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Asylum Information Database

Country Report: Hungary

Hungarian Helsinki Committee

2018 Update

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European Council on Refugees and Exiles

Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2018, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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Epim
European Programme for Integration and Migration

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Glossary & List of Abbreviations

Kúria	Hungarian Supreme Court
Rule 39 request	Request under Rule 39 of the Rules of the European Court of Human Rights for interim measures before a case is decided.
BMSZKI	Budapest Methodological Centre of Social Policy and Its Institutions | Budapesti Módszertani Szociális Központ és Intézményei
CJEU	Court of Justice of the European Union
CoE	Council of Europe
COI	Country of origin information
CPT	European Committee for the Prevention of Torture
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRI	European Committee against Racism and Intolerance
ECtHR	European Court of Human Rights
EMN	European Migration Network
HHC	Hungarian Helsinki Committee
IAO	Immigration and Asylum Office
MSF	Médecins sans Frontières
OPCAT	Optional Protocol to the Convention Against Torture
PTSD	Post-traumatic stress disorder
TEGYESZ	Department of Child Protection Services | Területi Gyermekvédelmi Szakszolgálat
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
UNWGAD	United Nations Working Group on Arbitrary Detention

Statistics

Overview of statistical practice

Statistical information on asylum applicants and main countries of origin, as well as overall numbers and outcome of first instance decisions, was made available on a monthly basis by the Immigration and Asylum Office (IAO), although this practice stopped in April 2018.[1] The Hungarian Helsinki Committee (HHC) also published brief statistical overviews on a monthly basis, although their regularity has also become more limited.[2]

Applications and granting of protection status at first instance: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	670	124	70	280	20	590	7.3%	29.2%	2.1%	61.5%

Breakdown by countries of origin of the total numbers

Afghanistan	275	68	10	130	0	230	2.7%	35.1%	0%	62.2%
Iraq	240	22	0	75	5	255	0%	22.4%	1.5%	76.1%
Syria	50	5	0	45	0	10	0%	81.8%	0%	18.1%
Iran	30	8	25	10	0	30	38.4%	15.4%	0%	46.2%
Pakistan	30	7	5	0	0	20	20%	0%	0%	80%

Source: Eurostat. Pending applications by IAO. Rejection includes inadmissibility decisions.

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

Gender/age breakdown of the total number of applicants: 2018

	Number	Percentage
Total number of applicants	670	-
Men	400	59.7%
Women	270	40.3%
Children	360	53.7%
Unaccompanied children	40	5.9%

Source: Eurostat

Comparison between first instance and appeal decision rates: 2018

	First instance		Appeal	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	960	-	284	-
Positive decisions	370	38.5%	154	54.2%
• *Refugee status*	70	7.3%	N/A	N/A
• *Subsidiary protection*	280	29.2%	N/A	N/A
• *Humanitarian protection*	20	2.1%	N/A	N/A
Negative decisions	590	61.5%	61	21.5%

Source: Eurostat; IAO. Rejections cover inadmissibility decisions. Positive decisions at court level concern annulments of first instance decisions.

Overview of the legal framework

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

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Fundamental Law of Hungary,25 April 2011	Magyarország Alaptörvénye, 2011. április 25.	Fundamental Law	https://bit.ly/2SYNBA1 (EN)
Act LXXX of 2007 on Asylum	2007. évi LXXX törvény a menedékjogról	Asylum Act	https://bit.ly/2SWTqhr(HU)
Amended by: Act XX of 2017 on the amendment of certain acts to tighten the procedures conducted on the border	2017. évi XX. törvény a határőrizeti területen lefolytatott eljárás szigorításával kapcsolatos egyes törvények módosításáról	March 2017 amendments	https://bit.ly/2FhfYQp(HU)
Amended by: Act CXLIII of 2017 amending certain acts relating to migration	2017. évi CXLIII. törvény az egyes migrációs tárgyú törvények módosításáról	January 2018 amendments	https://bit.ly/2GucLwy(HU)
Amended by: Act VI of 2018 amending certain laws relating to measures to combat illegal migration	2018. évi VI. törvény egyes törvényeknek a jogellenes bevándorlás elleni intézkedésekkel kapcsolatos módosításáról	July 2018 amendments	https://bit.ly/2XbsrxD(HU)
Amended by: Act CXXXIII of 2018 amending certain acts relating to migration and others	2018. évi CXXXIII. törvény az egyes migrációs tárgyú és kapcsolódó törvények módosításáról	January 2019 amendments	https://bit.ly/2Gvg1Mh(HU)
Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról	TCN Act	https://bit.ly/2TXuOCe(HU)
Act CL of 2016 on General Administrative Code	2016. évi CL. Törvény az általános közigazgatási rendtartásról	GAC	https://bit.ly/2GAaSlO(EN)
Act LXXX of 2003 on Legal Aid	2003. évi LXXX. törvény a jogi segítségnyújtásról	Legal Aid Act	https://bit.ly/2TShrmJ (HU)
Act LV of 1993 on the Hungarian citizenship	1993. évi LV. törvény a magyar állampolgárságról	Citizenship Act	https://bit.ly/2GyGtVc(HU)
Act I of 2017 on the Code of Administrative Court Procedure	2017. évi I. törvény a közigazgatási perrendtartásról	Code on Administrative Litigation	https://bit.ly/2V8bLFD (EN)

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

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Government Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum	301/2007. (XI. 9.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról	Asylum Decree	https://bit.ly/2EgqgBN(HU)
Amended by: Government Decree no. 70/2017. (V.30.) on the amendments of certain governmental decrees to tighten the procedures conducted on the border	70/2017. (III. 31.) Korm. rendelet a határőrizeti területen lefolytatott eljárás szigorításával kapcsolatos egyes kormányrendeletek módosításáról	Decree 70/2017	http://bit.ly/2EIkWZP(HU)
Amended by: Government Decree no.147/2017. (VI. 12.) on the amendments of Government Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum	147/2017. (VI. 12.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról szóló 301/2007. (XI. 9.) Korm. rendelet módosításáról	Decree 147/2017	http://bit.ly/2EFu40X(HU)
Amended by: Government Decree no. 411/2017. (XII. 15.) on the amendments of certain governmental decrees relating to migration and others	411/2017. (XII. 15.) Korm.az egyes migrációs tárgyú és velük összefüggésben egyes további kormányrendeletek módosításáról	Decree 411/2017	https://bit.ly/2Hvqm80 (HU)
Amended by: Government Decree 151/2018 (VII.13.) on the amendments of certain laws in order to carry out duties relating to the support of prosecuted Christians	151/2018. (VIII.13.) Korm. rendelet az üldözött keresztények megsegítésével kapcsolatos feladatok ellátása érdekében szükséges egyes jogszabályok módosításairól	Decree 151/2018	https://bit.ly/2NenhN5(HU)
Amended by: Government Decree 227/2018 (XII.5.) on the amendments of certain governmental decrees relating to the realization of the scholarship program named Scholarship Programme for Christian Youth and to certain tasks carried out by the law enforcement agency in relation to the support for persecuted Christians	227/2018. (XII. 5.) Korm. rendelet az üldözött keresztények megsegítésével kapcsolatos szakhatósági feladatok ellátása érdekében szükséges és az Ösztöndíj program Keresztény Fiataloknak elnevezésű ösztöndíjprogram megvalósításával kapcsolatos egyes kormányrendeletek módosításáról	Decree 227/2018	https://bit.ly/2GWoojp(HU)
Amended by: Government Decree no. 277/2018 (XII.21) on the amendments of certain governmental decrees relating to migration	277/2018. (XII.21.) Korm. rendelet az egyes migrációs tárgyú kormányrendeletek módosításáról	Decree 277/2018	https://bit.ly/2X9kyZA(HU)

Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról	TCN Decree	https://bit.ly/2SMZ8TC (HU)
Interior Minister Decree no. 29/2013 (VI.28.) on the rules of execution of asylum detention and bail	29/2013. (VI. 28.) BM rendelet a menekültügyi őrizet végrehajtásának szabályairól és a menekültügyi óvadékról	Decree 29/2013	https://bit.ly/2GR496u (HU)
Government Decree no. 191/2015 (VII. 21.) on safe countries of origin and safe third countries	191/2015. (VII. 21.) Korm. rendeleta nemzeti szinten biztonságosnak nyilvánított származási országok és biztonságos harmadik országok meghatározásáról	Decree 191/2015	https://bit.ly/2TV7DbJ(HU)
Government Decree no. 41/2016. (III. 9.) on ordering the crisis situation caused by mass migration in relation to the entire territory of Hungary, and other relevant rules concerning the declaration, existence and termination of the crisis situation	41/2016. (III. 9.) Korm. rendeleta tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról	Decree 41/2016	https://bit.ly/2X5C29r(HU)

Overview of the main changes since the previous report update

The report was previously updated in **February 2018**.

A quasi-state of exception introduced into Hungarian law in September 2015, entitled as the “state of crisis due to mass migration”, was again prolonged until 9 March 2019. During this state of crisis special rules apply to third-country nationals irregularly entering and/or staying in Hungary and to those seeking asylum, and certain provisions of Asylum Act are suspended.

Asylum procedure

- **Dublin:** In 2018, no transfers to Hungary were implemented. With regard to outgoing Dublin procedures, improvements were noted in the efforts of the Immigration and Asylum Office (IAO) to organise transfers to other countries.

- **Admissibility:** A new inadmissibility ground was introduced into the Asylum Act in July 2018, consisting of a hybrid between the safe third country and first country of asylum concepts. Compliance of such a ground with the recast Asylum Procedures Directive was raised in a preliminary reference by the Metropolitan Court, while it also led the European Commission to start an infringement procedure. There is no automatic suspensive effect of the appeals against the inadmissible decision based on the new ground. All asylum seekers applying for asylum after July 2018 have received inadmissible decisions, except for the former Prime Minister of North Macedonia who was granted refugee status.

Reception conditions

- **Reception capacity:** No major changes occurred. Still very few asylum seekers reside in open reception centres. By the end of 2018, only 3 persons were accommodated at the open reception centres.

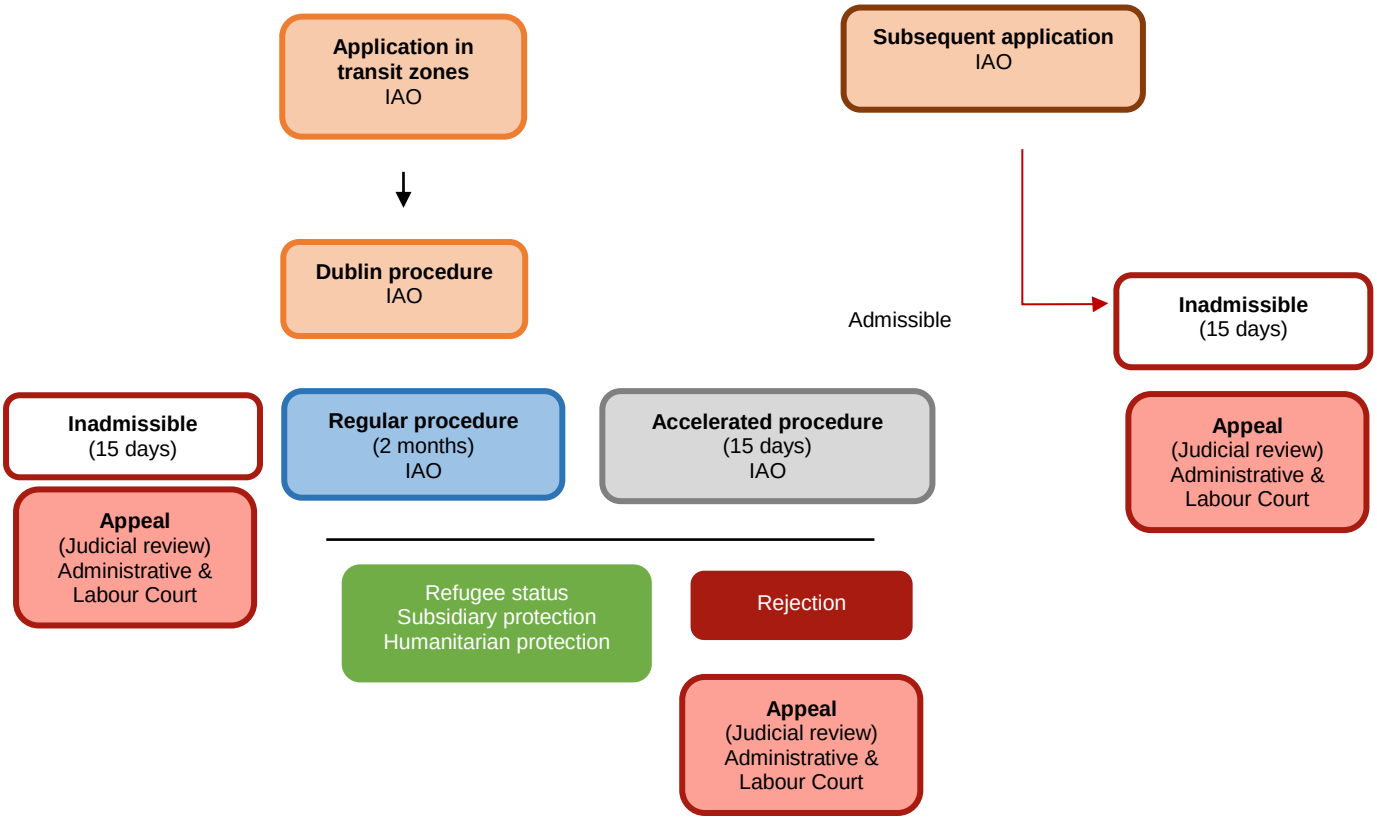
Content of international protection

- **Housing:** Accommodation free of charge is provided exclusively by civil society organisations and church-based organisations. The situation was aggravated by the fact that the Ministry of Interior withdrew all the calls for tenders funded by AMIF in the beginning of 2018. This means that by 30 June 2018 all those programs had ceased of which integration support activity relied on this fund.

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:[3]	☒ Yes	☐ No
▪ Fast-track processing:[4]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☐ Yes	☒ No
❖ Accelerated procedure:[5]	☒ 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. The HHC is aware of unaccompanied children who have been held in the transit zone for more than 80 days, withouth any decision being issued in their case.

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

Stage of the procedure	Competent authority (EN)	Competent authority (HU)
Application at the border	Police Immigration and Asylum Office (IAO)	Rendőrség Bevándorlásiés Menekültügyi Hivatal (BMH)
Application on the territory	Immigration and Asylum Office (IAO)	Bevándorlásiés Menekültügyi Hivatal (BMH)
Dublin (responsibility assessment)	Dublin Coordination Unit, Immigration and Asylum Office (IAO)	Bevándorlásiés Menekültügyi Hivatal (BMH)
Refugee status determination	Immigration and Asylum Office (IAO)	Bevándorlásiés Menekültügyi Hivatal (BMH)
Appeal (Judicial review)	Regional Administrative and Labour Court	Bevándorlásiés Menekültügyi Hivatal (BMH)
Subsequent application (admissibility)	Immigration and Asylum Office (IAO)	Bevándorlásiés Menekültügyi Hivatal (BMH)

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?
Immigration and Asylum Office (IAO)	302	Ministry of Interior	☒ Yes ☐ No

Source: IAO, 12 February 2019.

According to the answer of the IAO, the majority of the case officers received training on interview techniques in asylum procedures of vulnerable asylum seekers and of unaccompanied children. There were also trainings on the indentification of victims of trafficking, integration and corruption, data protection in accordance with the General Data Protection Regulation (GDPR). The case officers were also trained

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

[4] Accelerating the processing of specific caseloads as part of the regular procedure.

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

on the General Administrative Code and on the Schengen Information System. They attanded programmes relating to intercultural training, as well.

5. Short overview of the asylum procedure

A quasi-state of exception operates under Hungarian legislation, entitled “state of crisis due to mass migration”. The state of crisis can be ordered by a government decree, on the joint initiative of the Immigration and Asylum Office (IAO) and the Police, for a maximum of 6 months to certain counties or the entirety of the country. Once in effect, among others, the Hungarian Defence Forces is tasked with the armed protection of the border and with the assistance of the police forces in handling issues related to migration. The state of crisis due to mass migration has been in effect in the two counties bordering Serbia (Bács-Kiskun and Csongrád) since 15 September 2015, in the four counties bordering Croatia, Slovenia and Austria (Baranya, Somogy, Vas, Zala) since 18 September 2015. On 9 March 2016, the state of crisis was extended to the entire territory of Hungary. This has been extended five times since then and is currently in effect until 9 March 2019.

