015, there are 4 open reception centres and 2 homes for unaccompanied children in Hungary. The four reception centres are:¹⁵⁴

Reception Centre	Location	Maximum capacity
<i>Balassagyarmat</i>	Near Slovakian border (North)	111
<i>Vámosszabadi</i>	Near Slovakian border (North-West)	255
<i>Nagyfa</i>	Szeged, near Serbian border (South)	300
<i>Bicske</i>	Near Budapest	439

The biggest reception centre in **Debrecen** was closed in October 2015. **Bicske**, **Balassagyarmat** and **Vámosszabadi** are located in smaller towns.

Balassagyarmat is a community shelter for 111 asylum seekers, persons tolerated to stay, persons in immigration procedure and foreigners who have exceeded 12 months in immigration detention, and now also receives beneficiaries of international protection.

Nagyfa is the newest reception centre which opened on 12 January 2015, which was initially meant as a temporary facility but since September 2015 it is being used as a regular reception centre. The centre consists of heated containers. Nagyfa is located inside the territory of a penitentiary institution and it is far away from the nearest settlement.

The centres are managed by the OIN.¹⁵⁵ The reception centres operate financially under the direction of the Director-General as an independent department and perform their professional tasks under the supervision of the Refugee Affairs Directorate of the OIN. Thus, only one central body, the OIN, is responsible for the financial operation and the professional duties of the reception centres. Nevertheless, NGOs who work in the field of asylum cooperate with the refugee authority in providing supplementary services for applicants. The OIN coordinates their activities carried out in the reception centres.

Migrants asking for asylum at the border zones are kept inside the transit zones (see Place of Detention), unless they are exempted from the border procedure, whereby they are transferred either to the asylum detention centre or are directed to go to the open reception centres. Where the detention grounds do not apply, they are given a train or bus ticket and are taken to the closest station so as to travel to the designated reception centre.¹⁵⁶ Those asking for asylum at the airport can stay in a small facility (maximum capacity of 8 persons) within the airport transit area up to 8 days.

Asylum seekers can also request to stay in private accommodation at their own cost; however, they are then not entitled to most of the material reception conditions.¹⁵⁷

Unaccompanied children are not placed together with adults but are accommodated in specialised structures:

Reception Centre	Location	Maximum capacity
<i>Fót</i>	North of Budapest	20
<i>Hódmezővásárhely</i>	Near Serbian and Romanian border (South)	18

Fót is a home for unaccompanied children, which belongs to the Ministry of Human Resources.¹⁵⁸ **Hódmezővásárhely** is a small house for unaccompanied children maintained by a Catholic charity under a contract with the Ministry.¹⁵⁹

¹⁵⁴ EASO, *Description of the Hungarian asylum system*, May 2015, 7.

¹⁵⁵ Section 12(3) Decree 301/2007.

¹⁵⁶ EASO, *Description of the Hungarian asylum system*, May 2015, 4.

¹⁵⁷ Section 20(1) Decree 301/2007.

¹⁵⁸ The Ministry of Human Resources' website is available at: <http://bit.ly/1IN7PSI>.

4. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

Until June 2015, it had not happened that asylum seekers would be left without accommodation due to a shortage of places in reception centres. According to EASO, in March 2015, the overall occupancy rate was at 60-70%.¹⁵⁹ This has however significantly increased during the summer months of 2015, when on some weeks the occupancy rate varied between 150-250%. Reception conditions have significantly worsened and both in the **Debrecen** and the **Bicske** facility asylum seekers sometimes had to sleep outside due to the lack of place. Three reception centres (Debrecen, Bicske and Vámoszabadi) had tents installed in their courtyards and in **Bicske** the gym room was full on beds where men and women slept together.

The OIN failed to provide adequate reception conditions to a large number of arrivals during June-August 2015. Asylum seekers transiting through Budapest had no access to any shelter, food or water. Volunteer groups took over the role of state in providing basic support for the asylum seekers. During July and August one of the volunteer groups, Migration Aid, supplied on average 1,600 people per day, altogether 111,600 persons, with food, water, hygienic supplies, medication and some with overnight shelter.

As opposed to detention centres (see section on Conditions in Detention Facilities below), the legal standards regulating open reception premises are defined in separate instruments.¹⁶¹ Conditions in reception centres differ. In all centres, residents get 3 meals per day. People can cook for themselves in all facilities, although in **Vámoszabadi** there are only a few cookers, due to the bad electric installation. Religious diets are respected in all facilities. There is no regulation on the amount of nutrition value necessary for the reception centres, contrary to the detention centres.

In all centres, regular cleaning is arranged. **Vámoszabadi** and **Balassagyarmat** are relatively clean, while in **Nagyfa** and **Bicske** the residents complain about the level of cleanliness. The number of toilets and showers are sufficient in all facilities during regular occupancy. However, during the summer of 2015 this has also proven to be a challenge, along with the general deterioration of cleanliness and hygienic conditions.

Residents share rooms. The minimum surface area that should be available is outlined in national legislation only for the community shelters i.e. **Balassagyarmat**. The relevant Decree provides that the community shelter must have at least 15m³ of air space and 5m² of floor space per person.¹⁶² Families are accommodated in family rooms.

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

Asylum seekers can go outside whenever they want. In **Vámoszabadi**, the OIN provides also direct free bus transport to Győr, the nearest bigger town, for the residents of the community shelter. The

¹⁵⁹ EASO, *Description of the Hungarian asylum system*, May 2015, 15.

¹⁶⁰ EASO, *Description of the Hungarian asylum system*, May 2015, 10.

¹⁶¹ EASO, *Description of the Hungarian asylum system*, May 2015, 10.

¹⁶² Section 131 Decree 114/2007.

Nagyfa facility is very far from Szeged, thus it is very hard for asylum seekers to go to the town, but the OIN provides a mini bus with 14 places that goes to Szeged twice a day.

Social and community workers in the reception facilities sometimes organise different activities for asylum seekers e.g. drawing, music activities, film clubs, cooking or sport events. However, such activities are project-based and occur only if there is a funded project. During the summer of 2015 no such activities were organised since social workers were involved in distributing bedlinen and other administrative tasks. Every facility has computers and community rooms and sport fields. Some have a playground as well. In **Vámosszabadi**, the social workers have also organised a small library.

In each facility, medical services are available. However, asylum seekers complain about the lack of interpretation services when accessing medical services. In **Bicske** and **Vámosszabadi**, the lack of medical or social assistance during weekends renders the handling of emergency situations occurring at those times difficult.

Duration of stay in reception centres

The average length of time spent in reception facilities for asylum seekers that did not leave before the end of their procedure is not available for 2015, but may be estimated at a few months given that the procedure was very slow during the summer 2015. The average duration of stay has significantly decreased compared to 2014 and 2013, due to the significant number of persons absconding within 10 days after applying for asylum in Hungary.¹⁶³

Recognised refugees and beneficiaries of subsidiary protection can stay in the reception centre for 2 more months after their recognition.¹⁶⁴ Persons with tolerated stay can be placed in the community shelter in **Balassagyarmat**. The July 2013 amendments to the Asylum Act introduced a new integration system moving away from camp-based integration to community-based integration. As of January 2014, integration support is provided via an integration contract concluded by the asylum authority and the person granted international protection upon request of the latter within 4 months following their recognition. The maximum period of validity of the contract is 2 years. The amount of integration support is set in the integration contract and the services are provided via the family care service of the local municipality. A social worker is appointed supporting the beneficiary of international protection throughout the integration process.

Nevertheless, NGOs and social workers have reported extreme difficulties for refugees in moving out of reception centres and integrating into local communities in practice.¹⁶⁵

5. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

Section 30(1) of the Asylum Act, as amended by Act XCIII of 2013, lays down the grounds for reducing and withdrawing material reception conditions. These include cases where the applicant:

¹⁶³ See HHC, *Information Note: Hungarian Government reveals plans to breach EU asylum law and to subject asylum-seekers to massive detention and immediate deportation*, 3 March 2015, 1 and EASO, *Description of the Hungarian asylum system*, May 2015, 10, suggesting that 80-90% of applicants abscond soon after lodging an application according to OIN data.

¹⁶⁴ Section 41(1) Decree 301/2007.