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

- Police are authorised to pushback across the border fence irregularly staying migrants who wish to seek asylum in Hungary from any part of the country, without any legal procedure or opportunity to challenge this measure.
- Asylum applications can only be submitted in the transit zones at the border unless the applicant is already residing lawfully in the territory of Hungary. Asylum seekers are to be held in the transit zones for the entire asylum procedure without any legal basis for detention or judicial remedies.
- All vulnerable persons and unaccompanied asylum-seeking children over 14 years of age are also automatically detained in the transit zones.
- The deadlines to seek judicial review against inadmissibility decisions and rejections of asylum applications decided in accelerated procedures are drastically shortened to 3 days.

The IAO, a government agency under the Ministry of Interior, is in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The IAO is also in charge of operating the transit zones, 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 IAO. The second instance is a judicial review procedure carried out by regional Administrative and Labour Courts, which are not specialised in asylum. There is an inadmissibility process and an accelerated procedure in addition to the normal procedure.

Asylum may only be sought at the border (inside the transit zone). This is due to the current status of mass migration emergency.[6] Only those lawfully staying can apply for asylum in the country. The asylum procedure starts with the submission of an application for asylum in person before the asylum authority.

The asylum procedure starts with assessment of whether a person falls under a Dublin procedure. If this is not the case, the IAO proceeds with an 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 IAO has to make a decision on the merits within 60 days.

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

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

a country where he or she is not exposed to persecution or to serious harm, or in the country through which the applicant arrived to Hungary an adequate level of protection is available.

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

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

Regular procedure: The asylum application starts out with an interview by an asylum officer and an interpreter, usually immediately upon the entry in the transit zone. At that point, biometric data is taken, questions are asked about personal data, the route to Hungary and the main reasons for asking for international protection. Sometimes the IAO will conduct more than one interview with the applicant.

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

Appeal: The applicant may challenge the negative IAO decision by requesting judicial review from the regional Administrative and Labour Court within 8 calendar days and within 3 calendar days in case of inadmissibility and in the accelerated procedure. The judicial review request will have suspensive effect on the IAO decision in the regular procedure. However, in case of inadmissibility it will only have a suspensive effect if the application is declared inadmissible on "safe third country" grounds. In the accelerated procedure, the judicial review has suspensive effect only if the accelerated procedure is applied because the applicant entered Hungary irregularly or extended his or her stay illegally and did not ask for asylum within reasonable time although he or she would have had the chance to do so.

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

Since March 2017, most asylum applications are examined in the transit zones and asylum seekers are required to remain in these transit zones, with the exception of unaccompanied children below the age of 14, who are placed in a childcare facility, and with the exception of those lawfully staying in the territory. In September 2017, the HHC published an information note on the asylum situation in Hungary following two years of successive reforms.[7]

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

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

1.1. Regular entry through transit zones

The barbed-wire fence along the 175km long border section with Serbia was completed on 15 September 2015. A similar barbed-wire fence was erected a month later, on 16 October 2015, at the border with Croatia. So-called "transit zones" have been established as parts of the fence. The two transit zones along the Serbian border are located in **Tompa** and **Röszke**, while **Beremend** and **Letenye** are the transit zones along the Croatian border (these two were never operational). They consist of a series of containers, which host actors in a refugee status determination procedure. The chain of authorities inhabiting the linked containers starts with the police who record the flight route, then, if an asylum application is submitted, a refugee officer to accept it, and finally, a judge in a "court hearing room", who may only be present via an internet link;[8] in the past, a court clerk could also have issued the judgment, but as of 2018 they are no longer entitled to do so.[9] After the construction of the fences, the number of asylum seekers arriving in Hungary dropped significantly. However, this is not due to the people not wishing to enter Hungary because of the fence, but due to the entry quota imposed by the IAO, discussed below. Despite all of the measures taken with the explicit aim of diverting refugee and migrant flows from the Serbian border, this border section continues to be the fourth biggest entry point to Europe.[10]

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 HHC witnessed that only very few asylum seekers were allowed to enter the transit zone, sometimes literally not a single person was let in for hours. In 2016, only 20-30 persons per day were let in at each transit zone.[11] From November 2016, only 10 persons were let in per day and only through working days, due to the changes in working hours of the IAO. In 2017, only 5 persons were let in per day in each transit zone. From 23 January 2018, only one person is let in each transit zone per day.[12] In the first week of July 2018, no asylum seeker was allowed to enter into the transit zones.[13] The above-described policy hinders access to the asylum procedure for most asylum seekers arriving at this border section of the EU.

On 19 July 2018, the European Commission decided to refer Hungary to the Court of Justice of the European Union (CJEU) for non-compliance of its asylum and return legislation with EU law.[14] Among other issues, the Commission considers that Hungarian legislation falls short of the requirements of the recast Asylum Procedures Directive as it only allows asylum applications to be submitted within such transit zones where access is granted only to a limited number of persons and after excessively long waiting periods.

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

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

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

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

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

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

14 European Commission, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', IP 18/4522, 19 July 2018, available at: https://bit.ly/2uMEJ2c.

The IAO decides exactly who can enter the transit zone on a particular day. Beginning in March 2016, an ever-growing number of migrants continued to gather in the "pre-transit zones", which are areas partly on Hungarian territory that are sealed off from the actual transit zones by fences in the direction of Serbia. Here, migrants waited in the hope of entering the territory and the asylum procedure of Hungary in a lawful manner. Approximately one-third of those waiting to access the transit zones were children. Although parts of the pre-transit zones are physically located on Hungarian soil, they are considered to be in "no man's land" by Hungarian authorities, who provided little to nothing to meet basic human needs or human rights. Migrants waited idly in dire conditions.[15]

In autumn 2016, the Serbian authorities decided to terminate the practice of waiting in the pre-transit zone and now all asylum seekers that wish to be put on the waiting list in order to be let to the transit zone in Hungary need to be registered in one of the temporary reception centres in Serbia and wait there until it is their turn to enter the transit zone.[16] The only person staying in the pre-transit zone for longer periods of time is the community leader, as discussed below. People who are about to enter the transit zone are brought to the pre-transit zone usually one day in advance of their entry. Since April 2018, the role of the community leader in the pre-transit zone is shared between the fathers of the families from the Subotica reception centre. They rotate, with each staying for about 4 days in the pre-transit zone. This is necessary in order to prevent people from accessing pre-transit area and jumping the list. In addition, since there is no direct communication between Hungarian and Serbian authorities, fathers are used for communication between the authorities. The fathers stay in the heated tent in **Röszke** and in the abandoned duty free shop in **Tompa**. Hungarian authorities give them food once a day.

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

Several abuses were reported regarding the use of the list.[17] Families with small children enjoy priority over single men and usually some unaccompanied children are also allowed entry each Thursday. However, there are other determining factors when it comes to entry, which are not so clear and this lack of clarity further frustrates those waiting. The HHC believes that these lists should be considered as expressions of intention to seek asylum in Hungary and according to the recast Asylum Procedures Directive, Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible.[18] Having to wait for months in order to be let in the transit zone is therefore clearly against the recast Asylum Procedures Directive. Information on waiting lists was confirmed in several reports.[19]

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

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

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

18 Article 6(2) recast Asylum Procedures Directive.

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

1.2. Irregular entry

Irregular entry into Hungary through the border fence is punishable by actual or suspended terms of imprisonment of up to ten years – and/or the imposition of an expulsion order. The criminal procedure is not suspended when the defendant has made an asylum application during the court hearing, which could have permitted consideration by the court of a defence under Article 31 of the 1951 Refugee Convention. Motions requesting suspension of the criminal proceedings that were submitted by the defendants' legal representatives were systematically rejected by the court on the grounds that eligibility for international protection was not a relevant issue to criminal liability. Individuals who made an asylum application in court were only referred to the IAO after being convicted and sentenced to expulsion. While their asylum applications have suspensive effect, and a "penitentiary judge" can impose a prohibition on enforcement of a court sentence of expulsion where the individual concerned is entitled to international protection,[20] that prohibition does not annul the penal sentence, let alone the conviction. UNHCR thus considers that Hungary's law and practice in relation to the prosecution of asylum seekers for unauthorised crossing of the border fence is likely to be at variance with obligations under international and EU law.[21]

The criminalisation of illegal entry targeting asylum seekers ceased to be of relevance with the 5 July 2016 entry into force of the "8-km rule" discussed below. Between 15 September 2015 and 10 July 2016, over 2,800 criminal procedures started at the Szeged Criminal Court under the new Criminal Code for illegally crossing the border fence. In 2,843 cases, the decisions became final. Since 10 July 2016, only seven cases have been tried for "illegally crossing the border fence". In 2017, no such case was reported. The HHC is not aware of any case in 2018. The National Judicial Office did not provide any information in this regard, as they do not have relevant statistics.[22]

Legal amendments that entered into force on 5 July 2016 allowed the Hungarian police to automatically push back asylum seekers who were apprehended within 8 km of the Serbian-Hungarian or Croatian-Hungarian border to the external side of the border fence, without registering their data or allowing them to submit an asylum claim, in a summary procedure lacking the most basic procedural safeguards (e.g. access to an interpreter or legal assistance).[23] Legalising pushbacks from deep within Hungarian territory denies asylum seekers the right to seek international protection, in breach of international and EU law,[24] and according to the HHC constitutes a violation of Article 4 of Protocol 4 of the European Convention on Human Rights (ECHR).Those pushed back have no practical opportunities to file a complaint. As a result of the legalisation of pushbacks by the "8-km rule", in the period of 5 July and 31 December 2016, 19,057 migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border.[25] These migrants were not only denied the right to apply for international protection, despite most of them coming from war zones such as Syria, Iraq or Afghanistan, but many of them were also physically abused by personnel in uniforms and injured as a consequence. Two HHC cases on collective expulsion addressing the unlawful pushbacks were communicated in 2017 by the European Court of Human Rights (ECtHR).[26]

The Human Rights Committee has criticised this practice and recommended to the Hungarian Government to repeal the pushback law established in June 2016 and the amendments thereto, and to legally ensure that the removal of an individual is always consistent with the State party's *non-refoulement* obligations and to refrain from collective expulsion of aliens and ensure an objective, individualised assessment of the level of protection available in "safe third countries"; and to ensure that force or physical restraint is not applied against migrants, except under strict conditions of necessity and proportionality,

20 See Section 301(6) Act CCXL of 2013 on the implementation of criminal punishments and measures, and Sections 51 and 52 Act II of 2007 on the entry and residence of third-country nationals. See also Section 59(2) Criminal Code, which provides that: "Persons granted asylum may not be expelled."

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

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

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

24 *Ibid*.

25 HHC, *Key asylum figures as of 1 January 2017*, available at: https://goo.gl/KdTy4V.

26 ECtHR, *Khurram v. Hungary*, Application No 12625/17; *H.K. v. Hungary*, Application No 18531/17, Communicated on 21 December 2017.

and ensure that all allegations of use of force against them are promptly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are offered reparation.[27]

GRETA noted that irregular migrants and asylum seekers are groups, which are particularly vulnerable to trafficking. As a consequence, collective expulsions negatively affect the detection of victims of trafficking amongst them and raise grave concerns as regards Hungary's compliance with certain obligations of the Convention, including the positive obligations to identify victims of trafficking and to refer them to assistance, and to conduct a pre-removal risk assessment to ensure compliance with the obligation of *non-refoulement*.[28]

One of the key elements of the amendments that entered into force on 28 March 2017 is that when the state of crisis due to mass migration is in effect, irregularly staying migrants found anywhere in Hungary are to be escorted to the external side of the border fence with Serbia, thus extending the 8-km zone to the entire territory of Hungary. This includes the migrants who have never even been to Serbia before and have entered Hungary through Ukraine or Romania.

In 2017, 9,136 migrants were pushed back from the territory of Hungary to the external side of the border fence and 10,964 migrants were blocked entry at the border fence.[29] 4,151 push backs happened in 2018.The police in Hungary apprehended some 840 migrants in an irregular situation between 1 September and 31 October 2018; this occurred close to the border in all cases. According to the data of the National Headquarters of the Police, these persons were escorted back to the outer side of the fence at the Hungarian-Serbian border.

The European Committee for the Prevention of Torture (CPT) concluded in its latest report on Hungary that although authorities often took photos of the apprehended migrants while escorting them back to the gates along the border fence, such photos were taken randomly and did not serve the purpose of registration. Also in Hungary, the police and the army prevented 241 people from crossing the border into Hungary via the border fence, the National Headquarters of the Police reported.[30]

Since 5 July 2016, the HHC and other organisations working with migrants and refugees, including UNHCR and MSF, have received reports and documented hundreds of individual cases of violence perpetrated against would-be asylum seekers on and around the Hungarian-Serbian border. Common to these accounts is the indiscriminate nature of the violence and the claim that the perpetrators wore uniforms consistent with the Hungarian police and military. The best-known case is that of a young Syrian man who drowned in the river Tisza while attempting to cross into Hungary on 1 June 2016.[31] His surviving brother is represented by the HHC and since a criminal investigation in relation to the tragic incident has been closed, the case is now pending at the ECtHR.[32] The fact that violence against potential asylum seekers is on the rise is further testified by the report of Human Rights Watch, published on 13 July 2016, citing various testimonies about brutality against migrants at the border.[33] Amnesty International researchers interviewed 18 people who entered Hungary irregularly in an attempt to claim asylum, often in groups, and who were pushed back, several violently. None of them had their individual situation assessed to determine the risks to the person or establish their asylum needs first. They were all sent back to Serbia across the border fence – sometimes through the hole they had cut themselves, sometimes through service doors – without any formal procedure. Most of them were informed in English that they

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

28 GRETA, *Report on Hungary*, GRETA(2018)13, 27 April 2018, available at: https://bit.ly/2GxAEY0.

29 HHC, *Key asylum figures as of 1 January 2018*, available at: http://bit.ly/2mkueyK.

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

31 UNHCR, 'UNHCR alarmed at refugee death on Hungary-Serbia border', 6 June 2016, available at: https://goo.gl/T20fj9.

32 ECtHR, *Alhowais Abdullah Mohamed v. Hungary*, Application No 59435/17.

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

needed to wait to enter the "transit zones", if they wished to seek asylum in Hungary, and that this is the only lawful way to enter the country. Some of the interviewees reported that they were shown an information note in their own language, advising them of the same. Most of them were photographed or filmed by police.[34] The doctors of MSF in Serbia treat injuries caused by Hungarian authorities on a daily basis. This shocking reality is evidenced by a set of video testimonies recorded by a Hungarian news portal on 24 August 2016 in English.[35] A Frontex spokesperson has described the situation in an article of the French newspaper Libération on 18 September 2016 as "well-documented abuses on the Hungary-Serbia border".[36] UNHCR also expressed its concerns about Hungary pushing asylum seekers back to Serbia.[37] In 2017, the following reports addressing these issues were published: a HHC report published jointly with regional partners entitled "Pushed Back at the Door",[38] the Oxfam report "A Dangerous 'game'",[39] the MSF report "Games of violence",[40] and the report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary.[41] The CPT published a report on their visit to Hungary in autumn 2017, which confirmed ill-treatment of migrants along the Hungarian-Serbian borders. Several migrants interviewed by the CPT confirmed that they had been physically mistreated by Hungarian police officers in the context of their apprehension and escorting back through the border fence. The CPT delegation observed the signs of the recent traumatic injuries, which, in the view of the delegation's doctor, were consistent with the allegations of mistreatment.[42]

In light of the unprecedented number of reports about violence committed around the Hungarian-Serbian border, the HHC sent an official letter to the Police, urging investigations into the allegations already made on 14 June 2016.[43] The letter referred to, among others, testimonies given by unaccompanied minor asylum seekers, who told the HHC that the Hungarian Police hit and kicked them, and used gas spray against them. One of these children had visible injuries on his nose that he claimed were the result of an attack by a police dog released on him after he had been apprehended. The HHC requested that the Police launch an investigation immediately, and that steps be taken to ensure that police measures are lawful in all cases. On 23 June2016, the Police responded by claiming that they "guarantee humane treatment and the insurance of fundamental human rights in all cases". The letter failed to address any of the reported abuses but promised to "pay particular attention" to instruct those on duty at and around the border to guarantee the lawfulness of police measures.[44]

In 2017, despite the fact that as many as 56 reports on abuse committed against migrants at the border have been filed and that the prosecutor's office has launched 50 investigations, only one member of the police and one member of the army have been convicted (fined) in court.[45]

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

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

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

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

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

39 Oxfam et al., *A dangerous 'game': The pushback of migrants, including refugees, at Europe's borders*, April 2017, available at: http://bit.ly/2oGwxQ9.

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

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

42 CPT, *Report on the visit to Hungary from 20 to 26 October 2017*, CPT/Inf(2018) 42, 18 September 2018, available at: https://bit.ly/2TTgsTq.

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

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

45 444, 'A Honvédségés a rendőrségegy-egybeosztottjátítélték el eddig, mertmigránsokatbántalmazott', 25 August 2017, available in Hungarian at: http://bit.ly/2Fjee9E.

On 19 July 2018, the European Commission decided to refer Hungary to the CJEU for non-compliance of its asylum and return legislation with EU law.[46] The Commission considers that within its territory, Hungary fails to provide effective access to asylum procedures as irregular migrants are escorted back across the border, even if they wish to apply for asylum.

2. 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?

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

The application should be lodged in writing or orally and in person by the person seeking protection at the IAO.[47] If the person lawfully staying in Hungary seeking protection appears before another authority to lodge an application for asylum, that authority should inform the asylum seeker about where to turn to with his or her application. If the asylum claim is made in the course of immigration, petty offence or criminal procedures e.g. at the border or in detention, the proceeding authority (police, Immigration Department of the IAO, local authorities or court) must record the statement and forward it to the asylum authority without delay.

Numbers of applications for international protection are presented below:

Asylum applicants in Hungary						
Year	2013	2014	2015	2016	2017	2018
Number	18,900	42,777	177,135	29,432	3,397	671

Source: IAO

C. Procedures

1. Regular procedure

As of 28 March 2017, asylum applications can only be submitted in the transit zones, with the exception of those staying lawfully in the country. All asylum seekers, excluding unaccompanied children below the age of 14, have to stay at the transit zones for the whole duration of their asylum procedure. The asylum procedure in the transit zone is therefore a regular procedure and no longer a Border Procedure. Provisions regulating border procedure are currently suspended in Hungary, due to the "state of crisis due to mass migration".

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; furthermore, the concept of extraterritoriality of transit zones was clearly rejected by the ECtHR in the

46 European Commission, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', IP 18/4522, 19 July 2018, available at: https://bit.ly/2uMEJ2c.

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

Amuur case.[48] The transit zone and the fence are on Hungarian territory and even those queuing in front of the transit zone's door are standing on Hungarian soil – as also evidenced by border stones clearly indicating the exact border between the two states.[49] On 14 March 2017, the ECtHR issued a long-awaited judgment in the HHC-represented *Ilias and Ahmed v. Hungary* case. The Court confirmed its established jurisprudence that confinement in the transit zones in Hungary amounts to unlawful detention and established the violation of Article 5(1), a violation of Article 5(4) and a violation of Article 13 in conjunction with Article 3 of the Convention due to the lack of effective remedy to complain about the conditions of detention in the transit zone. The government's appeal against the judgment is currently pending at the Grand Chamber of the ECtHR.

The United Nations Working Group on Arbitrary Detention (UNWGAD) in its statement after being denied access to the transit zones in Hungary stated that "There can be no doubt that holding migrants in these 'transit zones' constitutes deprivation of liberty in accordance with international law."[50]

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 2 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2018: 124

The asylum procedure in Hungary starts with an assessment of whether a person falls under a Dublin procedure. If this is not the case, the IAO 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.[51]

The procedural deadline for issuing a decision on the merits is 60 days.[52] The recent amendment of Asylum Act entering into force on 1 January 2018 provides that the head of the IAO may extend this administrative time limit on one occasion before its expiry, by a maximum of 21 days. The following shall not count towards the administrative time limit:

a. periods when the procedure is suspended,
b. periods for remedying deficiencies and making statements,
c. periods needed for the translation of the application and other documents,
d. periods required for expert testimony,
e. duration of the special authority's procedure,
f. periods required to comply with a request.

It is too early to observe the application of this amendment in practice in 2018.

In 2017, the HHC observed that time limits were usually respected. The IAO issues the first decision in around 1.5 to2 months. Syrians without any original ID document receive a decision even faster, in 3-4 weeks or sometimes sooner. However, the HHC is aware of several cases of families with children that were staying in the transit zone for months without any decision despite the deadline being 60 days. The cases of unaccompanied children that are supposed to be privileged under the law are also not always

48 ECtHR, *Amuur v. France*, Application No 19776/92, Judgment of 25 June 1996, para 52.
49 HHC, *No country for refugees*, Information Note, 18 September 2015; ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, available at: http://bit.ly/1NxI9IP.
50 UNWGAD, 'UN human rights experts suspend Hungary visit after access denied', 15 November 2018, available at: https://bit.ly/2B7X5Pu.
51 Section 47(2) Asylum Act.
52 Section 47(3) Asylum Act.

decided within the deadline. The HHC is aware of cases where children would be kept in the transit zone for more than 80 days without any decision. FRA reports (1 May–30 June 2018) that the length of asylum procedures vary significantly, and that in many cases the administrative decisions have been issued several months after the lodging of the asylum claim.[53]

There are cases outside the transit zones where HHC has seen long procedural times (up to 1 year and longer). In 2018, an asylum seeker received the first instance decision after more than 13 months of waiting. In another case, the waiting time was more than 9 months, and after the long waiting period, the delivery of the decision was followed by the launch of a withdrawal of status procedure within one month. In a third case, the applicant had to wait 7 months for a decision. In none of the cases were the applicants or the legal representative provided with official information or reasoning as to why the procedure was extended. They were only informed on the phone upon the call of the legal representative despite of the several written inquiries sent to the IAO.

The HHC observed the general practice that decisions were not notified in time (8 days, or 3 days after March 2017) after their issuance, which is contrary to the Asylum Act.[54]

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

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

Amendments to the Asylum Act that entered into force on 1 January 2018 provide an additional ground for termination of the procedure that is unclear and its application could be problematic: "The refugee authority shall terminate the procedure if the client failed to submit any document requested by the refugee authority in time or failed to comply with the invitation to make a statement within the time limit and, in the absence of the document or statement, the application cannot be decided on."[55] The HHC has not observed any such termination practice.

In parallel with the rejection decision, the IAO 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.

In practice, according to the HHC, the average length of an asylum procedure, including both the first-instance procedure conducted by the IAO and the judicial review procedure, is 3-6months.

1.2. Prioritised examination and fast-track processing

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

For example in the case of an unaccompanied child who applied for asylum in December 2016, the decision was delivered in July 2017. The reason for prolongation was partly due to the fact that his caretaker had absconded, leaving the child behind, thus causing procedural difficulties in the case. However, in July 2017 a rejection was served to the child, which was quashed by the court in September 2017. Following a second rejection by the IAO, the child left Hungary. The IAO's decision was again quashed by the Court, which forbade the asylum authority from ceasing the procedure in the absence of

53 FRA, *Periodic data collection on the migration situation in the EU*, July 2018, available at: https://bit.ly/2uLK0Id.
54 Section 80/K(3) Asylum Act.
55 Section 32/I Asylum Act.

the child. The procedure is currently still pending due to no response the from National Security Service. At the time of writing the current report, the repeated procedure had already exceeded 60 days and had been prolonged by 21 days.

In case of an asylum seeker detained in an asylum detention or immigration jail, the asylum procedure shall be conducted as a matter of priority. This is usually applied in practice.[56] Note that transit zones are not considered detention by the Government, therefore the prioritisation does not apply there.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

The personal interview of the asylum seeker is mandatory in the asylum procedure. The IAO may omit the personal interview in the following cases, where the asylum seeker:[57]

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

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

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

The quality of the asylum interviews highly depends on the personality of the case officer. Although in most cases, the interview records – especially when legal representative is not present – are vague and lack the resolution of contradictions, the HHC is also aware of an extremely punctual and detailed interview technique applied in **Budapest**. Accordingly, the case officer conducts extensive interviews and usually holds two hearings with the aim that at the second time contradictions are clarified in the light of the country of origin information obtained by then.

Interpretation

Section 36 of the Asylum Act and Section 66 of the Asylum Decree set out rules relating to the right to use one's native language in the procedure and on gender-sensitive interviewing techniques. A person seeking asylum may use their mother tongue or the language 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

56 Section 35/A Asylum Act.
57 Section 43 Asylum Act.

interpreter if the asylum officer speaks the mother tongue of that person or another language understood by him or her, and the asylum seeker consents in writing to not having an interpreter.

Where the applicant requests so, a same-sex interpreter and interviewer must be provided, where this is considered not to hinder the completion of the asylum procedure.[58] For asylum seekers who are facing gender-based persecution and make such a request, this designation is compulsory.[59] Amendments that entered into force on 1 January 2018 secure the right of the applicant to request a case officer and interpreter of the gender of his or her choice on grounds that his or her gender identity is different from the gender registered in the official database.[60] Nevertheless, the HHC is not aware of any gender or vulnerability-specific guidelines applicable to eligibility officers conducting interviews (see Special Procedural Guarantees).

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

There is no specific code of conduct for interpreters in the context of asylum procedures. Many interpreters are not professionally trained on asylum issues. There is no quality assessment performed on their work, nor are there any requirements in order to become an interpreter for the IAO. The IAO is obliged to select the cheapest interpreter from the list, even though his or her quality would not be the best. For example, in the **Vámosszabadi** refugee camp, the HHC lawyer reported that in all his cases regarding Nigerian clients, none of the English interpreters fully understood what the clients said; the lawyer had to help the interpreter. The same happened at the court. There was another case, where the interpreter did not speak English well enough to be able to translate; for example, he did not know the word “asylum”.

In another case before the Budapest Labour Court, the interpreter was from Djibouti, and the client from Somalia did not understand her. The interpreter said the client was lying and the judge decided that there would be no interview. In another case, the client claimed that he converted to Christianity and the interpreter was Muslim. He did not know the expressions needed for the interview, not even in Farsi, not to mention Hungarian, for example disciples, Easter, Christmas and so on. The lawyer had to help him. In 2017, a HHC lawyer reported that an English interpreter was used in order to communicate the decision to the client, who could not properly speak English. The lawyer complained about this, nevertheless, the same interpreter was invited to the Court hearing in **Győr**, where after realising the low level of his English, the judge conducted the procedure with the HHC and IAO’s lawyers helping with the translation for the asylum seeker. It has also been reported that some interpreters tend to add their own comments to the story, which can be either supporting or weakening the claim itself. It even happened that the interpreter would ask further questions on his own motion. A client reported to the HHC that the interpreter forced her to answer even though she did not know the answer to the question. Despite this, the interpreter insisted on getting some kind of answer out of her.

In 2018, the HHC lawyer reported a bad experience with the interpreter in the case of a young Afghan girl detained in the transit zone. The interpreter and the case officer were in **Debrecen**, therefore the interview was conducted through videoconference. The girl talked about sexual violence and the interpreter and the case officer laughed, because the interpreter did not know a word in Hungarian language. In another case, upon the entry of an Afghan family in the **Röszke** transit zone, the interpreter in the police container (which is the first container the asylum seekers enter) told the asylum seeker that they should not choose the NGO attorney they wanted to, but the attorneys provided by the state legal aid system. The same interpreter also started to ask the father in the family why they had to flee Afghanistan, and the father felt very afraid and intimidated speaking about the reasons in front of his family members since he had to flee due to his sexual-emotional orientation. The father also considered the questions of the interpreter very inappropriate because there was no case officer present, and he thought interpreters should not ask questions without an official interview taking place. The same asylum seeker was also humiliated by the laughter of the interpreter who interpreted during his official asylum interview as he was describing the sensitive parts of his asylum story related to his sexual-emotional orientation.

58 Section 66(2) Asylum Decree.
59 Section 66(3) Asylum Decree.
60 Section 66(3a) Asylum Decree.

On the other hand, HHC lawyers are aware of good examples, as well, when upon the request of the converted Christian applicant from Afghanistan the IAO respected the wish of the asylum seeker and appointed a Christian, Hungarian nationality interpreter who spoke perfectly the Farsi language and had a very sensitive manner towards the applicant.

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

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

Videoconferencing

Interviews are frequently conducted through videoconferencing. It happens several times that there are more interpreters present in the same room in **Budapest** and having videoconferences with asylum seekers from the **transit zones**. On account of the noise, it is hard to hear and to concentrate on what the interpreter is saying. In general, the connection is reported as of poor quality, as it is often not working and everyone has to wait. Sometimes it is hard to understand what the person on other side is saying, so both parties have to shout. It is also unnecessary that in order to communicate a decision, a videoconference has to be used, if the case officer is not present at the place of the applicant. It would be easier if the case officer would fax the decision to the IAO officer present at the place of the applicant and he or she would then read it out to the applicant.

In 2017, the HHC lawyer experienced the following: A child asylum seeker was interviewed from the Röszke transit zone through a “Skype interview”. The case officer, translator and the lawyer were at the other end of the line. The minor was sitting in a container in the transit zone. There were at least 2 IAO officers either present or walking in occasionally. Because of the heat, the door was open in the first 30 minutes and there was a policeman standing in front of the door; he could be seen in the camera. The guardian was also present, however he clearly never met the minor before. He was mainly interested in the minutes referring to the fact that he did his legal obligations. The picture quality was good, however the asylum-seeker could only see the translator. Whenever the lawyer asked a question or tried to explain something to him, he tried to lean in so that the client could see him, but at the end of the day, there was still no way to read body language. There was no information form prepared for the interview so the minor only received and signed it at the end of the interview.

Recording

Interviews are not recorded by audio-video equipment. The questions and statements are transcribed verbatim by the asylum officers conducting the interview. The interview transcript is orally translated by the interpreter to the asylum seeker who will have an opportunity to correct it before its finalisation and signature by all present persons. However, the HHC has observed that minutes of the interviews are systematically not read back to the asylum seekers in different locations, e.g. in **Békéscsaba** (which is now closed) and in the **Röszke** and **Tompa** transit zones. Furthermore, there was a case when the Afghan interpreter had so many interviews on the same day that she wanted to leave just before the read-back of the record. There are several cases where the courts would annul the IAO’s first instance decision and to order a new procedure to be carried out due to the inadequate interviews.[61] However, in 2018, the HHC

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

lawyers in the transit zones observed that if they are present, the interview transcripts are always read back to the asylum seeker.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No
2. Average processing time for the appeal body to make a decision: 2-4 months

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

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

Competent court

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

Since April 2018 the **Szeged** Administrative and Labour Court has declared lack of jurisdiction in asylum cases based on the argument that the administrative activity is performed in **Budapest**. Given that the IAO is a Central Office and the territorial organs have no territorial competence, the decisions are issued in Budapest. Therefore, it referred the appeals to the Metropolitan Administrative and Labour Court that became exclusively competent in asylum cases.

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

Time limits

The deadline for lodging a request for judicial review is only 8 days.[62] The drastic decrease of the time limit to challenge the IAO's decision, in force since 1 July 2013, has been sharply criticised by UNHCR and NGOs such as HHC, which have argued that this will jeopardise asylum seekers' access to an effective remedy.[63] For example, the short deadline proved to be problematic when a person receives subsidiary protection and is not sufficiently informed about the opportunity to appeal 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.

Keeping with the deadline proved especially difficult in the case of unaccompanied children since it requires discussions with a lawyer and the arrangement of the minor's personal appearance before the asylum authority. The understaffed Children's Home in **Fót** may find it difficult to carry out these tasks on time. A shortage in cars and drivers was a recurring problem throughout 2018.

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

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. However, in practice, the appeal procedure takes a bit longer, around 3 months or even more, depending on the number of hearings the court holds in a case.

Hearing

The hearing is only mandatory if the person is in detention. And even this is subject to some exceptions, where:[64]

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

At the judicial stage, asylum seekers held in the **transit zones** are not heard if the case is adjudicated by the Metropolitan Court. The reason is that the technical requirements are not met by the court, as the videoconference system is not set up at all and the court would not want to summon the clients – even if there is a credibility issue – from the transit zones, as that would require transport by the police which they deem problematic in terms of costs, time, logistics etc. This was extremely problematic as there was a period from April until November 2018 where the Metropolitan Court had the sole territorial jurisdiction to adjudicate all asylum cases, as mentioned above.

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

62 Section 68 Asylum Act.
63 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.
64 Section 68(4) Asylum Act.

Hearings in asylum procedures are public. Individual court decisions in asylum cases are published on the Hungarian court portal.[65] However, the personal data, including nationality, of the appellant are deleted from the published decisions.

In the summer of 2018, several decisions were issued by the court in which it rejected the appeals of asylum seekers held in the transit zones, claiming that the applicants did not specify the legal harm they had suffered by the IAO decision. The court argued that applicants were represented by legal representatives, therefore the Code on Administrative Litigation did not allow the court to call the applicant to remedy this deficiency. The HHC appealed these decisions, arguing that although the applicants had lawyers, upon submitting the appeal the asylum seekers acted in person and not by their legal representative. The Asylum Act provides that the power of attorney does not cover those acts and statements that must be taken in person.[66] Therefore, the court should have called the applicant to remedy the deficiency.