¹⁶⁵ EASO, *Description of the Hungarian asylum system*, May 2015, 10.

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

The OIN may consider sanctions in designating a place of accommodation if the person seeking recognition grossly violates the rules of conduct in force at the designated place of accommodation, or manifests seriously violent behaviour.¹⁶⁶

A decision of reduction or withdrawal is made by the OIN and is based on a consideration of the individual circumstances of the person. The decision contains the reasoning. The reduction can be in the form of retaining the monthly financial allowance. The reduction or the withdrawal should be proportionate to the violation committed and can be ordered for a definite or for an indefinite period of time with a possibility of judicial review.¹⁶⁷ If circumstances have changed, reception conditions can be provided again. The request for judicial review shall be submitted within 3 days and it does not have a suspensive effect. The applicant has a right to free legal assistance.

In practice if asylum seekers turn out to have substantial assets or funds, they will be required to reimburse the OIN for the costs of reception. The most common sanction applied in case of breaching the rules of the reception centre is withdrawal of pocket money.

6. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

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

NGOs can also access the reception centres without any problem, provided that they also submit a written request to the OIN in advance of their planned visit. HHC has a cooperation agreement with the OIN, granting it access to asylum seekers for the provision of legal assistance. HHC lawyers and staff have authorisation letters providing them entry to these facilities. The **Debreceen** reception centre had a full-time HHC staff member working in its premises until the closure of the camp in October 2015, providing legal assistance to asylum seekers.

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

¹⁶⁶ Section 30(2) Asylum Act.

¹⁶⁷ Section 31 Asylum Act.

7. Addressing special reception needs of vulnerable persons

Indicators: Special Reception Needs

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

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

Furthermore, the Asylum Act provides that in case of persons requiring special treatment, due consideration shall be given to their specific needs.¹⁶⁸ Persons with special needs – if needed with respect to the person’s individual situation and based on the medical specialist’s opinion – shall be eligible to additional free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person’s state of health.¹⁶⁹

It is the duty of the 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.¹⁷⁰ There is no protocol, however, for identifying vulnerable asylum seekers upon reception in a facility and therefore it depends very much on the actual asylum officer whether the special needs of a particular asylum seeker are identified at the beginning or through the procedure (see section on Special Procedural Guarantees above).

Unless there is overcrowding, in reception centres, single women are usually accommodated together with families on one floor. Families are not separated during the asylum procedure.

Unaccompanied asylum-seeking children are placed in special homes in **Fót** and **Hódmezővásárhely**, designated specifically for unaccompanied children, where social and psychological services are available. However, it is the responsibility of the authorities to conduct an age assessment, whose level of expertise can often be questioned (see section on Age Assessment above). If the assessment results in the person being considered an adult, then this poses an obstacle to accessing the services that a child would need.

The OIN needs to ensure separate accommodation within reception centres for asylum seekers with identified special needs, however this is not always possible when the centre is overcrowded.¹⁷¹ Standard Operating Procedures on victims of sexual and gender-based violence were introduced in 2011 for two reception centres, **Debrecen** and **Bicske**, but are not used in practice. Moreover, the level of overcrowding however might prevent the actual separation of vulnerable asylum seekers.

Psychological services and psychotherapy for traumatised asylum seekers are exclusively provided by the NGO Cordelia Foundation to a limited extent within the framework of an ERF-funded project in **Bicske** and **Debrecen**. However, 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.

Medical assistance for seriously mentally challenged persons is unresolved. Similarly, residents with drug or other type of addiction have no access to mainstream health care services. In **Vámosszabadi**, psychological assistance is not available.

¹⁶⁸ Section 4(3) Asylum Act.

¹⁶⁹ Section 34 Decree 301/2007.

¹⁷⁰ Section 3(1)(2) Decree 301/2007.

¹⁷¹ Section 33(1) Decree 301/2007.

8. Provision of information

Asylum seekers are informed about their rights and obligations pursuant to Section 17(3) of Decree 301/2007. After the submission of the asylum application, the OIN shall inform in writing the person seeking asylum in his or her mother tongue or in another language understood by him or her, without delay and within a maximum of 15 days, of all provisions and assistance to which he or she entitled under the law, as well as of the obligations with which he or she must comply in respect to reception conditions, and information as to organisations providing legal or other individual assistance.

Information is also provided orally to asylum seekers on the day when they arrive at the reception centre, in addition to an information leaflet. Information thus supplied includes the house rules of the reception centre, the material assistance applicants are entitled to, information on the refugee status determination procedure and on access to education, health care and the labour market. The information is communicated both orally and in written form, in a language that the asylum seeker understands. However, written information on reception conditions is only available in Hungarian or in English, which is of little help to a foreigner not speaking any of these two languages.

The provision of information has proven to be a challenge during the summer of 2015. Most asylum seekers that the HHC has talked to were lacking even the most basic information related to the rules of the facility they were staying in and their rights and obligation. Information on the asylum procedure was clearly missing and interpretation beyond the world languages continues to pose problems.

9. Freedom of movement

Indicators: Freedom of Movement

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

Asylum seekers are allocated to a specific facility through a dispersal scheme managed by the OIN.

Asylum seekers who are not detained can move freely within the country, but may only leave the reception centre where they are accommodated for less than 24 hours, unless they notify the authorities in writing about their intention to leave the facility. Furthermore, the condition for receiving the pocket money in the reception centres is that the asylum seeker has stayed there at least 25 days in a given month. In **Bicske**, this is monitored through an electronic system which registers the asylum seeker's card every time he or she exits or enters the centre, and also every time he or she comes to lunch.

In the **Balassagyarmat** community shelter, the house rules have introduced a curfew from 10pm to 6am. Disobeying the house rules is regarded as a petty offence of breaching immigration rules, and is punishable by a fine of up to HUF 150,000 HUF (approximately €500) and 180 hours of public work. This poses a serious restriction on the freedom of movement of asylum seekers accommodated in Balassagyarmat.

Relocation of applicants to different reception facilities is a possibility due to capacity/bed management issues or where medical or special needs arise. In practice, applicants were moved from one centre to another when there was a situation of overcrowding, renovation work or disputes between the residents of the centre. Asylum seekers cannot appeal against the relocation decision.

B. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

- | | |
|---|---|
| 1. Does the law allow for access to the labour market for asylum seekers? | ☒ Yes ☐ No |
| ❖ If yes, when do asylum seekers have access the labour market? | |
| ▪ Employment in reception centres | Immediate |
| ▪ Other employment | 9 months |
| 2. Does the law allow access to employment only following a labour market test? | ☒ Yes ☐ No |
| 3. Does the law only allow asylum seekers to work in specific sectors? | ☐ Yes ☒ No |
| ❖ If yes, specify which sectors: | |
| 4. Does the law limit asylum seekers' employment to a maximum working time? | ☒ Yes ☐ No |
| ❖ If yes, specify the number of days per year | |
| ▪ Employment in reception centres | 40 |
| ▪ Other employment | N/A |
| 5. Are there restrictions to accessing employment in practice? | ☒ Yes ☐ No |

Asylum seekers have restricted access to the labour market. They may work in the premises of the reception centre,¹⁷² without obtaining a work permit and subject to a maximum working time of 80 hours per month.¹⁷³

Only after 9 months can asylum seekers also work outside the centres, in accordance with the general rules applicable to foreigners.

The employer has to request a working permit – valid for 1 year, renewable – from the local employment office. Asylum seekers can only apply for jobs which are not available for Hungarians or nationals of the European Economic Area, therefore subject to a labour market test.

Asylum seekers in general complain about the lack of employment opportunities in practice. In all reception centres, there is greater demand than available job opportunities. For example in **Vámosszabadi**, there are 6 employment positions available, while the centre can accommodate 225 persons.

In practice, however, asylum seekers 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 the non-recognition of foreign certificates, diplomas or degrees by the Hungarian authorities.

Asylum seekers are only rarely given access to vocational training schemes. In **Bicske**, access to vocational training is possible only for beneficiaries of international protection.

2. Access to education

Indicators: Access to Education

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

¹⁷² Section 21(3) Decree 301/2007.

¹⁷³ Section 21(4) Decree 301/2007.