In December 2018, the Metropolitan Regional Court decided on the appeal and annulled the decision of the Metropolitan Administrative and Labour Court. It agreed with the asylum seeker that regarding the peculiarities of the asylum procedure and the circumstances of the submission of the appeal, the lack of detailed specification of the legal injury could not be the reason for rejecting the appeal.[67] The Court also agreed that at the time of the submission of the appeal the applicant acted in person and not by his legal representative. In January 2019, another council of the Metropolitan Regional Court came to the opposite conclusion and approved the decision of the Metropolitan Administrative and Labour Court. The Court interpreted the power of attorney in a way that it covers the judicial procedure, as well, therefore the applicant is considered as acting with a lawyer at the time of the appeal. The judgment also stated the legal representative was present at the delivery of the decision so the lawyer could have completed the appeal of the asylum seeker.[68]

Since the Szeged Administrative and Labour Court decides again over the appeals submitted from the transit zones as of November 2018, there has been no further rejection based on the incomplete content of the appeal.

The court carries out an assessment of both points of fact and law as they exist at the date when the court's decision is made (only *ex tunc* and not *ex nunc* examination).The court may not alter the decision of the IAO; 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 IAO to conduct a new procedure if necessary.[69] A preliminary reference case is pending at CJEU, raising the question of compatibility of such a remedy with the right to an effective remedy under Article 47 of the EU Charter.[70]

There were 141 appeals submitted against the decisions of the IAO in 2018. In 61 cases, the courts rejected the appeal of the asylum seekers while in 154 cases on the ground of the appeals the courts annulled the decisions of IAO and ordered them to conduct a new procedure. In 59 cases courts terminated the judicial procedure and in 10 cases rejected the appeals as inadmissible.[71]

65 Asylum cases published on the Hungarian court portal are available in Hungarian at: http://bit.ly/1IwxZWq.
66 Section 32/T(4) Asylum Act.
67 Metropolitan Regional Court, Decision 12.Kpkf.671.039/2018/2, 11 December 2018.
68 Metropolitan Regional Court, Decision 3.Kpkf.671.107/.2018/4, 9 January 2019.
69 Section 68(5) Asylum Act.
70 CJEU, Case C-556/17*Torubarov*, Reference of 22 September 2017.
71 Information provided by IAO, 12 February 2019.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☒ With difficulty ☐ No
   - ❖ Does free legal assistance cover:[72] ☒ Representation in interview ☒ Legal advice

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

Under Section 37(3) of the Asylum Act, asylum seekers in need have access to free legal aid according to the rules set out in the Act on Legal Aid Act or by an NGO registered in legal protection. The needs criterion is automatically met, given that asylum seekers are considered in need irrespective of their income or financial situation, merely on the basis of their statement regarding their income and financial situation.[73]

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

Since mid-November 2018, the IAO has been rejecting the power of attorney of the HHC attorney providing legal representation in the transit zones, claiming that the power of attorney is not in compliance with the requirement of the private documents with full probative value, as it did not contain the signature of the interpreter. The referred section requires the power of attorney to contain the reference as to the asylum seeker being informed about its contents by (either of the witnesses or) the counter-signatory.[74] The HHC argues that the authorisation explicitly states that an interpreter informed the applicant about the contents thereof, which is confirmed by the signature of the attorney. Furthermore, the HHC is of the view that this practice is unlawful and has challenged the decisions of IAO before the court. As a result of the judicial review, in January 2019 the Szeged Administrative and Labour Court ruled on the question and confirmed the arguments of the attorney. It declared that the power of attorney is a private document having full probative value and that IAO violated the right to lawyer of the applicant. Therefore, the Court annulled the ruling of IAO and ordered the conduct of a new procedure.[75]

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.

72 This refers both to state-funded and NGO-funded legal assistance.
73 Section 5(2)(d) Legal Aid Act.
74 Section 6(7) Civil Code.
75 Administrative and Labour Court of Szeged, Decision 19.K.27.020/2019/9, 22 January 2019.

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.[76] Legal aid providers may specify which main legal field they specialise in, i.e. whether in criminal law, or civil and public administrative law. As a general rule, beneficiaries of legal aid are free to select a legal aid provider of their own choice. This is facilitated by the legal aid offices around the country, which maintain lists and advise clients according to their specific needs. However, in the transit zone, asylum seekers cannot choose the state legal aid representative from the list.

Since mid-2017, the IAO has been enforcing a new legal approach regarding the representation of asylum seekers. According to Hungarian law, asylum seekers may be represented by persons whose capacity to act has not been limited by the Court. The IAO however argues that asylum seekers may only be represented by attorneys, thereby excluding those lawyers who are not yet members of the Bar Association. This led to the IAO rejecting HHC non-attorney lawyers' authority forms and denying them the right to act on behalf of their clients. The HHC challenged these rejection decisions in Court, which quashed many of the IAO's rejection rulings. These judgments declared that the rejection of authorisations given by asylum seekers to non-attorney lawyers was unlawful since it was in breach of relevant sections of the Asylum Act according to which the representation cannot be limited to attorneys.[77] Some appeals were not examined due to changes in the Court procedure introduced by the Code of Administrative Litigation; a three-judge panel is currently examining the admissibility of a direct appeal by the rejected representative under the Code. Despite the court judgments, the IAO has not given up with its unlawful practice and has been obstructing the right of asylum seekers to legal representation throughout the year 2018. However, in December 2018, a non-attorney lawyer was allowed to represent his client, although there was no formal communication from the IAO on reversing their practice.

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

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

Since 1 September 2016, the Legal Aid Service is run by the Ministry of Interior. In 2018, state legal aid in extrajudicial procedures was provided in 380 asylum cases.[78]

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76 Chapter VIII Legal Aid Act.

77 See e.g. Administrative and Labour Court of Szeged, Decision 210.Kpk.46.217/2017/8, 9 January 2018; 24.K.31.364/2018/9, 21 June 2018; 44.K.31.717/2018/7, 11 July 2018; 33.K.32.469/2018/5, 30 August 2018; 45.K.30.841/2018/8,14 September 2018; 45.K.30.838/2018/9, 14 September 2018; 45.K.30.845/2018/9, 14 September 2018.

78 Information provided by the Ministry of Interior, 24 January 2019.

State-funded legal aid in asylum procedures: 2018		
	Extrajudicial procedures	Court procedures
Total requests made	**386**	**38**
Bács-Kiskun County (Tompa)	199	3
Csongrád County (Röszke)	166	34
Total requests granted	**380**	**7**
Bács-Kiskun County (Tompa)	199	0
Csongrád County (Röszke)	166	6

Source: Ministry of Interior, 24 January 2019.

The Ministry of Interior does not have data as to the rejections' reasons. The figures clearly show that despite the need for an attorney in court procedures, only a handful of asylum seekers were granted a representative. Furthermore, according to the Ministry of Interior, in asylum cases there were only five persons providing legal aid throughout the year.

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.

In 2018, despite the continuous governmental attacks on the organisation and the significant drop in the numbers of asylum seekers, the HHC provided legal counselling to 348 asylum seekers. Among these cases, the HHC provided legal representation to 248 asylum seekers. Out of this number, 60 asylum seekers received international protection last year, while 84% of all asylum appeals were successful in court where applicants were represented by the HHC.

2. Dublin

2.1. General

The Dublin Unit has 11 IAO staff members.

Dublin statistics: 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	276	53	**Total**	2,662	0
Bulgaria	209	0	:	:	
Germany	33	26	:	:	
Austria	7	12	:	:	
Italy	6	5	:	:	

Source: IAO

In 2018, no asylum seeker was transferred to Hungary.

Application of the Dublin criteria

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

However, in one case, the HHC represented in the asylum procedure an asylum seeker who was in a criminal procedure in Hungary and his family members were asylum seekers in Austria. The Hungarian Dublin Unit refused to start the Dublin procedure, saying that Dublin cannot be applied while the applicant is in a criminal procedure. After the intervention of the HHC lawyer, the Dublin Unit finally sent a take charge request to Austria, 1.5 month after his application for asylum. Due to the very slow procedure in Austria, the applicant could only join his family after 5.5 months since the start of the Dublin procedure.

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

The Dublin Unit accepts documents (birth certificates, national ID) without translation and transferred them to the requested Member State's authorities in a speedy manner. Communication between Dublin caseworkers and HHC lawyers was good and constructive, both sides working to realise transfers swiftly.

The HHC is aware of one case from 2017 when a DNA test was used to verify the family link between two brothers. The costs of the test were not borne by the applicant. The IAO was evidently not sure of the procedural steps that needed to be taken, which resulted in the HHC taking over many of the practical aspects of the case's management (e.g. sending the sample materials to the Belgian authorities).

The Dublin Unit also ceased its practice of relying on Article 17(2) in the cases of unaccompanied children and instead started referring to Article 8. Despite the positive changes at the Hungarian Dublin Unit, it became evident in 2018 that Dublin transfers could hardly take place without the active involvement of competent lawyers. HHC lawyers and attorneys experienced an increasingly strict and negligent attitude from the authorities of Austria, Germany and France.

Before 2018, the Hungarian authorities refused to apply Article 19(2) of the Dublin III Regulation with regard to Bulgaria in cases of asylum seekers who have waited more than 3 months in Serbia before being admitted to the transit zone. According to Article 19(2), the responsibility of Bulgaria should have ceased in such situations, but the Hungarian authorities argued that this is not something that the applicants can rely on, but it can only be invoked by Bulgaria. Bulgaria in most cases either does not respond to Dublin request and therefore the responsibility is assumed, or it does not invoke Article 19(2).This practice changed in 2018.The HHC witnessed cases where the courts would quash a Dublin decision and accept the argument of tree-month stay outside of the EU,[79] as well as cases where responsibility was directly established by the IAO.

The dependent persons and discretionary clauses

Hungary decided in a total of 227 cases[80] in 2017 and in 82 cases in 2018 to examine an application for international protection itself.[81]

In 2017, Hungary established the responsibility of other Member States in 2 cases under the "humanitarian clause". Pursuant to the humanitarian clause of Dublin Regulation 14 requests by other Member States were sent to Hungary in 2017. There were no cases in 2017 where "sovereignty clause" or the dependent persons clause were applied.[82] Unlike in the preceding years, the IAO refused to provide the data regarding 2018, claiming that they do not have them in the form requested by the HHC. Given that the provision of data would be costly, the IAO requested the HHC to pay for the request.[83]

79 See e.g. Administrative and Labour Court of Szeged, Decision 11.K.27.085/2018/9, 23 February 2018.
80 Once in relation to **Germany**, at another time regarding **Bulgaria** and in 225 cases the IAO examined the application in relation to **Greece**.
81 Information provided by IAO, 12 February 2018; 12 February 2019.
82 Information provided by IAO, 12 February 2018.
83 Information provided by IAO, 12 February 2019.

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

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?[84] Varies from case to case

Asylum seekers are systematically fingerprinted and their data is stored in Eurodac by the police authorities. However, during the large-scale influx of asylum seekers in 2015 and 2016, the IAO 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. No such cases were reported since then. Where an asylum seeker refuses to have his or her fingerprints taken, this can be a ground for an accelerated procedure,[85] or the IAO may proceed with taking a decision on the merits of the application without conducting a personal interview.[86]

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.[87] The suspension ruling cannot be subject to individual appeal.[88] 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 IAO 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.

Individualised guarantees

The IAO reports that it notes the existence of vulnerability factors already in the request sent to the other EU Member State and, if necessary, asks for individual guarantees. Nonetheless, the IAO does not have any statistics on the number of requests of individual guarantees. The request of individual guarantees concerns the treatment and the accommodation – especially the possibility of detention – of the transferred person. The inquiry furthermore includes questions about access to the asylum procedure, legal aid, medical and psychological services and about the appropriateness of material reception conditions.

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

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84 For example in cases of unaccompanied children **Norway** was proven to be very fast (a week) and **Germany** also quite fast (2-3 weeks). **Austria** on the other hand is very slow and transfers to **Bulgaria** can take longer as well.

85 Section 51(7)(i) Asylum Act.

86 Section 66(2)(f) Asylum Act.

87 Section 49(2) Asylum Act.

88 Section 49(3) Asylum Act.

Transfers

If another EU Member State accepts responsibility for the asylum applicant, the IAO has to issue a decision on the transfer within 8 days, and this time limit is complied with in practice.[89] Once the IAO issues a Dublin decision, the asylum seeker can no longer withdraw his or her asylum application.[90]

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

The transfer procedure to the responsible Member State is organised by the Dublin Unit of the IAO, in cooperation with the receiving Member State, but the actual transfer is performed by the police. In case of air transfer, the police assist with boarding the foreigner on the airplane, and – if the foreigner's behaviour or his or her personal circumstances such as age do not require it – the foreigner travels without escorts. Unaccompanied minors travel with their legal guardian who hands them over to the authorities of the receiving Member State. Otherwise, the person will be accompanied by Hungarian police escorts. In case of land transfers, the staff of the police hand over the foreigner directly to the authorities of the other state. According to HHC's experience, voluntary transfers are rare. There is no official information on the duration of the transfer.

In 2018, Hungary issued 276 outgoing requests and carried out 53 transfers, thereby indicating a 19.2% transfer rate.

2.3. Personal interview

Indicators: Dublin: Personal Interview

☐ Same as regular procedure

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

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

Until recently, according to the HHC's experience, asylum seekers were rarely asked about the reasons for leaving another EU Member State. This was particularly problematic because the IAO takes the decision on transfer without being aware of any potential problems that the applicant could have experienced in the responsible Member State. This problem further escalates at the appeal stage since there the hearing is excluded by law. Therefore, asylum seekers never actually got a chance to explain why they believe return to a responsible Member State would violate their rights. In one case for example, the applicant did not even have a regular interview, the IAO only checked his fingerprints and issued a Dublin transfer decision for **Greece**. The case reached the Court only after 8 months because of the delay in communication of the Dublin decision to the applicant and finally the court quashed the decision due to the procedural mistakes.[91] In another case, the applicant was asked during the interview about Serbia and informed that Serbia is considered as a safe third country and that he had 3 days to submit the additional evidence why his return to Serbia would not be safe. After that, the applicant received a Dublin decision ordering his transfer to Greece.

89 Section 83(3) Asylum Decree.
90 Section 49(4) Asylum Act.
91 Metropolitan Court, Decision No 35.Kpk.46.367/2016/6.

In 2018, the HHC observed that the interview questions did touch upon the conditions in the EU countries on the applicants' journey.

2.4. Appeal

Indicators: Dublin: Appeal
☐ Same 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.[92] 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.[93] The HHC's attorney has observed that sometimes in **Békéscsaba**, an asylum detention centre that is now closed, the IAO did not inform the asylum seeker of the 3-day deadline for a judicial review.

The request for review shall be submitted to the IAO. The IAO shall forward the request for review, together with the documents of the case and its counter-application, to the court with no delay.[94] In practice however, the HHC has observed cases where the Dublin Unit of the IAO only forwarded the appeals to the court after several months. This significantly prolonged already very long Dublin procedures. For example in one case, the Dublin Unit waited 5 months before forwarding the appeal of an Afghan family, whose husband was seriously traumatised. HHC as well as UNHCR raised these problems with the IAO and finally the head of the Dublin Unit was replaced. The HHC observes that since the end of 2016, the appeals are forwarded to the court faster and since then no such problems were observed.

The court can examine points of fact and law of the case, however only on the basis of available documents. This has been interpreted by the courts as precluding them from accepting any new evidence that were not submitted to the IAO already. This kind of interpretation makes legal representation in such cases meaningless, since the court's assessment is based on the laws and facts as they stood at the time of the IAO's decision and the court does not at all examine the country information on the quality of the asylum system and reception conditions for asylum seekers in responsible Member State submitted by the asylum seeker's representative in the judicial procedure. The court has to render a decision within 8 calendar days.[95] 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.[96] This was particularly problematic in the past, since the asylum seeker was usually not asked in the interview by the IAO about the reasons why he or she left the responsible Member State and, since the court does not hold a hearing, this information never reaches the court either. In 2018, the HHC observed that the interview questions did touch upon the conditions in the EU countries on the applicants' journey. Asylum seekers were asked regarding the Member States they transited during their route about the following: "For how long and where did you stay there? What did you do meanwhile? Why you did not apply for asylum? Did you consider it as a safe country? Why do you think it is not safe? What would happen to you upon your return there? Did you try to apply for accommodation in a reception centre? What kind of documents were you issued?"

92 Section 49(7) Asylum Act.
93 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.
94 Section 49(7) Asylum Act.
95 Section 49(8) Asylum Act.
96 Section 49(8) Asylum Act.

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,[97] according to the TCN Act and Asylum Act this request does not have suspensive effect either.[98] However, the Director-General of the IAO issued an internal instruction, stating that if a person requests for suspensive effect, the transfer should not be carried out until the court decides on the request for suspensive effect.[99] However, it seems worrying that despite the clear violation of the Dublin III Regulation, the controversial provision was not amended in the scope of the several recent amendments of the Asylum Act.

The HHC's experience shows that the courts often do not assess the reception conditions in the receiving country, nor the individual circumstances of the applicant. Further on, the court decisions were often delivered by the court clerk and not the judge. However, this has changed from 2018, since according to the new amendments the clerks can no longer issue judgments.[100]

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

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

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

Greece

Until May 2016, because of the European Court of Human Rights (ECtHR)'s ruling in *M.S.S. v. Belgium and Greece*,[101] transfers to Greece have occurred only if a person consented to the transfer. However, in May 2016, the IAO started to issue Dublin decisions on returns to Greece again. The IAO was of the opinion that the *M.S.S.* case was no longer applicable, since Greece had received substantial financial

97 Article 27(3) Dublin III Regulation.
98 Section 49(9) Asylum Act.
99 Information provided by the Dublin Unit based on the HHC's request, March 2014. See also EASO, *Description of the Hungarian asylum system*, May 2015, 6.
100 Section 94 of Act CXLIII of 2017 amending certain acts relating to migration.
101 ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

support and the reception conditions in Greece were not worse than in some other EU countries. In some cases, the HHC lawyers successfully challenged such decisions in the domestic courts and in two cases the HHC obtained Rule 39 interim measures from the ECtHR, because the domestic courts confirmed the transfer decision of the IAO.[102] In both cases, the court decision was not issued by a judge but a court secretary. Both cases were struck out in 2017 because the applicants left Hungary and the Court was of the opinion that they are no longer at risk of being sent back to Greece because of the constrained resumption of Dublin transfers to Greece and the cautious treatment of transfers to Hungary.[103]

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

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

Bulgaria

Hungary has not suspended transfers to Bulgaria, even after UNHCR's call in January 2014 to temporarily suspend such transfers because of the risk of inhuman and degrading treatment due to systemic deficiencies in reception conditions and asylum procedures in Bulgaria.[104] The HHC lawyers in 2016 obtained two interim measures from the United Nations Human Rights Committee (UNHRC) regarding returns of persons with PTSD to Bulgaria.[105] In 2017, another interim measure was granted by the UNHRC, but the government did not respect the granted interim measure and deported the applicant to Bulgaria. All three cases are still pending. Meanwhile, in one of the three cases the IAO established the responsibility of Hungary based on Article 29(1) and (2) of the Dublin Regulation and is currently conducting the asylum procedure on the merits.

The HHC is aware of a positive decision from the Szeged Court, which stopped a transfer of an Iraqi family with four small children to Bulgaria under the Dublin III Regulation. The wife in the family was 8 months pregnant with the fifth child when the Szeged Administrative and Labour Court ruled on 3 July 2017 that due to her pregnancy, they were in need of special treatment and therefore their transfer to Bulgaria could jeopardize the life of the unborn baby and the wife, which lead the court to the conclusion that their transfer would be unlawful.[106]

In a case of two brothers, the Szeged Administrative and Labour Court annulled a Dublin decision in 2018, reasoning that since one brother was under 14, Hungary is responsible. As to the other brother, the Court applied Article 10 of the Dublin Regulation.[107]

In another case, a four-member Afghan family arrived to the transit zone in 2016 through Bulgaria where they had been fingerprinted. The IAO contacted the Bulgarian authorities regarding their transfer and the family was awaiting a decision. According to the regulations in place at that time, they were released from the transit zone after 28 days and transferred to the open facility in Vámosszabadi. They left the facility for Austria and the family stayed in Vienna for six months. Following that, the Austrian authorities transferred the mother and one child to Bulgaria under the Dublin III Regulation. At that time, the woman was 7months pregnant. The father and the other child continued their way to Germany, while the pregnant mother with a child was in Bulgaria. From there, she went back to Serbia with her child, where she gave birth. The mother and the two children stayed in Serbia for 8 months waiting to enter Hungary. They re-entered the transit zone on 11 July 2017, where she and the older child were considered as subsequent applicants, and thus according to the current legislation ineligible to receive any food, only shelter. It was

102 HHC, *Hungary: Update on Dublin transfers*, 14 December 2016, available at: https://goo.gl/Fm00tF.
103 ECtHR, *M.S. v. Hungary*, Application No 64194/16 and *H.J. v. Hungary*, Application No 70984/16.
104 See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014, available at: http://bit.ly/1dsMr2Y.
105 See e.g. Human Rights Committee, *B. v. Hungary*, Communication No 2901/2016, 9 December 2016.
106 Administrative and Labour Court of Szeged, Decision No 11.Kpk.27.469/2017/12, 3 July 2017.
107 Administrative and Labour Court of Szeged, Decision No 4. 10.K.27.051/2018/5, 7 February 2018.

only the new-born baby who could receive food. The breastfeeding mother and the small child had been starving in the transit zone for at least a week before the Baptists Charity started providing food for them. The Hungarian authorities wanted to send the mother and the two children to Germany under the Dublin Regulation, to be reunited with the father and the other child. The German authorities however informed the IAO that they intended to send the father and the child back to Bulgaria based on their fingerprints. Therefore, the Hungarian authorities decided to follow this example and sent a request to Bulgaria to take the family back. Bulgaria accepted responsibility. The mother with the two children was then released on 27 August 2017 from the transit zone and stayed in a semi-open community shelter in Balassagyarmat. In the meantime, the German authorities decided to recognise the father and the child in Germany as refugees. The HHC lawyer encouraged the Hungarian Unit to re-send the take charge request to Germany and on 16 November 2017, Germany accepted responsibility for the mother and the two children.

The HHC observed that in 2018 Bulgaria stopped accepting responsibility for requests sent by the Dublin Unit.

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

2.7. The situation of Dublin returnees

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

The following situations are applicable to Dublin returnees:

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

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

(c) The asylum procedure would also not continue, when the returned foreigner had previously received a negative decision and did not seek judicial review. This is problematic when the IAO 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 IAO, the applicant only has a right to request a judicial review in case the decision has not yet become legally binding. Since a decision rejecting the application becomes binding once the deadline for seeking judicial review has passed without such a request being submitted, the HHC believes that the Hungarian practice is in breach of the Dublin III Regulation because in such cases Dublin returnee applicants are not afforded an opportunity to seek judicial review after their return to Hungary.

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

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

Since the enactment of legislative amendments to the Asylum Act in 2015 and 2017 and ensuing practice, administrative authorities and courts in at least 15 countries have ruled against Dublin transfers to Hungary. At least 8 countries (Czech Republic, Finland, Italy, the Netherlands, Norway, Slovakia, Switzerland, United Kingdom) have suspended transfers to Hungary as a matter of policy.[108] In 2017, UNHCR also released a statement on halting Dublin transfers to Hungary.[109]

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

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

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

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

In 2018, the IAO issued 162 inadmissibility decisions. However, the IAO did not provide detailed information on the grounds of inadmissibility decisions, claiming that it does not have data in the requested form.[110]

A new inadmissibility ground, a hybrid of the concepts of "safe third country" and "first country of asylum", is in effect since 1 July 2018.[111] Automatic inadmissibility of asylum applications based on the new ground has now become the norm (see Hybrid Safe Third Country / First Country of Asylum).

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

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108 For an overview of related case law, see HHC, *Summary of bans on / stopping of Dublin returns to Hungary as of 16 May 2018*, available at: https://bit.ly/2s2QjWB.

109 UNHCR, 'UNHCR urges suspension of transfers of asylum-seekers to Hungary under Dublin', 10 April 2017, available at: http://bit.ly/2EIcF3R.

110 Information provided by IAO, 12 February 2019. The IAO requested the HHC to cover the costs of provision of data on the number of inadmissible decisions based on the "safe third country" concept.

111 Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.

3.2. Personal interview

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

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive
     - ○ 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.[112] The March 2017 amendment to the Asylum Act further shortened the appeal time to 3 calendar days.[113] Judicial review is carried out by the same Regional Administrative and Labour Court that considers other asylum cases. The court's review shall include a complete examination of both the facts and the legal aspects, but only as they exist at the date when the authority's decision is made.[114] The applicant therefore cannot refer to new facts or new circumstances during the judicial review procedure. This also means that if the applicant did not present any country of origin information (COI) reports during the first instance procedure, or the IAO did not refer to these on their own, the applicant cannot present these reports at the judicial review procedure, despite the fact that these reports already existed before and were publicly available. A hearing is not mandatory; it only takes place "in case of need".[115] Moreover, the review procedure in admissibility cases differs from those rejected on the merits, since the court must render a decision within 8 days, instead of 60.

A request for judicial review against the IAO decision declaring an application inadmissible has no suspensive effect, except for judicial review regarding inadmissible applications based on safe third country grounds.[116]

There is no automatic suspensive effect of the appeals against an inadmissible decision based on the ground introduced in July 2018 (see Hybrid Safe Third Country / First Country of Asylum). At the beginning of the use of this inadmissibility ground in August 2018, the alien policing procedure started to run against the rejected asylum seekers, despite them asking for suspensive effect in their appeals.[117] Although those applicants who submit a court appeal against an inadmissibility decision still have the right to remain on the territory of Hungary,[118] they were expelled and ordered to stay in the transit zone, where they were denied access to food.[119]

The IAO did not consider that it was obliged to provide food to foreigners under alien policing procedures in the transit zones. The IAO argued that the government decree on the implementation of alien policing procedures only prescribes the provision of food in community shelters, and does not specifically mention the transit zones in this regard.[120] The HHC requested Rule 39 in five cases and the ECtHR ordered the

112 Section 53(3) Asylum Act.
113 Section 80/K Asylum Act.
114 Section 53(4) Asylum Act.
115 Section 53(4) Asylum Act.
116 Section 53(6) Asylum Act.
117 Based on Section 52 Code on Administrative Litigation.
118 Article 46(5) recast Asylum Procedures Directive.
119 HHC, *Asylum-seekers with Inadmissible Claims are Denied Food in Transit Zones at Border,* 17 August 2018, available at: https://bit.ly/2Egsz7B.
120 Section 135 TCN Decree.

Hungarian Government to provide food for the applicants. After these successful Rule 39 cases, this clearly inhuman treatment and absurd legal situation stopped.[121] The Government in its response to the Rule 39interim measures stated that it had "misinterpreted" the law. Currently rejected applicants that appeal their inadmissibility decision do get food in the transit zone. The alien policing procedure is still started, but it is immediately suspended because of the appeal. However, foreigners in the alien policing procedure, whose asylum cases are no longer pending still do not receive food(see Conditions in Detention Facilities). The HHC obtained two interim measures based on Rule 39 in early 2019, ordering the Government to provide food to the applicants.

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.[122]

The European Commission launched an infringement procedure against Hungary for the violation of asylum-related EU law in December 2015, after a record fast preparatory process. Regarding the asylum procedure, the Commission is concerned that there is no possibility to refer to new facts and circumstances in the context of appeals and that Hungary is not automatically suspending decisions in case of appeals, effectively forcing applicants to leave their territory before the time limit for lodging an appeal expires, or before an appeal has been heard. Further on, the Commission is also concerned as to the fact that, under the new Hungarian law dealing with the judicial review of decisions rejecting an asylum application, a personal hearing of the applicants is optional. By the end of 2017, the European Commission decided to move forward on the infringement procedures concerning Hungarian asylum law. On 19 July 2018, the European Commission decided to refer Hungary to the CJEU for non-compliance of its asylum and return legislation with EU law.[123]

3.4. Legal assistance

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

4. Border procedure (border and transit zones)

In 2017, the border procedure was used only until the amendments to the Asylum Act entered into force on 28 March 2017. The amendments prescribe that due to the current state of mass migration emergency the provisions on border procedures detailed below are no longer applicable. In 2018, the use of border procedure is still suspended.[124]

5. Accelerated procedure

The Asylum Act lays down an accelerated procedure, where the IAO is expected to pass a decision within the short timeframe of 15 days.[125]

121 HHC, 'All asylum seekers finally get food in the transit zones at the border', 23 August 2018, available at: https://bit.ly/2S87D6U.
122 Section 53(5) Asylum Act.
123 European Commission, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', IP 18/4522, 19 July 2018, available at: https://bit.ly/2uMEJ2c.
124 For more details, see AIDA, Country Report Hungary, 2017 Update, February 2018, 41 et seq.
125 Section 47(2) Asylum Act.

The law provides 10 different grounds for referring an admissible asylum claim into an accelerated procedure,[126] where the applicant:

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

The application cannot be rejected solely on the grounds of failing to submit an application within a reasonable time.[127]

In accelerated proceedings, the IAO, with the exception of the case when the applicant originates from a safe country of origin, shall assess the merits of the application for recognition in order to establish whether the criteria for recognition as a refugee or beneficiary of subsidiary protection exist.[128]

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.[129] Where the safe country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.[130]

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.[131]

Besides, despite the possibility to request for the suspension of the execution of the expulsion, the IAO starts the execution of the expulsion procedure before the 7 days available for submitting an appeal against the negative decision in accelerated procedures or inadmissible cases. As a result, asylum

126 Section 51(7) Asylum Act.
127 Section 51(8) Asylum Act.
128 Section 51(9) Asylum Act.
129 Section 51(11) Asylum Act.
130 Section 51A Asylum Act.
131 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.

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

15 days for processing a first-time asylum application is – as a general rule – insufficient time period for ensuring the indispensable requirements of such a procedure, including finding the right interpreter, conducting a proper asylum interview, obtaining individualised and high-quality country information, obtaining – if necessary –medical or other specific evidence, and an eventual follow-up interview allowing the asylum seeker to react on adverse credibility findings or legal conclusions.[132] 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.[133]

Also in contradiction to the relevant EU rule, Hungarian law does not set forth any specific safeguard that would prevent the undue application of accelerated procedures to asylum seekers in need of special procedural guarantees.[134]

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

In 2018, the accelerated procedure was not used.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

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

Under the Asylum Act, a person with special needs can be an "unaccompanied minor or a vulnerable person, in particular, a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has suffered from torture, rape or any other grave form of psychological, physical or sexual violence, found, after proper individual evaluation, to have special needs because of his/her individual situation".[135] Hungarian law does not explicitly include victims of human trafficking, persons suffering of serious illnesses and persons with mental disorders in the definition of vulnerable asylum seekers.

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

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

134 Recital 30 recast Asylum Procedures Directive.

135 Section 2(k) Asylum Act.

1.1. Screening of vulnerability

Although both the Asylum Act and the Asylum Decree provide that the special needs of certain asylum seekers should be addressed,[136] there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons. The Decree only foresees the obligation of the authority to consider whether the special rules for vulnerable asylum seekers are applicable in the given individual case. However, no procedural framework has been elaborated to implement this provision in practice.[137] Hungarian law also fails to provide a timeframe within which the asylum authority shall carry out this assessment, nor does it clarify in which phase of the proceedings this shall take place.

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

A medical or psychological expert may be involved to determine the need for special treatment. The applicant should be informed in simple and understandable language about the examination and its consequences. The applicant has to consent to the examination, however, if no consent is given, the provisions applicable to persons with special needs will not apply to the case.[138] According to the HHC's lawyers it is up to the legal representative to argue that the applicant is vulnerable, which may be then considered by the caseworker or it may still be disregarded. In the latter case, the lack of proper assessment of the facts of the case (such as individual vulnerability) may lead to the annulment of the decision in the judicial review phase.

1.2. Age assessment of unaccompanied children

The law does not provide for an identification mechanism for unaccompanied children. The Asylum Act only foresees that an age assessment can be carried out in case there are doubts as to the alleged age of the applicant.[139] In case of such uncertainty, the asylum officer, without an obligation to inform the applicant of the reasons, may order an age assessment to be conducted. Therefore, decisions concerning the need for an age assessment may be considered arbitrary.

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

The asylum application cannot be refused on the ground that the person did not consent to the age assessment.[140] However, as a consequence most of the provisions relating to children may not be applied in the case.[141]

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

136 Section 4(3) Asylum Act.
137 Section 3(1) Asylum Decree.
138 Section 3 Asylum Decree.
139 Section 44(1) Asylum Act.
140 Section 44(2) Asylum Act.
141 Section 44(3) Asylum Act.

Since the entry into force of the new legal regime in March 2017, age assessment practices became even more important since the law differentiates between unaccompanied children below and above the age of 14. The consequences are severe: erroneous assessment of the applicant's age may result on his or her confinement in the transit zone, which the HHC considers unlawful detention. The military doctor does not possess any specific professional knowledge that would make him appropriate to assess the age of asylum seekers, let alone differentiate between a 14 and a 15 year old. The practice of age assessment has been criticised by the CPT among others.[142] As is explained at length in the third party intervention of the AIRE Centre, Dutch Council for Refugees and ECRE in the *Darboe and Camara v. Italy* case,[143] there is currently a broad consensus among medics that existing age assessment methods alone cannot narrow down the age of the applicant to an adequate range to be relied on in the asylum procedure. The margin of error is the broadest among those around 15 years of age. It can therefore be easily seen that carrying out an age assessment procedure with the aim to clearly identify whether a child is under or above the age of 14 is highly problematic.