The Public Education Act provides for compulsory education (kindergarten or school) to asylum seeker and refugee children under the age of 16 staying or residing in Hungary. Children have access to kindergarten and school education under the same conditions as Hungarian children. Schooling is only compulsory until the age of 16, according to a recent legislative change.¹⁷⁴ As a consequence, asylum-seeking children above the age of 16 are not offered the possibility to attend school, until they receive a protection status. They have to stay in the reception centre during the entire day without any education-related opportunities.

Children at the age of 6 are enrolled in local schools of towns where the reception centres are located, which host a special preparatory language learning class in order for children to later join regular classes. Difficulties have been reported in June 2015, however, that unaccompanied minors of school age accommodated in the reception centre for separated children in **Fót** cannot be enrolled in school if they arrive during the school year (between September and June). This tendency is a step backwards compared to the previous practice.

Refugee children are often not enrolled in the normal classes with Hungarian pupils but placed in special preparatory classes. Integration with the Hungarian children remains thus limited. They can move from these special classes once their level of Hungarian is sufficient. However, there are only a few institutions which accept such children and are able to provide appropriate programmes according to their specific needs, education level and language knowledge. According to the experience of the Menedék Association for Migrants, many local schools are reluctant to receive foreign children as (a) they lack the necessary capacity and expertise to provide additional tutoring to asylum-seeking children; and (b) Hungarian families would voice their adversarial feelings towards the reception of asylum-seeking children.¹⁷⁵ This is a clear sign of intolerance of the Hungarian society in general. In some other cases, the local school only accepts asylum seeking children in segregated classes but without a meaningful pedagogical programme and only for 2 hours a day, which is significantly less than the 5-7 hours per day Hungarian students spend in school.

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

Unaccompanied children in **Fót** attend the Than Karolyn Secondary School or the Bródy Imre Secondary School in Budapest. Children attending the Bródy Imre School reported that they only have access to school 2 days a week, although they would like and need to learn more. In addition, several children were not issued the necessary documentation for schooling, some complained that their humanitarian residence permit had not been issued yet and as a consequence they could not be enrolled in the school. Some children also reported that they feel discriminated against by some teachers both in Than Károly, and Bródy Imre School. There have been reports that bus drivers may not stop in front of the children's home in Fót when foreign youngsters go to or return from school.¹⁷⁶

Children in **Bicske** and in **Fót** have reported not receiving any books and other necessary material for school such as paper pencils, booklets. Due to legislation in force, schools have to indicate the amount of materials they would need prior to the beginning of the school year. This proves impossible in case of refugee children due to the high fluctuation and internal moving within the country. Hence, currently there is no possibility to purchase materials for the students.¹⁷⁷

Full access to mainstream education is hindered in **Vámosszabadi**, where 2 – one school age and one kindergarten age – children did not have access to primary education, thus could not attend school on grounds that their asylum application was rejected and they are awaiting deportation.

¹⁷⁴ Section 45(3) Act CXC of 2011 on public education.

¹⁷⁵ HHC, *Information gathered during interviews conducted during the age, gender and diversity monitoring visits*, September 2012.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

In **Balassagyarmat** only one girl could start attending a local school in April 2014. For the rest of the school aged children staying there, no arrangement has yet been made with the local schools. As of October 2014, there is a school operating at the premises of the community shelter, where resident children are enrolled.

Education opportunities and vocational training for adults is only offered once they have a protection status. In practice asylum seekers can sometimes attend Hungarian language classes.

C. Health care

Indicators: Health Care

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

Access to health care is provided for asylum seekers as part of material reception conditions.¹⁷⁸ It covers essential medical services and corresponds to free medical services provided to legally residing third-country nationals.¹⁷⁹ Asylum seekers have a right to examinations and treatment by general practitioners, but all specialised treatment conducted in polyclinics and hospitals is free only in case of emergency and upon referral by a general practitioner.

According to Decree 301/2007,¹⁸⁰ asylum seekers with special needs are “eligible for free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person’s state of health.”

In practice there are no guidelines for identifying vulnerable asylum seekers and a lack of specialised medical services. Furthermore, only few experts speak foreign languages and even fewer have experience in dealing with torture or trauma survivors. Cordelia Foundation, an NGO, is the only organisation with the necessary experience in providing psychological assistance to torture survivors and traumatised asylum seekers in some of the reception centres. Their capacity is, however, limited and every year the question arises 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 the OIN. The therapeutic activities of the Foundation include verbal and non-verbal, individual, family and group therapies, and psychological and social counselling.

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

The emergency health care services must be provided even in the event of the reduction or withdrawal of reception conditions.¹⁸¹

¹⁷⁸ Section 26 Asylum Act.

¹⁷⁹ A detailed list is provided under Section 26 Decree 301/2007.

¹⁸⁰ Section 34 Decree 301/2007.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015 (January-September):	1,860
2. Number of asylum seekers in detention at the end of October 2015: ¹⁸²	441
3. Number of detention centres:	3
4. Total capacity of detention centres:	472

Detention has become a frequent practice rather than an exceptional measure in Hungary.

Between January and September 2015, 1,860 asylum seekers were detained. As of 2 November 2015, 52% of asylum seekers applying in Hungary were detained. On 2 November 2015, the number of asylum seekers in detention exceeded those accommodated in open reception centres, as 441 applicants were detained while only 412 stayed in open reception facilities.¹⁸³

In 2014, 4,829 asylum seekers were detained in asylum detention. According to the statistics of the OIN, on 31 December 2014, 98 asylum seekers were in detention.

Since the introduction of asylum detention in July 2013, the asylum detention facilities are usually full. There are no specific categories of asylum seekers that are detained. If the grounds for asylum detention apply, any asylum seeker, except unaccompanied children, can be detained. In practice, since September 2014, families with children are often detained.

There are 3 asylum detention facilities: **Debrecen**, **Békéscsaba** and **Nyírbátor**, totalling a capacity of 472 places. The asylum detention centre in Debrecen is foreseen to be closed in December 2015.

After the arrival of around 25,000 asylum seekers from Kosovo between January and March 2015, the use of asylum detention significantly decreased and for months these capacities were not running at full capacity. With the adopted legal modifications during the summer, and as the refugee crisis intensified by mid-September, the OIN restarted to use asylum detention more and more frequently. The nationality of detainees also changed: more Syrians, Afghans and Iraqis were subject to asylum detention than in the previous (summer) months. During summer months, the facility in **Nyírbátor** ceased to operate as an asylum jail and only foreigners waiting to be deported were held there. This all changed after 15 September 2015, when the facility restarted to function as an asylum jail.

There are also 4 immigration detention centres in Budapest Airport Police Directorate, Nyírbátor, Kiskunhalas and Győr, which hold persons waiting to be deported.

B. Legal framework of detention

1. Grounds for detention

¹⁸¹ Section 30(3) Asylum Act.

¹⁸² This is higher than the number of persons accommodated in open centres (412).

¹⁸³ Based on the information received from the OIN on 2 November 2015.

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: ☒ Yes ☐ No
 - ❖ at the border: ☒ Yes ☐ No
2. Are asylum seekers detained in practice during the Dublin procedure? ☒ Frequently ☐ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice? ☒ Frequently ☐ Rarely ☐ Never

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

- (a) To establish his or her identity or nationality;
- (b) Where a procedure is ongoing for the expulsion of a person seeking recognition and it can be proven on the basis of objective criteria – inclusive of the fact that the applicant has had the opportunity beforehand to submit application of asylum – or there is a well-founded reason to presume that the person seeking recognition is applying for asylum exclusively to delay or frustrate the performance of the expulsion;
- (c) In order to establish the required data for conducting the procedure, where there are well-founded grounds for presuming that the applicant is delaying or frustrating the asylum procedure or presents a risk of absconding;
- (d) To protect national security, public safety, or (in the event of serious or repeated violations of the designated place of stay) public order;
- (e) Where the application has been submitted in an airport procedure; or
- (f) Where it is necessary to carry out a Dublin transfer and there is a serious risk of escape;
- (g) In order to carry out the Dublin transfer, the refugee authority may take into asylum detention a foreigner who failed to submit an application for asylum in Hungary and the Dublin handover can take place in his or her case.