The previous updates of this report went to great lengths to explain why the methods used by the IAO are inadequate. Since the entry into force of the new law in March 2017, age assessment must be carried out in the transit zones, which are not physically equipped for such purposes. The standards have therefore fallen even lower since the last report was published. Based on interviews with unaccompanied minors, the HHC lawyers found that in reality the "age assessment" takes mere minutes, during which the military doctor simply measures the applicants' height, looks at their teeth, measures the size of their hips and examines the shape of their body (whether it "resembles that of a child or more like that of an adolescent") alongside with signs of their sexual maturity (e.g. pubic hair, size of breasts). The HHC is of the opinion that this practice is highly unprofessional and is in breach of the fundamental rights of children.[144]

Up to the time of writing, no protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the IAO. On several occasions (conferences, roundtables etc.), the IAO denied its responsibility to adopt such a protocol, stating that age assessment is a medical question, which is beyond its professional scope or competence. The police elaborated a non-binding protocol for the purpose of police-ordered age assessment examinations that provide a checklist to be followed by doctors who are commissioned to carry out the examination.[145] This protocol, which was published in 2014, would *not* take into account the psychosocial or intercultural elements of age assessment either. The protocol only foresees that in case the applicant (the subject of the age assessment) is suspected to be a victim of sexual violence, follow-up assistance from a psychologist may be requested (but this is not automatic and the HHC has never assisted a case where the authorities would refer the applicant to a psychologist *ex officio*).

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

There is no direct remedy to challenge the age assessment opinion. It can only be challenged through the appeal against a negative decision in 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.

142 CPT, *Report on the visit to Hungary from 20 to 26 October 2017*, CPT/Inf(2018) 42, 18 September 2018, available at: https://bit.ly/2TTgsTq.

143 AIRE Centre et al., *Third party intervention in Darboe and Camara v. Italy*, Application No. 5797/17, 5 July 2017, available at: http://bit.ly/2gZ0Zmq.

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

145 The protocol is available in Hungarian at: http://bit.ly/1X53QT6.

According to the IAO, 38 age assessment procedures were conducted by the military doctor in the transit zones in 2017. The IAO does not have statistics about the results of these age assessment procedures.[146] There was no age assessment procedure conducted in 2018.[147]

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

There is a specialised unit within the IAO, which deals with asylum applications of vulnerable groups, namely the applications of unaccompanied children. The competent department is the Regional Directorate of Budapest and Pest County Asylum Unit. The employees (case officers) of the unit have special knowledge on unaccompanied minors, which enables them to conduct the hearings and make the decision in accordance with their special situation.

According to the response of the IAO in 2017, training to this unit is provided every 6 months by asylum officials working at the Litigation Unit of the Refugee Directorate of the IAO. The training touches upon vulnerability aspects as well. The training is based on the EASO training modules and contains two levels: asylum case officers have to pass an online exam, and later there is a training with a trainer where the tasks of the online exam are also spoken about.

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

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

2.1. Adequate support during the interview

The IAO 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."[148] 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,[149] and this right is respected in practice. Since 2018, the law also explicitly provides this for persons with claims based on gender identity.[150]

There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the IAO.[151] If the asylum seeker is not able to write, this fact and his or her statement shall be included in the minutes.[152]

146 Information provided by IAO, 12 February 2018.
147 Information provided by IAO, 12 February 2019.
148 Section 90 Asylum Decree.
149 Section 66(3) Asylum Decree.
150 Section 66(3a) Asylum Decree.
151 Section 36(7) Asylum Act.
152 Section 62(2) Asylum Decree.

In case the applicant cannot be interviewed due to being unfit to be heard, the IAO 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.[153]

If the IAO has already obtained information about the fact that the asylum seeker is a victim of torture or trauma, the asylum seeker is interviewed by a specifically trained case officer. However, since there is no formal mechanism for identifying these asylum seekers, there is a risk that such an applicant is heard by a case officer who is not appropriately trained. If the applicant does not feel fit to be interviewed, the interview can be postponed, although the IAO can reject a request for postponement, if the postponement would prevent the IAO from taking its decision within the procedural deadline foreseen in the law. The IAO can also give permission for a family member or a psychologist to be present at the hearing, which has happened in the past. On one occasion in 2017, in the case of two highly vulnerable unaccompanied minors, the IAO denied access to a social worker to the asylum interview of the children, although the HHC lawyer had informed the IAO about the high level of trust they had come to place on her.

However, it has also happened that unaccompanied minors, victims of torture or traumatised asylum seekers were not interviewed in a proper room with suitable conditions for such hearings. Due to the lack of space, and due to the organisational shortcomings on the side of IAO, the interviews often take place in a room where there are other case officers. Some of the rooms at the Budapest Regional Directorate's Asylum Unit are separated by walls into two parts, but the walls are not high enough. This means that an interview of a victim of torture or traumatised asylum seeker can be interrupted by another applicant's interview, or that the information in the interview is not provided under conditions of confidentiality. Due to this, it may also happen – as it did in the case of an unaccompanied minor and victim of sexual abuse – that other case officers came and went to use the other room while the interview was taking place.

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

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

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

153 Section 43(2) Asylum Act and Sections 77(1) and (2) Asylum Decree.

questioned about the personal details, the fleeing route, and new facts and circumstances, his family members' situation in the country of origin and ongoing threats, which was clearly a topic that resulted in further frustration and deterioration of his mental state.

Amendments that entered into force on 1 January 2018 describe detailed procedural safeguards for interviewing children. These include the requirement for the IAO to conduct the asylum interview in an understandable manner and by taking into account the age, maturity, the cultural and gender particularities of the child. This includes a child-friendly interview room for children below the age of 14. Any subsequent interview needs to be conducted by the same case officer in case the child needs to be heard. Finally, case officers interviewing children must possess the necessary knowledge on interviewing children.[154]

2.2. Exemption from special procedures

There is no exemption of vulnerable groups from accelerated procedures.

Prior to March 2017, the airport procedure and procedure in the transit zones could not be applied in case of vulnerable asylum seekers.[155] In practice, only asylum seekers with physically visible special needs (pregnant women, families) were exempted from the border procedure.[156] Since March 2017, border procedures are no longer applied, since the procedure in the transit zones became a regular procedure and all asylum seekers have to remain in the transit zone until the end of the procedure. The only exception are unaccompanied children below the age of 14.

For unaccompanied children, the asylum authorities as a general rule have to trace the person responsible for the minor, except if it is presumed that there is a conflict or if the tracing is not justified in light of the minor's best interest.[157] 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 IAO.

2.3. Appointment of guardian

In certain cases of vulnerable asylum seekers who lack full legal capacity (primarily children or due to mental health reasons), the IAO has to either involve their statutory representative or appoint a guardian. In case of children, the guardian should be appointed without delay, within 8 days.[158]

Since March 2017, unaccompanied children above the age of 14 need to await the end of their asylum procedure in the transit zone. Under the current legal regime, while in the asylum procedure, they are exempted from the special provision of child protection rules.[159] Under Hungarian law, they are considered to have full legal capacity as soon as they are 14 years of age, so they are assigned a formal legal representative only for the asylum procedure (an "ad hoc guardian"). Given their low numbers, such ad hoc guardians are only able to meet the children sporadically, and their consent is not required if a child decides to leave the transit zone through the one-way exit to Serbia.[160] The children report that they do not talk to those temporary guardians at all, they only meet them during the interview conducted by the IAO.

154 Section 74 Asylum Decree.
155 Sections 71/A(7) and 72(6) Asylum Act.
156 ECRE, *Crossing Boundaries*, October 2015, 17.
157 Section 4 Asylum Decree.
158 Section 80/J(6) Asylum Act.
159 Section 4(1)(c) Law XXXI of 1997 on the Protection of Children.
160 FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: https://bit.ly/2To4QI2.

3. Use of medical reports

Indicators: Use of Medical Reports

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

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.[161] 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.[162]

The HHC's experience shows that medical reports were frequently used in practice but mostly at the request of the applicant. The IAO has the possibility to order a medical examination *ex officio* in case the applicant consents to it. However, this was rarely the case. It was usually the legal representative who obtained and submitted the medical opinion in order to substantiate the applicant's well-founded fear of persecution. In case the applicant obtained a private medical opinion, he or she has to cover the costs; the IAO covers the costs only for medical opinions it requests itself. The only NGO that deals with psychosocial rehabilitation of torture victims is the Cordelia Foundation, which prepares medical reports on applicants' conditions in line with the requirements set out in the Istanbul Protocol. The psychiatrists of this NGO, however, are not forensic experts and in some cases their opinion was not recognised by the IAO or courts, since according to the Act CXL of 2004 on the General Rules of Public Administration Procedures (in effect at the material time), the expert opinion may only be delivered by a forensic expert registered by the competent ministry.[163] For the reasons above (the lack of an official forensic expert standing in proceedings), sometimes both the IAO and the courts disregarded the medical opinion issued by the Cordelia Foundation.[164]

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

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

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

In January 2018, the CJEU ruled that asylum seekers may not be subjected to a psychological test in order to determine their sexual orientation as this would mount to disproportionate interference in their private life.[165]

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

The law provides for the appointment of a guardian (who is the legal representative) upon identification of an unaccompanied child. When realising that the asylum seeker is an unaccompanied minor, regardless of the phase of the asylum procedure, the IAO has to contact the Guardianship Authority, which will appoint within 8 days a guardian to represent the unaccompanied child.[166] The appointed guardian is not only responsible for representation in the asylum procedure and other legal proceedings but also for the ensuring that the child's best interest is respected.

In practice, delays in appointment have not occurred since 2017.

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

For unaccompanied children above the age of 14, *ad-hoc* guardians are appointed whose mandate is, by definition, a temporary one. They do not have to be trained to care for children the same way legal guardians need to be. They are also not trained in asylum law and can hardly speak English. Given the physical distance between the *ad-hoc* guardians' workplace (Szeged) and the transit zone, the children and their ad-hoc guardians mostly only meet twice: at the interview and when the decision is communicated. Based on personal interviews with unaccompanied children, the HHC lawyers found out that most of the time there is no direct communication between the *ad-hoc* guardians and the unaccompanied children they are responsible for.[167]

The legal guardians are employed by the Department of Child Protection Services (TEGYESZ). Though delays have ceased to be a problem, severe obstacles still remain regarding the children's effective access to their legal guardians. Under the Child Protection Act, a guardian may be responsible for 30 children at the same time.[168] Based on personal interviews with guardians, the HHC found that this is hardly the case, as some of them gave accounts of caring for 40-45 children at once. This means that in practice, guardians cannot always devote adequate time to all the children they represent. Not all guardians speak a sufficient level of English and even if they do, the children they are in charge of may not. TEGYESZ employs one interpreter but guardians do not always have access to his services. In 2018, the Children's Home hired an Afghan social worker who helps with translation and intercultural communication.

Legal guardians have participated in trainings held by the HHC, the Cordelia Foundation and other actors such as IOM. The HHC is currently involved in two projects, funded by the EU, which aim at strengthening

165 CJEU, Case C-473/1 *F*, Judgment of 25 January 2018.See also HHC, 'No more psychological testing of asylum seekers to determine sexual orientation in Hungary', 17 April 2018, available at: https://bit.ly/2GxToqk.

166 Section 80/J(6) Asylum Act.

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

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

the guardians' knowledge of asylum law and child friendly administration. The HHC and other NGOs continue to enjoy a good working relationship with legal guardians.

Since December 2016, regular roundtable discussions have been held at the initiation of the HHC and with the participation of the legal guardians, the Károlyi István Children's Home, SOS Children's Villages Hungary, the Menedék Association for Migrants, the Cordelia Foundation, UNHCR Hungary and (sometimes) IOM. The discussions aim to serve as a substitution for the non-existent best interest determination procedure by providing for a multidisciplinary case assessment in the case of those children staying in the Károlyi István Children's Home while also discussing broader, systematic issues such as the children's access to education. Currently this is the only forum where State actors and the NGO sector together discuss how to further the case of unaccompanied children.[169]

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.[170] In order to fulfil his or her duties, the child protection guardian has a mandate to generally substitute the absent parents. He or she:

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

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

The childcare guardian cannot give his or her consent to the adoption of the child. Although adoption is not an option for unaccompanied minors, SOS Children's Villages Hungary managed a project in 2017 to recruit and train families who would be willing to become the foster family for children from a migrant background.[171] Based on personal discussions with SOS Children's Villages Hungary staff members, the HHC can report that a few families have completed the training and one child, who had been represented by the HHC in his asylum procedure, moved to a foster family in September. While being placed with a foster parent, the children's legal guardian remains the same as before – this role therefore is not given up or shifted to the foster families.

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

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

E. Subsequent applications

Indicators: Subsequent Applications

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

2. Is a removal order suspended during the examination of a first subsequent application?[172]
   - ❖ At first instance ☐ Yes ☒ No
   - ❖ At the appeal stage Depending on outcome

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

A subsequent application is considered as an application following a final termination or rejection decision on the former application. New circumstances or facts have to be submitted in order for a subsequent application to be admissible.[173] Persons who withdraw their application in writing or tacitly cannot request the continuation of their asylum procedure upon return to Hungary; therefore, they will have to submit a subsequent application and present new facts or circumstances (see section Dublin: Situation of Dublin Returnees).

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;[174]

(b) Admissible subsequent applications are examined in an accelerated procedure (see section on the Accelerated Procedure);[175]

(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;[176]

(d) The IAO 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;[177]

(e) The right to remain on the territory and reception conditions throughout the examination of application are not provided for the subsequent asylum application (except having been granted subsidiary or tolerated status prior to the subsequent application).[178] Since all asylum seekers except unaccompanied minors below age of 14 are kept in the transit zone (without the right to enter Hungary) for the whole duration of asylum procedure, the fact that the subsequent applicants do not have a right to remain on the territory does not actually mean that they are returned to Serbia before getting a decision in their asylum procedure. They are also allowed to stay in the transit zone. However, they do not receive any food or any other material conditions. They only get a bed in a living container. The HHC requested the ECtHR to issue an interim measure based on Rule 39 in case of a subsequent applicant who did not receive any food in the transit zone.[179] The interim measure was granted but the Hungarian authorities did not comply with it. The HHC requested another interim measure, which was also granted, and this time the Court explicitly requested the Hungarian Government to provide food to the applicant. The Hungarian Government did not abide by this request either.[180]

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

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

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

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

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

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

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

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

180 Politico, 'Hungary ignoring court orders to improve border camp conditions: watchdog', 29 July 2017, available at http://politi.co/2FZsPpR.

(f) Judicial review of rejected subsequent applications does not have a suspensive effect (see Accelerated Procedure);[181]

(g) Amendments entering into force on 1 January 2018 provide that subsequent procedures are no longer free of charge. As a general rule, applicants in repeat procedures will be granted exemption from paying for any costs incurred during the procedure (e.g. related to expert opinions) but applicants having adequate financial resources may be required to pay such fees. This will be decided on a case-by-case basis by the IAO based on the personal circumstances of the applicants, and a standalone legal remedy will be available against the interim decision of the IAO.[182]

(h) Under the rules applied in case of state crisis due to mass migration,[183] the subsequent asylum seeker shall not be entitled to exercise the right to stay on the territory, to aid, support and accommodation and to undertake employment.[184]

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

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

Given the lack of clear and publicly available guidelines, the IAO 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.

In 2018 there were 35 subsequent applicants according to Eurostat.

F. The safe country concepts

Indicators: Safe Country Concepts

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

1. First country of asylum

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

181 Section 53(2) Asylum Act.
182 Section 34 Asylum Act.
183 Section 80/K(11) Asylum Act.
184 As it is set out in Section 5(a)– (c) Asylum Act.

2. Safe third country

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

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

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

2.1. Connection criteria

The "safe third country" concept may only be applied as an inadmissibility ground where the applicant (a) stayed or (b) travelled there and had the opportunity to request effective protection; (c) has relatives there and may enter the territory of the country; or (d) has been requested for extradition by a safe third country.[185] In practice, transit or stay is a sufficient connection, even in cases where a person was smuggled through and did not know the country at all.

2.2. Procedural guarantees

In the event of applying the "safe third country" concept, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe third country.[186] 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. In 2017, in the **Röszke** transit zone, the case officers refused to take submissions that are not written in English, however in 2018, this was no longer the case, all submissions were accepted and translated by the IAO. The law does not specify the format or language, the availability of interpreters, and the preparation of a written record pertaining to applicants' "declaration". No mandatory, free-of-charge legal assistance is foreseen for this process, however if the applicants request the assistance of HHC attorneys in time, then the HHC attorneys are able to assist their clients with these submissions.

In the case that the application is declared inadmissible on safe third country grounds, the IAO 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.[187] This guarantee was respected in practice. Where the safe third country fails to take back the applicant, the refugee authority shall withdraw its decision and continue the procedure.[188]

Where the safe third country fails to take back the applicant, the refugee authority shall withdraw its decision and continue the procedure.[189] This provision was not respected in practice. Even though it was clear that Serbia would not accept back asylum seekers from Hungary, the IAO did not automatically

185 Section 51(3) Asylum Act.
186 Section 51(11) Asylum Act.
187 Section 51(6) Asylum Act.
188 Section 51A Asylum Act.
189 Section 51A Asylum Act.

withdraw the inadmissibility decision, but the person needed to apply for asylum again. According to the HHC's experience asylum seekers had to go through the admissibility assessment for two or even three times and only after submitting the third or fourth asylum application would their case not be declared inadmissible. This resulted in extremely lengthy procedures, which left people in great despair. Sometimes asylum seekers would be even detained after receiving a final rejection based on Serbia being a safe third country, despite the fact that deportations to Serbia were not taking place. The argument of the IAO was that Serbia could at any time start respecting the readmission agreement and therefore the return would become possible.

The fact is that since 15 September 2015, Serbia is not taking back third-country nationals under the readmission agreement except for those who hold valid travel/identity documents and are exempted from Serbian visa requirements. Therefore, actual returns to Serbia are not possible. Between January and November 2016, only 182 irregular migrants were officially returned to Serbia. Neither the refusal of the asylum applications in the transit zones, nor the "legalised" pushbacks since 5 July 2016 result in such official readmissions. Among the readmitted persons, there were 84 Serbian, 35 Kosovar and 27 Albanian citizens. None of the returnees was Syrian, Afghan, Iraqi or Somali citizens.[190] Despite this fact, the IAO still issued inadmissibility decisions based on safe third country grounds.

2.3. The list of safe third countries

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Third Countries.[191] Following a subsequent amendment to the list, the following countries are currently considered safe third countries:

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

The list includes, amongst others, Serbia. 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",[192] a position it still maintains today.[193] Besides, aside from the fact that the Asylum Act authorises the Government to establish a national list of safe third countries, Hungary does not otherwise appear to have laid down rules in its national law on the methodology by which the competent authorities may satisfy themselves that a third country may be designated as a safe third country within the meaning of Section 2(i) of the Act. Nor is any explanation or justification provided in Government Decree 191/2015 as to how the Government arrived to the conclusion that each country listed qualifies as safe.[194]

The Supreme Court of Hungary 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.[195] The concrete reason for issuing such a guidance document was that, in recent years,

190 HHC, *Key asylum figures as of 1 January 2017*, available at: https://goo.gl/KdTy4V.

191 Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries. The original list did not include **Turkey**, but the country was later inserted.

192 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.

193 UNHCR, *Hungary as a country of asylum*, May 2016.

194 *Ibid*, para 36.

195 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.

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. [...]"

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.

In 2016, the Kúria's aforementioned opinion was withdrawn,[196] on the ground, that legislation has since changed and its application based on current asylum and migration laws is no longer possible. Moreover, the Qualification and Asylum Procedures Directives in effect at the time of the 2012 Opinion have been amended. Since the previous opinion was based on a different legal and factual basis, it was deemed not to be applicable any longer.

In 2016, the practice of the courts regarding the inadmissibility decisions based on Serbia being a safe third country varied. The Szeged Court, after the withdrawal of the Kúria's position, started to reject almost all appeals, but its practice reversed again towards the end of the year. The Budapest Court's practice was inconsistent throughout the year. UNHCR sent a letter to all relevant courts, reaffirming its position on Serbia not being a safe third country for asylum seekers. Despite this letter, the courts continued to issue negative decisions in several cases.

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.[197] 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 IAO has to deliver a decision in maximum 15 days (8 days at the border).[198] This extremely short deadline adds to the presumption that no individualised assessment will be carried out.
- These amendments not only breach the definition of "safe third country" under EU and Hungarian law,[199] but they also led, in practice, to the massive violation of Hungary's *non-refoulement* and protection obligations enshrined in the 1951 Refugee Convention, Article 3 ECHR, and Articles 18 and 19 of the EU Charter of Fundamental Rights. Since early 2015, the vast majority of asylum seekers have come to Hungary from the worst crises of the world (Afghanistan, Syria and Iraq).

196 Supreme Court of Hungary, Opinion no. 1/2016 (iii.21) KMK on certain questions related to the application of the safe third country concept, available at: http://bit.ly/2kQZXpa.
197 Section 51(5) Asylum Act.
198 Section 47(2) Asylum Act.
199 Recital 46 and Article 38 recast Asylum Procedures Directive; Section 2(i) Asylum Act.

> Most of them had no opportunity to explain why they had to flee. Instead, they were exposed to the risk of an immediate removal to Serbia, a country where protection is currently not available. This means that they were deprived of the mere possibility to find protection and at the real risk of chain refoulement.

The IAO issued inadmissibility decisions based on Serbia being a safe third country also to vulnerable applicants, for example transgender persons from Cuba, disabled or single women victims of sexual and gender based violence. In a case of an extremely vulnerable single woman from Cameroon, who was a victim of trafficking in Serbia, hold in hostage and raped several times. The HHC obtained an interim measure from the UN Human Rights Committee,[200] and after that her case was finally decided on the merits, UNHRC decided the case to be inadmissible, since the applicant was no longer at risk of being sent back to Serbia. Regrettably, The Human Rights Committee did not take into account the fact that the applicant was able to get protection in Hungary only due to the interim measure issued and, therefore, there clearly was a violation of Article 13 of the International Covenant on Civil and Political Rights – right to an effective domestic remedy.

On 14 March 2017, the European Court of Human Rights issued a judgment in the *Ilias and Ahmed v. Hungary* case and found a violation of Article 3 ECHR in respect of the applicants' return to Serbia based on safe third country grounds, because of the exposure to the risk of chain-*refoulement*. The Court stated that the Hungarian authorities failed to carry out an individual assessment of each applicant's case, did not take their share of the burden of proof and placed the applicants in a position where they were not able to rebut the presumption of safety, since the Government's arguments remained confined to the 'schematic reference' to the inclusion of Serbia in the national list of safe countries. The Court emphasized that relying on the Decree is not a sufficient reason to consider a country a safe third country and that the ratification of the 1951 Refugee Convention is not a sufficient condition to qualify a country as safe. The government's appeal against the judgment is currently pending at the Grand Chamber of the ECtHR.

In 2017, the IAO stopped issuing inadmissibility decisions based on safe third country grounds. The reasons for the change in practice are not known. In 2018, the inadmissibility decisions based on safe third country grounds were not issued either, as inadmissibility under the Hybrid ground became the norm.

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

A new inadmissibility ground, a hybrid of the concepts of "safe third country" and "first country of asylum", is in effect since 1 July 2018.[201] The new provision stems from amendments to the Asylum Act and the Fundamental Law,[202] but it was only put to practice in mid-August 2018. Since 28 March 2017, persons without the right to stay in Hungary can only lodge an asylum application in either of the two transit zones located at the Hungarian-Serbian border.[203] Since Hungary regards Serbia as a safe third country,[204] the new inadmissibility provision abolished any remaining access to a fair asylum procedure in practice. Since July 2018, once an asylum application is lodged, authorities systematically deny international protection to those who arrived via Serbia, declaring these applications inadmissible under the new rules.[205] The applicant can rebut the IAO's presumption of inadmissibility in 3 days, after which the IAO will deliver a decision.[206] In case the IAO decides the application inadmissible, it will also order the applicant's expulsion, launching an alien policing procedure.

This newly established inadmissibility ground is not compatible with current EU law as it arbitrarily mixes rules pertaining to inadmissibility based on the concept of "safe third country" and that of "first country of asylum". Article 33(2) of the recast Asylum Procedures Directive provides an exhaustive list of

200 Human Rights Committee, Communication No 2768/2015.
201 Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.
202 Article XIV Fundamental Law.
203 Section 80/J(1) Asylum Act.
204 Section 2 Decree 191/2015.
205 FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: https://bit.ly/2To4QI2.
206 Section 51(12) Asylum Act.

inadmissibility grounds, which does not include such a hybrid form. That the new law is in breach of EU law is further attested by the European Commission's decision of 19 July 2018 to launch an infringement procedure concerning the recent amendments. According to the Commission, "the introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the safe third country and the first country of asylum concepts, the new law and the constitutional amendment on asylum curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights."[207]

The IAO does not examine whether Serbia would be willing to readmit the applicant before issuing an inadmissibility decision based on this hybrid ground, despite this being a condition for a country to be considered a first country of asylum, according to Article 35 of the recast Asylum Procedures Directive. In one inadmissibility case based on the hybrid of the concepts of safe third country and first country of asylum, the IAO would not withdraw its inadmissibility decision despite the fact that Serbia officially refused to admit the applicants back. Instead, they started a new expulsion procedure towards the country of origin of the applicants.

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

The Metropolitan Administrative and Labour Court turned to the CJEU, requesting a preliminary ruling on whether the July 2018 amendments to the Asylum Act violate the EU asylum *acquis*.[208] Several similar cases were suspended based on this referral. However, in the meantime, due to the courts' dispute over the territorial jurisdiction of the cases (see Regular Procedure: Appeal), the cases were transferred to the Szeged Court. In several cases, the Szeged Court did not maintain the suspension, but quashed the IAO's inadmissibility decisions and at the same time annulled the placement of the applicants in the transit zones.[209] The Szeged Court directly applied Articles 33 and 35 of the recast Asylum Procedures Directive and stated that the new inadmissibility ground is not in compliance with Article 33, therefore, it did not apply the domestic provision. Nonetheless, the Court examined the first country of asylum principle and the required sufficient protection criteria regarding Serbia. The Court emphasised that the pure existence of international conventions ratified by countries is not sufficient but their applicability has to be examined, as well. Having analysed the available country of origin information, the Court declared that the sufficient protection could not be assessed in the case of Serbia. Furthermore, the Court stated that the IAO did not take any measure towards the Serbian authorities on the readmission of the applicants.

In one case however, the Court did not find any problems with the application of such inadmissibility ground that was, according to the Court, in line with the Directive, and rejected the appeal.[210]

It can be concluded that the practice of the Hungarian courts varies significantly.

4. Safe country of origin

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

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

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207 European Commission, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', IP 18/4522, 19 July 2018, available at: https://bit.ly/2uMEJ2c.

208 CJEU, Case C-564/18 *LH*, Reference of 7 September 2018.

209 Administrative and Labour Court of Szeged, Decision 19.K.27.020/2019/9, 22 January 2019; 16.K.27.761/2018/7, 10 January 2019.

210 Administrative and Labour Court of Szeged, Decision No 42.K.32.906/2018/12, 5 September 2018.

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

If the applicant's country of origin is regarded as "safe", the application will be rejected in the accelerated procedure (see Accelerated Procedure).[211] 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.[212] Where the safe country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.[213]

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Countries of Origin,[214] which are the following:

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

In 2018, the former Prime Minister of North Macedonia, Nikola Gruevski, was granted refugee status in an extremely rapid procedure within a few working days, despite his country of origin being candidate country to the EU.[215] The decision was met with heavy criticism by the HHC.[216]

211 Section 59(1) Asylum Act.
212 Section 51(11) Asylum Act.
213 Section 51A Asylum Act.
214 Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries.
215 Euronews, 'Fugitive ex-FYROM prime minister Gruevski granted asylum in Hungary', 20 November 2018, available at: https://bit.ly/2tu30di;, The Guardian, 'Anti-asylum Orbán makes exception for a friend in need', 20 November 2018, available at: https://bit.ly/2FANW6s.
216 HHC, 'Mi a helyzet a volt macedón kormányfő itteni menedékjogi eljárásával?', 13 November 2018, available in Hungarian at: https://bit.ly/2IkGyxr; 'Egyre több a kérdőjel Gruevszki menedékkérelme körül', 15 November 2018, available in Hungarian at: https://bit.ly/2NfPYZG.

G. 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?
   - ❖ UNHCR ☒ Yes ☐ With difficulty ☐ No
   - ❖ NGOs ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☐ With difficulty ☒ No
4. 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 IAO 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.[217]

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.

The asylum seeker is informed about the fact that a Dublin procedure has started, but after that, he or she is not informed about the different steps in the Dublin procedure. If the Dublin procedure takes a long time, this creates frustration, especially since the majority of asylum seekers are detained in the transit zones. Asylum seekers only receive the decision on the transfer which includes the grounds for application of the Dublin Regulation and against which they can appeal within 3 days. The IAO does not provide a written translation of the Dublin decision, but they do explain it orally in a language that the asylum seeker understands. In the past, some asylum seekers have told the HHC that they were not informed about the possibility to appeal the Dublin decision when they were given the decision. No such cases were reported in 2018.

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.[218] Frequently, information is not provided in user-friendly language, and written communication is the main means of information provision, although it has been shown to be less effective than video material. The HHC's experience shows that alternative sources of information are rarely used in practice.

Oral, *ad hoc* information sessions organised by UNHCR, although informal, are a useful channel for basic information provision on reception conditions and the asylum procedure, mainly for those who have just arrived in the transit zones. Specific information on assisted voluntary return and reintegration, and also

217 Section 37 Asylum Act.

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

child friendly information is provided by IOM throughout the asylum procedure during their regular visits in the facilities where asylum seekers are held.[219]

In summer 2017, the authorities terminated cooperation agreements with the HHC and denied access to police detention, prisons and immigration detention after two decades of cooperation and over 2,000visits. The HHC can no longer monitor human rights in closed institutions, even though NGOs' access to police, prison and immigration detention reduces the risk of torture and ill-treatment and contributes to improving detention conditions.[220] Regarding the access of HHC lawyers for the purpose to provide legal aid, see Regular Procedure: Legal Assistance.

In the summer of 2018, Hungary passed legislation criminalising otherwise legal activities aimed at assisting asylum seekers. Preparing or distributing information materials or commissioning such activities a) in order to allow the initiating of an asylum procedure in Hungary by a person who in their country of origin or in the country of their habitual residence or another country via which they had arrived, was not subjected to persecution for reasons of race, nationality, membership of a particular social group, religion or political opinion, or their fear of indirect persecution is not well-founded, b) or in order for the person entering Hungary illegally or residing in Hungary illegally, to obtain a residence permit, became a crime, which is punished by custodial arrest or, in aggravated circumstances, imprisonment up to one year (e.g. in case of material support to irregular migrants, organisations or individuals operating within the 8 km zone near the border; or providing assistance on a regular basis).[221]

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

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

2. Are applications from specific nationalities considered manifestly unfounded?[222] ☒ Yes ☐ No
   - ❖ If yes, specify which: EEA countries, EU candidate countries, Albania, Bosnia-Herzegovina, North Macedonia, Kosovo, Montenegro, Serbia, Canada, Australia, New Zealand, US states that do not have the death penalty

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

Recognition rates for those arriving from war- and terror-torn countries remain low, counting inadmissibility decisions.

Regarding differential treatment, the HHC observed that Syrian asylum seekers who have no original ID documents usually receive protection very fast, in 3-4 weeks. This is no longer the case, since July 2018 new inadmissibility ground was introduced and now all claims are dismissed, regardless of nationality.

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

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

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

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

Reception Conditions

The majority of asylum seekers (558 persons) in 2018 were placed in the transit zones,[223] while only a few applicants were waiting for their first instance asylum decision in one of the open reception facilities in 2018. Therefore, it has to be stressed out that the section on reception conditions concerns only a few asylum seekers in Hungary. The main form of reception is still detention carried out in one of the transit zones.

According to the IAO, on 31 December 2018 there were altogether only two asylum seekers in **Vámosszabadi** and one person in **Balassagyarmat**.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

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

According to the Asylum Act, asylum seekers who are first-time applicants are entitled to material reception conditions and other aid to ensure a standard of living adequate for the health of persons seeking asylum until the asylum procedure ends.[224] However, since 28 March 2017, first-time asylum seekers without lawful Hungarian residence or visa have been accommodated exclusively in one of the transit zones immediately after claiming asylum where they are entitled only to reduced material conditions(see Conditions in Detention Facilities). Asylum seekers who enter the transit zones can no longer request to stay in private accommodation at their own cost on account of the existent state of crisis due to mass migration.[225]

Those asylum seekers who are residing lawfully in the country at the time of submitting the asylum application, and do not ask to be placed in a reception centre still have the right to request private accommodation as their designated place to stay during the asylum procedure. However, in the last year the majority of applicants submitted their asylum application in one of the transit zones and there were only a small number of asylum seekers who had been already provided with a visa (or came from a country having no visa requirements) or residence permit by the time of submitting the asylum application. In this latter case, asylum seekers are not provided with any material reception condition since their subsistence is deemed to be ensured. Otherwise, from the wording of the Asylum Act it can be inferred that those who are residing lawfully in Hungary but would like to be placed in a reception facility can submit their asylum application only in the transit zones.[226] The HHC is not aware of such an example.