The ground most commonly used is the “risk of absconding” under Section 31/A(1)(c), sometimes in combination with the “identification” ground.¹⁸⁴ The risk of absconding is defined in Section 36/E of Decree 301/2007 as present: if “the third-country national does not cooperate with the authorities during the immigration proceedings, in particular if”:

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

However, the HHC observes that the assessment of whether it is probable that a person will depart for an unknown destination is sometimes done in a very arbitrary way. For example, in 2014 HHC has come across detention orders where it was considered that someone presents a risk of absconding where, when asked by the authorities which was their destination country, they answer that they wanted to come to the EU and do not explicitly mention Hungary.¹⁸⁵

¹⁸⁴ In February 2014, the HHC staff conducted monitoring visits to the three asylum detention centres (Békéscsaba, Debrecen, Nyírbátor). The monitoring teams interviewed over 150 detainees and collected the decisions ordering or maintaining the detention. Following these visits, HHC analysed a total of 107 decisions. See HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, available at: <http://bit.ly/1MOnO0Q>, 7.

¹⁸⁵ *Ibid*, 10.

Moreover, the OIN seems to take a questionable interpretation of the “threat to public safety” ground following the criminalisation of irregular entry into Hungary as of September 2015. According to the authorities in **Békéscsaba**, due to their prior criminal conviction for irregular entry, asylum seekers are automatically deemed to pose a threat to public safety and are therefore detainable.¹⁸⁶ This is a very problematic reading of said detention ground as it reveals a systematic use rather than an individualised assessment of whether an applicant constitutes a genuine and present threat to public order.

2. Alternatives to detention

Indicators: Alternatives to Detention

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

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

- (a) Bail;¹⁸⁷
- (b) Designated place of stay;¹⁸⁸ and
- (c) Periodic reporting obligations.¹⁸⁹

The scope of application of the bail as an alternative to detention is not sufficiently defined and may lead to the non-application of this measure in practice. The amount of the bail can vary between €500 and 5,000, but the conditions of assessment are not properly defined by law, thereby casting doubts on its transparent and coherent application. According to the law, the amount of bail should depend on the personal conditions and situation of the applicants as determined by the authority. Unfortunately, in practice there is no individualised approach used in determining the amount of bail. The average amount of bail ordered so far was €1,000. However, due to the high number of people trying to leave Hungary after paying the bail, the authorities have increased it in some instances but according to the HHC’s experience the average sum is around €1,000. The application of bail remains very rare in practice. Some attorneys reported that the OIN does not examine the possibility of applying bail automatically, which is not in line with the recast Reception Conditions Directive.

UNHCR has observed that the assessment of applicability of alternatives to detention is largely restricted in practice to the applicability of asylum bail, while the other two alternative measures such as the regular reporting requirement and the designated place of accommodation are rarely or not applied as standalone measures.¹⁹⁰

Necessity and proportionality

Asylum detention may only be ordered on the basis of assessment of the individual’s circumstances and only if its purpose cannot be achieved by applying less coercive alternatives to detention. However, the HHC’s experience shows that the detention orders lack individual assessments and alternatives are not properly and automatically examined. Decisions ordering and upholding asylum detention are schematic, lack individualised reasoning with regard to the lawfulness and proportionality of detention, and fail to consider the individual circumstances (including vulnerabilities) of the person concerned. The

¹⁸⁶ ECRE, *Crossing Boundaries*, October 2015, 26-27.

¹⁸⁷ Sections 2(lc) 31/H Asylum Act.

¹⁸⁸ Section 2(lb) Asylum Act.

¹⁸⁹ Section 2(la) Asylum Act.

¹⁹⁰ UNHCR, *UNHCR comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <http://bit.ly/1HZH0tt>.

necessity and proportionality tests are not used. The orders only state that alternatives are not possible in a concrete case, but there is no explanation why.¹⁹¹

Following his visit to Hungary in July 2014, the Council of Europe (CoE) Human Rights Commissioner also criticised the lack of individual assessment and reported detentions according to criteria such as the availability of places in detention centres or the nationality of the asylum seeker.¹⁹²

According to the statistics provided by the OIN, between 1 January and 30 June 2015 bail was applied in 68 cases and a designated place of stay was defined in 10,866 cases.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice? ☐ Frequently
☒ Rarely
☐ Never

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

Unaccompanied children are explicitly excluded from asylum and immigration detention by law.¹⁹³ Despite that clear ban, however, unaccompanied children have been detained due to incorrect age assessment,¹⁹⁴ as the age assessment methods employed by the police and OIN are considerably problematic (see section on Age Assessment above).

Moreover, no other categories of vulnerable asylum seekers are excluded from detention. Whereas previously families with children were not detained in practice, they are now again being detained in some cases. The detention of families has been criticised as discriminating between children based on their family status contrary to Article 2(2) of the UN Convention on the Rights of the Child, according to the Hungarian Parliamentary Commissioner for Fundamental Rights.¹⁹⁵

In its visit as the national prevention mechanism under OPCAT, the Parliamentary Commissioner for Fundamental Rights visited the asylum detention facility in **Debrecen** in January 2015. The report concludes that the conditions and the long lasting effects of detention are particularly harmful for children. The Commissioner claimed that:

“In order to temporarily ease the tension accumulated in the foreigners, in particular in the children, and to make the psychological burden of detention tolerable, the social workers should pay more attention, compared to that experienced at the time of the visit, to the organization and conduct of activities for the detainees as stipulated by the law.”¹⁹⁶

¹⁹¹ HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 6-7.

¹⁹² CoE Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for human rights of the Council of Europe following his visit to Hungary from 1 to 4 July 2014*, CommDH(2014)21, available at: <http://bit.ly/1e8pS8w>.

¹⁹³ Section 56 TCN Act; Section 31/B(2) Asylum Act.

¹⁹⁴ HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 12.

¹⁹⁵ Commissioner for Fundamental Rights, *Report in Case No. AJB 4019/2012*, June 2012, available at: <http://bit.ly/1JKiBZN>.

¹⁹⁶ Fundamental Rights Commissioner, *Summary of Case Report AJB-366/2015 on OPCAT Visit to the Debrecen Guarded Refugee Reception Center*, 26-27 January 2015, available at: <http://bit.ly/1SWnuQH>.

However, detention must be terminated if the asylum seeker requires extended hospitalisation for health reasons.¹⁹⁷

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| ❖ Subsequent applicants with no suspensive effect | 12 months |
| ❖ Families with children | 1 month |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

The maximum period of asylum detention is 6 months. Families with children under 18 years of age may not be detained for more than 30 days.

In practice, asylum seekers detained are likely to spend the whole status determination procedure at first instance in detention.¹⁹⁸ Once the OIN adopted a decision on their case, asylum seekers used to be released, even in case the decision is negative.

After 15 September 2015, however, the detention of asylum seekers is implicitly allowed during the court review procedure, which is clearly not in line with the provisions of Article 8 of the recast Reception Conditions Directive. Section 68(4) of the Asylum Act foresees that the court hearing is only obligatory in case the applicant is in asylum detention which indicates that the legislator sees detention possible throughout the entire asylum procedure including the judicial review phase. This contradicts an earlier provision on asylum detention stipulating that the aim of the detention is to gather information so the asylum authority would be able to make a decision.¹⁹⁹

Asylum seekers in a Dublin procedure may be detained prior to their transfer to the responsible Member State.²⁰⁰ When the applicant is not in asylum detention, the OIN can 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. Detention must be terminated where the conditions for implementing a Dublin transfer exist or where it becomes obvious that the transfer cannot be carried out.²⁰¹ Asylum seekers under a Dublin procedure are often detained for the whole duration of the Dublin procedure, based on grounds such as risk of absconding.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- | | | |
|--|---|--|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | ☒ Yes | ☐ No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | ☐ Yes | ☒ No |

¹⁹⁷ Section 31/A(8)(d) Asylum Act.

¹⁹⁸ HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 4.

¹⁹⁹ Section 31/A(1)(c) Asylum Act.

²⁰⁰ Section 49(5) Asylum Act.

²⁰¹ Section 31/A (8)(f) Asylum Act.

Until 30 June 2013, asylum seekers were detained in immigration detention, together with other third-country nationals. They were not detained in regular prisons, unless they had been charged with a crime. From July 2013, asylum seekers are detained in asylum detention facilities.²⁰²

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

Centre	Capacity
Békéscsaba	185
Debrecen	182
Nyírbátor	105
Total	472

Men must be detained separately from women, with the exception of spouses, and families with children are also to be separated from other detainees.²⁰³

The HHC has previously expressed concern about the installation of **Debrecen** detention facility inside the open reception centre for asylum seekers. The detention facility has a huge fence that has intimidating effect, not only to detainees, but also to the asylum seekers accommodated in the open reception centre. The watchtowers installed on the fence reinforce this effect, creating the impression of a high-security prison. The fact that the detainees see freely moving asylum seekers on the other side of the fence (sometimes even their friends or relatives) increases the frustration and the risk of aggression and extraordinary events.²⁰⁴

The facility in **Békéscsaba** is equipped with a football ground and playground for children, practice shows that the OIN tends to detain vulnerable persons and families here, while the two other facilities are more used for detaining single males.

As a result of the modification of the Penal Code adopted during the summer of 2015 those foreigners who were charged with the irregular crossing of the border closure face obligatory expulsion to Serbia (from where they entered Hungary) and are systematically detained in immigration detention (awaiting deportation) in regular penitentiary institutions.²⁰⁵ The law allows executing immigration detention in prisons under exceptional conditions if the immigration system of the country is under particular pressure.²⁰⁶ The refugee crisis of 2015 is used as a pretext to detain expelled foreigners in prisons.

Moreover, despite the government's position that asylum seekers in the transit zones are not deprived of their liberty, the conditions in these facilities confirm that applicants held there are in a state of detention. For example, in the **Röszke** transit zone on the Serbian-Hungarian border, asylum seekers may only move within a restricted area within the facility not larger than 140m².²⁰⁷

²⁰² Section 31/F(1) Asylum Act and Sections 36/A-36/F Decree 301/2007.

²⁰³ Section 31/F(2) Asylum Act.

²⁰⁴ HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 16.

²⁰⁵ HHC, *The Hungarian Helsinki Committee's opinion on the Government's amendments to criminal law related to the sealed border*, 16 September 2015, available at: <http://bit.ly/1Kinw1U>.

²⁰⁶ Section 61/A (1) Act II of 2007 (Third Country Nationals Act).

²⁰⁷ ECRE, *Crossing Boundaries*, October 2015, 14-16.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|---|
| 1. Do detainees have access to health care in practice? | ☒ Yes | ☐ No |
| ❖ If yes, is it limited to emergency health care? | ☐ Yes | ☒ No |
| 2. Is access to detention centres allowed to | | |
| ❖ Lawyers: | ☒ Yes | ☐ Limited ☐ No |
| ❖ NGOs: | ☐ Yes | ☒ Limited ☐ No |
| ❖ UNHCR: | ☒ Yes | ☐ Limited ☐ No |
| ❖ Family members: | ☒ Yes | ☐ Limited ☐ No |

Detained asylum seekers have the right to unsupervised contact with their relatives, to send and receive correspondence, to practice religion and to spend at least one hour per day outdoors.²⁰⁸ Decree 301/2007 also specifies minimum requirements for such facilities, including material conditions such as freedom of movement, access to open air, as well as access to recreational facilities, internet and phones, and a 24-hour availability of social workers. According to the Decree, there should be at least 15m³ of air space and 5m² of floor space per person in the living quarters of asylum seekers, while for married couples and families with minor children there should be a separate living space of at least 8m², taking the number of family members into account.²⁰⁹

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

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

The residents of asylum detention facilities complained about inadequate housing conditions. The detention facility in Debrecen is not fully equipped yet, in **Békéscsaba** some of the toilets are lacking doors. There, some taps are not operating and therefore access to hot water is not ensured. In **Nyírbátor**, the residents reported that they do not receive cleaning equipment and detergents to clean the toilet and the showers. They complained about the quality of the water which stinks, dries their skin and causes skin irritations. In **Békéscsaba**, the windows and doors of the community areas cannot be closed, cooling the building and often resulting in windows breaking. Difficulties in connection with the practice of religion were reported in **Nyírbátor**: the praying room lacks praying rugs and is not adequate to accommodate more than four people at a time.

Although the centres are usually full, the capacity is not exceeded; therefore there are no problems of overcrowding. Each asylum seeker has their own bed and there is sufficient space. Detention centres organise clothes distribution, but sometimes there are not enough clothes or shoes.

Asylum seekers are entitled only to basic medical care. Paramedical nurses are present in the centre all the time and general practitioners regularly visit the facilities. However, medical care provided is often criticised by detainees. They rarely have access to specialist medical care when requested and are only taken to hospital in emergency cases. They complain about receiving the same medication for a range of different medical problems (e.g. sleeping pills, aspirin). Language barrier is also an issue. There is no psycho-social support available in any of the detention centres. During consultation hours guards do not leave the room in **Békéscsaba** while interpretation is not provided in **Nyírbátor**.

²⁰⁸ Section 31/F(2) Asylum Act.

²⁰⁹ Section 36/D Decree 301/2007.

Moreover, the majority of the social workers working in the asylum detention facilities hardly speak any foreign language and at the time of the HHC's visits the HHC's observed they did not really engage with the detainees. They were mainly performing the administrative tasks.

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

Asylum seekers can access open-air freely, during the day (contrary to the immigration jails, where open-air access is guaranteed only one hour per day). Open-air space is of adequate size. Each centre also has a fitness room, but there are no organized physical activities.

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

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

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

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

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

In principle media and politicians have access to detention, but they need to ask for permission in advance. In practice this rarely happens, since the interest is not very high.

HHC lawyers regularly – every week or every second week – visit asylum detention facilities and immigration detention centres and provide legal assistance. In asylum detention facilities, no other NGO is regularly present, while in immigration detention centres social workers and psychologists from Menedék association are daily present.

Conditions for vulnerable asylum seekers

Under Section 31/F of the Asylum Act, detention must take into account special needs.²¹⁰

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

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

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

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

Asylum seekers are informed of the reasons of their detention and their rights orally in a language that they understand, but the detention order is given to them in Hungarian.

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

In recent years, the effectiveness of judicial review has been criticised by the CoE Commissioner for Human Rights expressed concern as to the lack of effective judicial review,²¹¹ UNHCR²¹² and the UN Working Group on Arbitrary Detention.²¹³

Automatic judicial review

Judicial review of the administrative decision imposing detention on a foreigner is conducted by first instance courts in case of a decision for the purpose of extending the duration of detention. Detention may initially be ordered by the OIN for a maximum duration of 72 hours, and it may be extended by the court of jurisdiction upon the request of the OIN, which should be filed within 24 hours from the time it has been ordered. The court may grant an extension of asylum detention for a maximum duration of 60

²¹⁰ Section 31/F(1) Asylum Act.

²¹¹ CoE Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for human rights of the Council of Europe following his visit to Hungary from 1 to 4 July 2014*, CommDH(2014)21, available at: <http://bit.ly/1e8pS8w>.

²¹² UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <http://bit.ly/1GvunEz>.

²¹³ UN Working Group on Arbitrary Detention, *Hungary: UN experts concerned at overuse of detention and lack of effective legal assistance*, 2 October 2013, available at: <http://bit.ly/1XSvlyY>.

days. Every 60 days, the OIN needs to request the court for another prolongation, 8 working days prior to the due date for extension. The court can prolong detention for 60 days repeatedly up to 6 months. The court has to decide on prolongation before the date of expiry of the detention order.

The hearing in the judicial review procedure is mandatory in the first prolongation procedure (after 72 hours of detention) or if the detained person asks for it when he or she files an objection against the detention order. The court shall appoint a lawyer for the asylum seeker if he or she does not speak Hungarian and is unable to arrange his or her representation by an authorised representative.

Judicial reviews of immigration and asylum detention are conducted mostly by criminal law judges. Judicial review of immigration detention has been found to be ineffective, as Hungarian courts fail to address the lawfulness of detention in individual cases or to provide individualised reasoning based upon the applicant's specific facts and circumstances. HHC's analysis of 64 court decisions from February 2014 (as does the experience of HHC lawyers in 2015) confirmed that the judicial review of asylum detention is ineffective because of several reasons:²¹⁴

Firstly, the proceeding courts systematically fail to carry out an individualised assessment as to the necessity and the proportionality of detention and rely merely on the statements and facts presented in the OIN's detention order, despite clear requirements under EU and domestic law to apply detention as a measure of last resort, for the shortest possible time and only as long as the grounds for ordering detention are applicable.²¹⁵ As an extreme example demonstrating the lack of individualisation, 4 decisions of the Nyírbátor District Court analysed by the HHC contained incorrect personal data (name, date of birth or citizenship of the applicant).²¹⁶

Moreover, 4 court decisions contained a date of birth which indicates an age lower than 18 years.²¹⁷ Nevertheless, none of the decisions questioned the lawfulness of detention of the persons concerned, nor did they refer to any age assessment process or evidence proving the adult age of the asylum-seeker concerned.

HHC has reported a case where, in the immigration detention facility in **Kiskunhalas** in December 2011, the court decided on detention in groups of 5, 10, or 15 detainees within 30 minutes, thus significantly decreasing the likelihood of a fair and individual review. According to a survey conducted by the Hungarian Supreme Court, out of some 5,000 decisions made in 2011 and 2012, only 3 discontinued immigration detention, while the rest simply prolonged detention without any specific justification.²¹⁸

The 60-day interval for automatic judicial review *per se* excludes the use of detention only for as short a period as possible and only until the grounds for detention are applicable, as it would be required by EU law.²¹⁹ If for any reason, the relevant grounds for detention cease to be applicable, for example, one week after the last judicial review, this fact is extremely unlikely to be perceived by the detaining authority and the detainee will only have the first chance to bring this change to the attention of the district court and request to be released only 53 days later. Therefore, the 60-day intervals cannot be considered as "reasonable intervals" in the sense of Article 9(5) of the Recast Reception Conditions Directive.

²¹⁴ HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014.

²¹⁵ Articles 8(2) and 9(1) recast Reception Conditions Directive; Section 31/A(2) Asylum Act.

²¹⁶ Nyírbátor District Court, Decisions Nos 1.Ir.214/2014/3., 9.Ir.350/2014/3., 1.Ir.728/2013/5., 9.Ir.335/2014/3.

²¹⁷ Nyírbátor District Court case 1.Ir.46/2014/3., Debrecen District Court cases 68.Beü.94/2014/4-I., 68.Beü.108/2014/4, 68.Beü.104/2014/4., 68.Beü.1087/2014/4.

²¹⁸ Supreme Court, Advisory Opinion of the Hungarian Supreme Court adopted on 30 May 2013 and approved on 23 September 2013.

²¹⁹ Article 9(1) recast Reception Conditions Directive.

The local district court of Debrecen (Járásbíróság) carried out the judicial review of detention orders from August-September 2014. After repeated trainings and increased efforts to advocate and litigate for the release of vulnerable detainees or torture survivors, the court's practice seems to have improved in cases where the HHC provided legal representation. There is no representative data on the release of detainees and the termination of detention by the court. Until October 2015, the HHC provided legal representation in 27 cases and 16 clients were released (59%).

Still, the practice of the Békéscsaba and Nyírbátor local district court seems to be more restrictive than the other in Debrecen with almost no successful releases.

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

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

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

Objection

According to Section 31/C(3) of the Asylum Act, an asylum seeker may file an objection against the ordering of asylum detention and the denial of certain rights of detainees during detention e.g. right to use a phone, right to special diets etc. The objection must be decided upon by the local court within 8 days.²²⁰ Based on the decision of the court, the omitted measure shall be carried out or the unlawful situation shall be terminated.²²¹

In practice, however, the effectiveness of this remedy is highly questionable for a number of reasons. Firstly, an objection can only be submitted against the ordering of asylum detention (i.e. the decision of the OIN, ordering detention for 72 hours). Following the first 72 hours, asylum detention can only be upheld by the local district court (for a maximum period of 60 days). Thus, the legal ground for detention will not be the OIN's decision, but that of the court. The Asylum Act uses a different term for these two: while the OIN's decision orders ("*elrendel*") detention, the court's decision prolongs ("*meghosszabbít*") it. This means that only the first type of decision (that of the OIN) can be "objected" against. Therefore the detainee can only file an objection in the first 3 days of detention. It is also confusing that the court has 8 days to decide on the objection, while the first automatic judicial review happens within 3 days.

Secondly, during the first 72 hours of detention, detained asylum seekers do not have access to professional legal aid. The Asylum Act ensures a case guardian for asylum seekers in asylum detention (who is an attorney at law appointed by the authority), but only for the regular prolongation of detention at 60-day intervals and the judicial assessment of an "objection" that has already been submitted to the court. No case guardian or *ex officio* appointed legal representative is present when asylum detention is

²²⁰ Section 31/C(4) Asylum Act.

²²¹ Section 31/C(5) Asylum Act.

ordered, nor is such assistance provided in the first 72 hours of detention. Therefore no legal professional can help the detainee file an objection.

Thirdly, there are also serious general concerns about the effectiveness of information provision upon issuing the detention order. This typically happens in the middle of the night, at a short-term detention facility at the border. The law provides for an interpreter that the asylum seeker can reasonably be expected to understand. However, asylum seekers in asylum detention unanimously stated to HHC during its monitoring visits in 2014 that the information provision was more or less limited to the fact that a person is detained and the explanation about the specific grounds or other details, or appeal possibilities were not understood or not even provided.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

- | | | |
|--|---|--|
| 1. Does the law provide for access to free legal assistance for the review of detention? | ☒ Yes | ☐ No |
| 2. Do asylum seekers have effective access to free legal assistance in practice? | ☐ Yes | ☒ No |

Asylum seekers in asylum detention have the same rights regarding legal assistance as those not detained. The same shortcomings apply to the provision of legal assistance (see section on Regular Procedure: Legal Assistance). HHC provides legal assistance in all detention facilities. HHC lawyers regularly visit asylum detention facilities and immigration detention centres for this purpose every week or second week. However the capacity of the HHC lawyers to that end is limited.

Until November 2015 the HHC lawyers provided legal assistance challenging detention orders in 27 cases out of which 16 resulted in having the clients released.

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

Even though the presence of an officially appointed lawyer is obligatory, HHC has witnessed that the lawyers usually do not object to the prolongation of detention. Officially appointed lawyers often provide ineffective legal assistance when challenging immigration detention, which is caused by their failure to meet their clients before the hearing, study their case file, or present any objections to the extension of the detention order. Besides, this *ex officio* legal assistance is only provided at the first court prolongation of the detention order (after 72 hours). This is corroborated by the Hungarian Supreme Court 2014 summary opinion, finding that the *ex officio* appointed legal guardians' intervention is either formal or completely lacking and therefore the "equality of arms" principle is not applied in practice

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

ANNEX I - Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Articles	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	All	21 December 2013	- 15 June 2013 - 1 July 2013 - 15 March 2014 - 1 July 2014 - 1 August 2015	Act XCIII of 2013 Act CXXVII of 2015	< http://bit.ly/1OeEGiQ > (HU)
Directive 2013/32/EU Recast Asylum Procedures Directive	43	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	- 1 August 2015 - 15 September 2015	Act CVI of 2015; Act CXXVII of 2015 Act CXL of 2015	< http://bit.ly/1j702Dp > (HU)
Directive 2013/33/EU Recast Reception Conditions Directive	8-11	20 July 2015	- 15 June 2013 - 1 July 2013 - 1 August 2015	Decree of the Minister of the Interior No. 29/2013 Act XCIII of 2013 Act CXXVII of 2015	< http://bit.ly/1WYqEJE > (HU)

Main findings on discrepancies in transposition

Provision in Directive / Regulation	Provision in National Law
Article 2(k) recast Reception Conditions Directive	Article 2(k) Asylum Act: The definition of 'applicant with special reception needs' as referred to in Article 2(k) of the recast Reception Conditions Directive is not correctly transposed into the Hungarian legal system as in the definition of 'person in need of special treatment' victims of human trafficking, persons with serious illnesses, and persons with mental disorders are not mentioned. The Hungarian definition is non-exhaustive, while the Directive definition is exhaustive.
Article 8(2) recast Reception Conditions Directive	Article 31/A(2) Asylum Act transposes it in an almost literal way, according to which Member States may detain an applicant if its purpose cannot be achieved through measures securing availability and it proves necessary and on the basis of an individual assessment of each case'. However the provision of the Directive has not been transposed in a

	conforming manner, due to the fact that the Hungarian national law does not provide the factors that need to be taken into account during the individual assessment of the asylum seeker. No clear criteria can be located in the Act on Asylum as regards the individual assessment, therefore it is the sole discretionary power of the refugee authority to detain an applicant instead of using other measures securing availability.
Article 8(3)(f) recast Reception Conditions Directive Article 28(3) Dublin III Regulation	Article 31/A(1)(f) Asylum Act transposes those provisions in a non-conform manner. According to the Directive provision, an applicant may be detained in accordance with Article 28 of the Dublin Regulation, which provides that the person shall no longer be detained 'when the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph. Despite this fact, the Asylum Act does not exclude Dublin detainees from the scope of Article 31/A(6) of the Asylum Act which means that the maximum length of detention may reach 6 months in case of Dublin detainees as well.
Article 8(4) recast Reception Conditions Directive	Article 2(I), Article 31/A(2) and Article 31/H(1) Asylum Act transpose this in a non-conform manner. According to the Directive provision Member States shall ensure that the rules concerning alternatives to detention are laid down in national law. The Hungarian national law lists the possible alternative measures, however there is a lack of a detailed regulation on the application of alternative measures. Clear criteria for the application of each alternative measure should be laid down in the Asylum Act for the purpose of legal clarity.
Article 9(1) recast Reception Conditions Directive	Article 31/A(6)-(7) and Article 31/A(8) Asylum Act transpose it in a non-conform manner. According to the Directive provision an applicant shall be detained only for as short period as possible. Despite this fact, the Asylum Act foresees an excessively long maximum period for the judicial prolongation of detention (60-day interval), so in practice 60 days shall pass until the judicial review of detention regardless of the situation (for example: mental state) of the applicant concerned in the detention centre. This 60-day interval cannot be regarded as 'a short period'. Practice so far shows that the asylum authority, for reasons of administrative convenience, automatically requests the court to prolong detention for the maximum period of 60 days. Furthermore, it should be mentioned that asylum detention may last for thirty days in case of a family with minors according to the Hungarian law. The detention of families with children is a form of discrimination on the ground of the family status of the child as detention of unaccompanied / separated asylum-seeking children are prohibited by Hungarian law, whereas the same national law provides a ground for detention of children who are accompanied by a family member. This is contrary to international human rights standards, in particular Article 2(2) of the UN Convention on the Rights of the Child.
Article 9(5) recast Reception Conditions Directive	Article 31/A(6) Asylum Act transposes it in a not conform manner. According to the Directive provision detention shall be reviewed by a judicial authority at reasonable intervals of time, <i>ex officio</i> , however the Hungarian law foresees a maximum 60-day interval which cannot be regarded as 'reasonable' as required by the recast Reception Conditions Directive, in light of the state's obligation to apply asylum detention for the shortest period possible.
Article 10(5) recast Reception Conditions Directive	Article 31/E(1) Asylum Act and Article 5(1) Decree 29/2013 of the Minister of the Interior transpose it in a non-conform manner. Based on the Directive provision, Member States shall ensure that applicants in detention are 'systematically' provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Nevertheless, Decree 29/2013 of the Minister of the Interior determines that asylum seekers are only provided information regarding the rules applied in the facility at the time of their reception into the asylum reception centre

Article 11(1), second sub-paragraph recast Reception Conditions Directive	Article 37/F(2) Asylum Act, Article 3(4)-(6) and Article 4 Decree 29/2013 of the Minister of the Interior transpose it in a non-conform manner. The Directive provision requires Member States, if vulnerable persons are detained to ensure regular monitoring and adequate support taking into account their particular situation, including their health. Article 4 of Decree 29/2013 ensures appropriate specialist treatment of the injuries caused by torture, rape or other violent acts to any detained person seeking recognition based on the opinion of the physician performing the medical examination necessary for admission. Nevertheless, the wording of Article 4 of Decree 29/2013 excludes from the scope of vulnerable persons: minor, elderly or disabled person, pregnant woman, single parent raising a minor child, victims of human trafficking, persons with serious illnesses, and persons with mental disorders.
Article 11(5), first sub-paragraph recast Reception Conditions Directive	Article 31/F(1) Asylum Act, Article 36/D(3) Government Decree 301/2007 and Article 3(8) Decree 29/2013 of the Minister of the Interior transpose it in a not conform manner. The Directive provision requires Member States, where female applicants are detained, to ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto. Nevertheless, the Hungarian law does not require all individuals' concerned consent to accommodate family members together in detention centres, it is automatic.
Article 4(3) recast Asylum Procedures Directive	According to Article 4(3), Member States shall ensure that the personnel of the determining authority are properly trained and persons interviewing applicants shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past. No similar provision could be located in the Hungarian transposing measures (paras 1.2.7.2 and 1.2.8.2 of Joint order No. 9/2010 of the Minister of the Interior and the Minister of Public Administration and Justice).
Article 6(1), second subparagraph recast Asylum Procedures Directive	The provision foresees that registration shall take place 'no later than six working days' after the application is made, if the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law. As referred to in Article 35(1)(b) Asylum Act , if an application for international protection was submitted to any other authority, asylum procedure shall commence from the registration of the application by the refugee authority. However no provision regarding the timeframe of the registration by the refugee authority can be located in the Hungarian implementing measures.
Article 7(2), first subparagraph recast Asylum Procedures Directive	The provision sets out an option which Hungary chose to apply, but not in a conform manner. Based on Article 35(8)-(9) Asylum Act , the Hungarian law requires the written consent of the family member with limited capacity to the joint application in advance or at the personal interview, at the latest. Nevertheless, the Directive provision determines that only the dependent adults shall give consent to the lodging of the application on their behalf in case of joint application. The Hungarian law is more stringent than the Directive provision.
Article 7(4) recast Asylum Procedures Directive	The Hungarian law (Article 46(f)(fa) Asylum Act) provides that in the case of a crisis situation caused by mass immigration there is no place for initiating the designation or designating a case guardian to an unaccompanied minor. This is not in line with the Directive provision which obliges Member States to ensure that the appropriate bodies have the right to lodge an application for international protection on behalf of an unaccompanied minor.
Articles 12(1)(a) and 30 recast Asylum Procedures Directive	Under Section 5(3) Asylum Act , asylum seekers can now be obliged to contact their country of origin in order to establish identity and obtain documentary evidence. This goes against the most basic prohibition in asylum law, as it may expose asylum-seekers and their families and friends to inhuman treatment, torture or even death.

Article 24(1) recast Asylum Procedures Directive	Article 3 Government Decree 301/2007 transposes to this provision, however not in a conform manner. The Directive provision requires Member States to assess within a 'reasonable period of time' after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees. The Hungarian law provides that the refugee authority shall assess whether the person seeking international protection is in need of special treatment or not. However, the 'reasonable period of time' is not implemented by the Hungarian law. Therefore it is not exactly clear when the examination process is carried out by the refugee authority and without this time guarantee, an asylum seeker belonging to vulnerable group may lose the ability to benefit from the rights and comply with the obligations provided for an 'applicant in need of special procedural guarantees'. The lack of timeframe determination is especially problematic at border procedure due to the fact that the proceedings at the border cannot be applied to persons with special needs as specified in Article 71/A(7) Asylum Act. Furthermore, there is a huge concern on how the refugee authority examines the applicant as the employees of the refugee authority are neither doctors nor psychologists (assumed based on Article 3(2) Government Decree 301/2007). Hence it is not clear how and in what basis they can make judgement on whether an applicant is a victim of torture, rape or suffered from any other grave form of psychological, physical or sexual violence. Based on Article 3(2) of the Government Decree, the refugee authority 'may' use the assistance of a medical or psychological expert, therefore it is clear that people working for the refugee authority are not medical or psychological experts. More accurate, detailed rules are needed to be developed by the Hungarian legislator
Article 24(3), first sub-paragraph recast Asylum Procedures Directive	Article 29 Asylum Act, Article 33(1) and Article 35(4) Government Decree 301/2007 conform to Article 24(3), first subparagraph of the Directive. However it should be mentioned that the Hungarian transposing provision does not determine detailed rules on how and in what form adequate support shall be provided to the persons in need of special treatment. The Hungarian law only ensures separated accommodation in the reception centre for persons seeking international protection in cases justified by their specific individual situation as referred to in Article 33(1) of the Decree.
Article 24(4) recast Asylum Procedures Directive	The transposition of Article 24(4) into the Hungarian law could not be located.
Article 25(1), first sentence recast Asylum Procedures Directive	Article 46(f)(fa) Asylum Act transposes it in a non-conform manner. The Directive provision requires Member States to take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in the recast Asylum Procedures Directive. Nevertheless, the Hungarian law provides that in the case of a crisis situation caused by mass immigration there is no place for initiating the designation or designating a guardian <i>ad litem</i> to an unaccompanied minor. This is not in alignment with the Directive provision.
Article 25(3)(a)-(b) recast Asylum Procedures Directive	The transposition of this provision into the Hungarian law could not be located.
Article 25(5), first sub-paragraph recast Asylum Procedures Directive	Article 44(1) Asylum Act and Article 78(1)-(2) Government Decree 301/2007 conform to Article 25(5), first subparagraph of the Directive. Based on Article 78(2) of the Asylum Government Decree, if the person seeking recognition debates the outcome of the expert examination regarding his or her age, he or she may request a new expert to be designated by the refugee authority. In case of contradicting expert opinions, it is up to the refugee authority to decide whether to appoint another expert or to determine which expert opinion shall be used regarding the

	age of the applicant. This provision is not in alignment to the Directive provision as if Member States still have doubts concerning the applicant's age after the age assessment, they shall assume that the applicant is a minor.
Article 25(5), second sub-paragraph recast Asylum Procedures Directive	The transposition of this provision into the Hungarian law could not be located.
Article 25(6) recast Asylum Procedures Directive	Article 51(7) and Article 71/A(7) Asylum Act transpose Article 25(6)(a) of the Directive. Article 51(7) of the Asylum Act incorrectly transposes it, as the Hungarian law does not exclude unaccompanied minors from the scope of accelerated procedure, while the provision of the Directive permits unaccompanied minors to be channelled into an accelerated procedure only in cases specified in Article 25(6)(a)(i)-(iii).
Articles 37-38 recast Asylum Procedures Directive	These have not been transposed into Hungarian law in a conform manner, due to the following reasons: - According to Articles 1-2 Government Decree 191/2015 (entering into force on 1 August 2015), candidate states of the European Union qualify as a safe country of origin and as a safe third country. The Hungarian government adopted a national list of safe third countries, which includes – among others – Serbia (candidate states of the European Union). This decision contradicts the UNHCR's currently valid position, according to which Serbia is not a safe third country for asylum seekers, and the guidelines of the Hungarian Supreme Court (Kúria) and the clear-cut evidence provided by the reports of the HHC and Amnesty International. Currently there is no other EU Member State that regards Serbia as a safe third country for asylum seekers. - The amendment to the Asylum Act obliges the OIN to reject as inadmissible all asylum claims lodged by applicants who came through a safe third country, since the applicant "could have applied for effective protection there" as referred to in Article 51(2)(e) and Article 51(4)(a)-(b) Asylum Act. As over 99% of asylum seekers entered Hungary at the Serbian-Hungarian border section in 2015, this means the quasi-automatic rejection at first glance of over 99% of asylum claims, without any consideration of protection needs. This is in violation of Article 10(3)(a) of the recast Asylum Procedures Directive as well which requires Member States to ensure that applications are examined and decisions are taken individually, objectively and impartially.
Article 43(3) recast Asylum Procedures Directive	Article 5(1)(b) and Article 71/A(2) Asylum Act transpose this in a non-conform manner. Based on the Directive provision, in the event of arrivals involving a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it impossible in practice to apply the basic principles and guarantees of Chapter II of the Directive, the border procedure may be applied where and for as long as these third-country nationals or stateless persons 'are accommodated' normally at locations in proximity to the border or transit zone. Nevertheless, Article 71/A(2) of the Asylum Act which deals with the rights of the applicant lodging applications for international protection at the border, provides that the applicants shall not be entitled to receive accommodation as referred to in Article 5(1)(b) of the Asylum Act.
Article 46(3) recast Asylum Procedures Directive	This provision is not transposed into the Hungarian law in a correct manner. Pursuant to Article 53(4) of the Asylum Act the judge has to take a decision in 8 days on a judicial review request against an inadmissibility decision and in an accelerated procedure. The 8-day deadline for the judge to deliver a decision is insufficient for "a full and <i>ex nunc</i> examination of both facts and points of law" as prescribed by EU law. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological

	expert opinion) or to arrange a personal hearing with a suitable interpreter
Article 46(8) recast Asylum Procedures Directive	Articles 45(5)-(6) and Article 53(2) Asylum Act transpose this provision in a non-conform manner. Based on the Directive provision, Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7 of Article 46 of the Directive. Nonetheless, the Hungarian law does not ensure suspensive effect on the enforcement of the refugee authority's decision as set out in Article 53(2) of the Asylum Act (with the exception of decisions made under Articles 51(2)(e) and 51(7)(h)). Instead, pursuant to Article 45(6) of the Asylum Act, the refugee authority in its decision refusing the application for recognition, withdraws the foreigner's residence permit issued for humanitarian purposes, orders his or her expulsion and deportation based on Act II of 2007 on the entry and stay of third country nationals and determines the period of prohibition of entry and residence. It should be highlighted that the Hungarian law only foresees the expulsion by way of deportation for asylum seekers whose application for recognition had been refused as referred to in Article 45(6) of the Asylum Act. Nevertheless, according to Article 7(4) Return Directive Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days, if there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security. Based on the provision of the Return Directive, Hungary would be required to carry out an individual assessment in each case to see whether the asylum seekers whose application for recognition had been refused 'pose a risk to public policy, public security or national security', if there is a risk of absconding, before deciding to refrain from granting a period for voluntary departure and carry out expulsion by way of deportation. This is not the case in the Hungarian transposing measure, as it automatically requires expulsion by way of deportation for asylum seekers whose application for recognition had been refused. It should be also noted that no specialised authority takes part in the procedure conducted at the border as set out in Article 71/A(8) of the Asylum Act, therefore the Constitution Protection Office and the National Counterterrorism Centre (specialised authorities) are not involved to determine whether the stay of the persons presents a threat to national security. The refugee authority decides on the admissibility of the application with priority but not later than within 8 days as set out in Article 71/A(3) of the Asylum Act. In the cases, the refugee authority actually delivers an inadmissibility decision at the transit zone in less than an hour. Such speedy decision-making gives rise to evident concerns regarding the quality and the individualisation of asylum proceedings as required by Article 10(3)(a) of the recast Asylum Procedures Directive, the individual examination of whether the third country concerned is safe for a particular applicant as set out in Article 38(2)(c) of that Directive and the application of even the most basic due process safeguards.
Article 18(2) Dublin III Regulation	For persons whose applications are considered to have been tacitly withdrawn (i.e. they left Hungary and moved on to another EU member state) and the asylum procedure had been terminated, the asylum procedure may be continued if the person requests such a continuation within 9 months of the withdrawal of the original application as referred to in Section 66(6) Asylum Act. Where that time-limit has expired, the person is considered to be a subsequent applicant. However, imposing a deadline in order for the procedure to be continued is contrary to the Article 18(2) of Dublin III Regulation, as when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided

	for in the recast Asylum Procedures Directive. This is also recalled in Article 28(3) of the recast Asylum Procedures Directive, which explicitly provides that the aforementioned 9-month rule on withdrawn applications “shall be without prejudice to [the Dublin III Regulation].” Persons who withdraw their application in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore they will have to submit a subsequent application and present new facts or circumstances. This is also not in line with above-described second paragraph of Article 18(2) of the Dublin III Regulation, which should be applied also in cases of explicit withdrawal in writing and not only in cases of tacit withdrawal. This is problematic in the view of recent practices in Hungary when detained asylum-seekers withdraw their applications in order to be released from asylum detention. By imposing detention on asylum-seekers returned under the Dublin III Regulation, in practice the refugee authority promotes the option of withdrawal amongst them. This practice can be interpreted as a disciplinary use of detention against those who lodge an asylum claim in Hungary.
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