223 Based on the information provided by IAO, 12 February 2019.
224 Section 27 Asylum Act.
225 Section 80/I(d) Asylum Act.
226 Section 80/J(1)(c) Asylum Act.

Only those asylum seekers who are deemed to be destitute are entitled to material reception conditions free of charge.[227] If an asylum seeker is not destitute, the asylum authority may decide to order that the applicant pays for the full or partial costs of material conditions and health care. The level of resources is, however, not established in the Asylum Act and applicants have to make a statement regarding their financial situation. Presently, this condition does not pose an obstacle to accessing reception conditions. Pursuant to the March 2017 amendments, the provisions of Reduction or Withdrawal of Material Reception Conditions set out in Sections 30 and 31 of the Asylum Act are not applicable anymore, although reception conditions are *ex lege* reduced.

According to the Asylum Act,[228] subsequent applicants shall not be entitled to exercise the right to aid, support and accommodation.[229] Although in practice since transit zones are the compulsory places of confinement, therefore accommodation (a bed in a container) was ensured for asylum seekers. Regarding the provision of food and other material support, subsequent applicants in the transit zones can only count on the aid of civil organisations and churches having access to the transit zones (see more at Subsequent Applications).[230]

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

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

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

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

The Asylum Decree determines the content of reception conditions. In state of crisis due to mass migration, the content of material reception conditions is limited to accommodation and food provided in reception facilities; costs of subsistence of asylum applicants. The state of crisis suspends the applicability of Section 15(2)(c) which enabled asylum seekers to apply for travel allowance.

Apart from material reception conditions there is only healthcare that is provided to asylum seekers in the framework of reception conditions. Other services such as the reimbursement of educational expenses and financial support (the latter contained only the financial aid to facilitate return) are halted, as well by virtue of the state of crisis due to mass migration.[231]

According to the Asylum Decree, asylum seekers residing in reception centres receive:[232]

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

Since 1 April 2016, asylum seekers are not entitled to receive pocket money.

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227 Section 26(2) Asylum Act.
228 Section 80/K(11) Asylum Act.
229 Set out in Section 5(1)(b) Asylum Act.
230 HHC, *Turbulent 50 days – an update on the Hungarian asylum situation*, 22 May 2017, available at: http://bit.ly/2EFxDAo.
231 Section 99/C(1)(c) Asylum Decree.
232 Section 21 Asylum Decree.

From 28 March 2017 until 5 July 2018, **Kiskunhalas** camp functioned to a limited extent because there was – apart from a few others who left the reception facility after some days –only one asylum seeker staying permanently in the reception facility, whose asylum procedure had started long before the transit zone regime was introduced. While those staying in the camp as asylum seekers or beneficiaries of international protection received food allowances and hygienic items, the permanent resident of the camp was not entitled to any food or hygienic items due to the restrictive regulations regarding the lack of reception conditions provided to subsequent asylum seekers.

In **Balassagyarmat** until 30 April 2018, asylum seekers were provided with hygienic items and food in kind. Since then asylum seekers are given food allowances.[233]

According to the IAO, in **Vámosszabadi** asylum seekers had been provided by food and hygienic items in kind until 31 May 2018.[234] Since then, asylum seekers have been receiving food allowance. At the end of 2018, there were only two asylum seekers staying in the reception facility. The HHC is aware of an asylum-seeking woman who had been residing in Vámosszabadi until September 2018 with her approximately 1-year-old child, who only had the right to reside in the reception centre, but was denied food in kind or an equivalent financial allowance on account of being a subsequent applicant. The single woman with her child could exclusively count on the help of volunteers and NGOs' services being present in Vámosszabadi in the course of her pregnancy and after the birth of the child.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

With the effect of the March 2017 amendments, Sections 30 and 31 of the Asylum Act, that regulate the reduction and withdrawal of material reception conditions shall not be applied in the current state of crisis due to mass migration. Pursuant to the legislative changes, no decision has been issued on the reduction or the withdrawal of the reception conditions since 2017.[235]

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

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

The IAO 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.[236]

A decision of reduction or withdrawal is made by the IAO 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

233 Based on the information provided by IAO, 12 February 2018.
234 Information provided by IAO, 12 February 2019.
235 Information provided by IAO, 12 February 2018; 12 February 2019.
236 Section 30(2) Asylum Act.

violation committed and can be ordered for a definite or for an indefinite period of time with a possibility of judicial review.[237] 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.[238] The applicant has a right to free legal assistance.

According to Section 39(7) of the Asylum Decree, if asylum seekers turn out to have substantial assets or funds, they will be required to reimburse the IAO for the costs of reception. If the sum value of the benefits and services is received without entitlement, the IAO shall order the collection of the sum repayable – and treated as outstanding public dues enforced as taxes – unless it is repaid voluntarily.[239]

As of January 2018, recuperation of financial claims can be ordered by the IAO and implemented via the national tax authority.[240] According to Section 32/Y(4) of the Asylum Act the person concerned shall be required to pay a default penalty if he or she has failed to comply with a payment obligation. There is no independent remedy set out in the law against such an enforcement order issued by IAO.[241]

4. Freedom of movement

Indicators: Freedom of Movement

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

Until March 2017, asylum seekers were allocated to a specific facility through a dispersal scheme managed by the IAO. When the March 2017 amendments came into effect, those asylum seekers who had already had an on-going procedure and had been staying in Hungary remained in open camps with the same material conditions as ensured before (except those who were deemed subsequent asylum seekers, they were refused to be provided with food and other material reception conditions apart from accommodation). At the end of last year, there were only three asylum seekers residing in open facilities (see Types of Accommodation).

Asylum seekers who are not detained (either in asylum detention or in the transit zones) can move freely within the country, but may only leave the reception centre where they are accommodated for less than 24 hours, unless they notify the authorities in writing about their intention to leave the facility for more than 24hours. In this case, the IAO upon the request issues the permission for the asylum seekers. HHC is not aware of any difficulty in this regard, instead in one case an asylum seeker had regularly requested to leave the facility for one or two weeks period of time thus securing adequate accommodation and living at a private place.

The March 2017 amendments prescribed that in state of crisis of mass migration, Section 48(1) of the Asylum Act regulating accommodation at a private address is not applicable. Therefore, the request for private accommodation of an asylum seeker accommodated alone in **Kiskunhalas** was rejected several times by the IAO. Nonetheless, after the applicant was relocated to **Balassagyarmat** the IAO finally approved his request to move to a private accommodation, albeit applying the provisions on alternatives to detention,[242] and not Section 48(1). In its decision, the IAO set out the obligation of staying at an assigned (private) place which constitutes one form of alternative to asylum detention,[243] despite the fact that the applicant was not in detention but had been living in open reception centres (first in Kiskunhalas, later on in Balassagyarmat).

237 Section 31 Asylum Act.
238 Section 31(1) Asylum Act.
239 Section 26(5) Asylum Act.
240 Section 32/Y Asylum Act.
241 Section 32/Y(1) Asylum Act.
242 Section 2(l) Asylum Act.
243 Section 2(lb) Asylum Act.

In the **Balassagyarmat** community shelter, a curfew had been introduced in 2017, which allowed asylum seekers to leave the facility for only 2 hours per day. The practice was terminated at the end of 2018, according to NGOs.

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

In 2018, the HHC is aware of a couple of cases where applicants were released from the transit zone in accordance with a judicial decision obliging the IAO to do so.[244]

There have been only a few, exceptional cases when asylum seekers – without visa or residence permit – were placed in open reception facilities. An Afghan woman and her son were accommodated in Vámosszabadi after they had submitted their asylum application in the transit zone, but due to the severely poor health of the woman, who requires constant medical assistance and surveillance, they were placed in **Vámosszabadi**. According to a volunteer and Menedék Association, the woman has been receiving special treatment in the reception centre. She is provided with a flexible toilet placed in her room and a personal nurse. Although, despite her special health status, like everybody else, she does not have a chance to meet a legal representative within the building (in her room) of the reception facility.

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

In 2017, an asylum seeker from the Democratic Republic of Congo appealed, with the help of an HHC attorney, against the IAO decision assigning a tent camp in **Körmend** as place of residence. The decision was successfully challenged before the Court and resulted in the relocation of the client to **Vámosszabadi**. In its ruling,[245] the Court assessed that IAO is obliged to provide the applicant with a placement that is in line with the Reception Conditions Directive and the relevant provisions of the Asylum Act and Asylum Decree,[246] taking into account his state of health.

244 See e.g. Administrative and Labour Court of Szeged, Decision 6.K.27.060/2018/8, 1 March 2018; Metropolitan Administrative and Labour Court, 44.K.33.689/2018/11, 14 November 2018.

245 District Court of Körmend, Decision Pk.50.018/2017/18., 27 March 2017.

246 Article 17(2) recast Reception Conditions Directive; Section 27 Asylum Act; Section 12(1) Asylum Decree.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:[247] 2
2. Total number of places in the reception centres: 350
3. Total number of places in private accommodation: N/A

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

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

On 31 December 2018, there were 2 open reception centres and 1 home for unaccompanied children in Hungary. The two reception centres are:

Reception Centre	Location	Maximum capacity	Occupancy at end 2018
Balassagyarmat	Near Slovakian border	140	1
Vámosszabadi	Near Slovakian border	210	2
Total		**350**	**3**

There is a visible discrepancy between the numbers on occupancy and the maximum capacity of reception facilities in the table above. It clearly points out that these reception facilities are not efficiently used and despite the fact that only in December 2018 there were 27 applicants who were placed in the transit zones and not in open reception facilities (see Access to the Territory and Place of Detention).[248]

A dramatic decrease occurred in the numbers of asylum seekers, as after February 2017 many applicants left Hungary owing to the fear that they could have been taken to the transit zones pursuant to the March 2017 amendments.[249] Ultimately, no transfers from open reception facilities to the transit zones have either been issued or carried out.[250] The HHC successfully obtained 2 interim measures from the ECtHR preventing transfer of unaccompanied children and a pregnant woman from open reception centres to the transit zones. However, HHC observed examples when applicants were "released" there from asylum detention.

The closure of open reception facilities has been a pattern since 2016 when first **Nagyfa** was closed in August 2016 and then **Bicske**, the closest reception to Budapest, was shut down in December 2016.After a harsh winter, the operation of Körmend tent camp was also suspended in May 2017. For more than one year functioning on a very low capacity, the operation of **Kiskunhalas** was closed in July 2018, as well. **Balassagyarmat** and **Vámosszabadi** are still operating with very limited occupancy.

Balassagyarmat is a community shelter with a maximum capacity of 140 places for 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. In 2018, this reception facility hosted those asylum seekers who were released from the transit zones as a result of judicial orders for relocation. In 2017, it was functioning mainly for those with on-going Dublin cases in the transit zones, who were then transferred to Balassagyarmat, where they waited for being transferred to Western EU Member States.

247 Both permanent and for first arrivals.
248 Information provided by IAO, 12 February 2019.
249 The reform prescribed that asylum seekers residing in open reception centres or at private accommodation should also be transferred to the transit zones.
250 HHC, *Turbulent 50 days – an update on the Hungarian asylum situation*, 22 May 2017, available at: http://bit.ly/2EFxDAo.

Vámosszabadi Reception Centre is located outside Vámosszabadi, close to the Slovakian border. It is a three-storey-high pre-manufactured building, which used to serve as one of the barracks of the Soviet troops stationed in Hungary.[251] The reception centre until July hosted asylum seekers whose cases had been launched before the March 2017 Amendments. Since then, the HHC is aware of only one case, when an asylum-seeking family was placed there due to the poor health status of the mother. Until August 2018, the centre received beneficiaries of international protection released from the transit zones. Although, according to the information provided by IAO, people on average had stayed only 10-11 days before they left the country.[252]

Kiskunhalas reception centre was opened in July 2016 with a maximum capacity of 200 places and operated until July 2018.Asylum seekers were hosted in containers. The camp is surrounded by a 4-5 meter high wire fence; the facility formerly functioned as an immigration detention centre.

In 2017 and until the closure of Kiskunhalas reception centre in mid-2018, Balassagyarmat and Kiskunhalas accommodated mainly those asylum seekers whose procedures had started even before the transit regime took effect and thus they had a symbolic role in maintaining these open reception centres. For example, between July 2017 and July 2018, apart from a few applicants who temporarily stayed there for a short period of time, there was only one asylum seeker residing permanently in Kiskunhalas.

Körmend reception centre was opened on 2 May 2016 with a maximum capacity of 280 places due to the extended numbers of asylum seekers and the lack of space in the existing facilities. The camp consisted of military tents. It was initially meant as a temporary facility but– not considering the extremely cold weather – it was used throughout the winter of 2016-2017 to accommodate asylum seekers. Only single men were accommodated there. On 10 May 2016, there were 202 asylum seekers in Körmend reception centre. However, by November 2016, the number of asylum seekers had decreased to just 10-15 and then to just 1 person by April 2017. This radical decline can be clearly attributed to the extremely dire and inhuman conditions, since all asylum seekers, without exception, complained about the extremely low temperature in the tents.[253]

The centres are managed by the asylum authority.[254] Until the end of 2018, the reception centres operated financially under the direction of the Director-General as an independent department structurally being a part of the regional directorates and perform their professional tasks under the supervision of the Refugee Affairs Directorate of the IAO. Therefore, only one central body, the IAO, 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 – and most of the cases substitutive - services for applicants. As a result of legal changes, as of 1 January 2019, the reception facilities and detention centres fall under the management and supervision of the central Refugee Affairs Directorate.[255]

Unaccompanied children below the age of fourteen are not placed in the transit zones but are accommodated in **Fót**. The Károlyi István Children's Home in Fót is a home for unaccompanied children located in the North of Budapest, which belongs to the Ministry of Human Resources and can host 50 children.[256] Unaccompanied children beyond the age of 14 are detained in the transit zones as it is detailed in Section on Detention.

Fót, therefore, hosts unaccompanied children whose asylum procedure is still on going, recipients of refugee, subsidiary protection and tolerated status, as well as those who are under the effect of an alien

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

252 *Ibid.*

253 HHC, *Report on Körmend*, 18 November 2016, available at: http://bit.ly/2jzsT3T.

254 Section 12(3) Asylum Decree.

255 Order of the Minister of Interior no. 26/2018. (XII. 28.) amended the order of the Minister of Interior no. 39/2016. (XII. 29.) on the determination of the structural and operational order of the Immigration and Asylum Office.

256 The Ministry of Human Resources' website is available at: http://bit.ly/1IN7PSl.

policing procedure. The Children's Home's closure was announced in 2016, however, as of now, no action was taken to this end. According to the Home's management, they are going to operate until mid-2019. Unaccompanied children are expected to be allocated to the backyard of a youth detention facility in **Aszód**, allegedly separated from detainees.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

Until the end of year 2018, it had not been the case that asylum seekers were left without accommodation due to a shortage of places in reception centres.

2.1. Overall conditions

Unlike detention centres (see section on Conditions in Detention Facilities), the legal standards regulating open reception premises are defined in separate instruments. There is no regulation on the minimum surface area, the minimum common areas or on the minimum sanitary fittings.[257] Conditions in reception centres differ. In all centres, residents get 3 meals per day or are provided with financial allowance. As a result of the limited number of asylum seekers and beneficiaries of international protection, people can cook for themselves in every facility. The Decree of the Minister of Interior 52/2007 on the organisation of IAO stipulates the amount of nutrition value that must be provided at the open reception facilities and states that religious diets are to be respected in all facilities.

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

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[258] provides that the community shelter must have at least 5m^{3}of air space and 4m^{2}of floor space per bed.[259] Families are accommodated in family rooms.

Every facility has computers, community rooms and sport fields.

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

257 EASO, *Description of the Hungarian asylum system*, May 2015, available at: https://bit.ly/2GS9E4H, 10.
258 According to Annex 1 Decree 239/2009 on the detailed conditions of providing countinuous shelter-service activity and the rules on the issuance of the permissions to operate a shelter, available in Hungarian at:https://bit.ly/2S8eugp.
259 Section 131 Asylum Decree.

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

2.2. Activities in the centres

Social workers of IAO used to organise different activities for asylum seekers in the reception facilities e.g. drawing, music activities, film clubs, cooking or sport events. In **Vámosszabadi**, the social workers used to even organise a small library and Hungarian language classes, as well. However, in 2018 reportedly, there was no regular program provided to asylum seekers by social workers who dealt mainly with administration. The withdrawal of the AMIF calls affected the number of the social workers and their activities as well. Many of them lost their job after 30 June 2018. As a result, in 2018 community activities were exclusively provided by NGOs in the reception facilities:

Until the closure of the refugee project at the end of June 2018, the SOS Children's Village, provided interpretation, information provision on integration related matters, community and children programs (such as visiting the zoo), individual and group social work and psycho-social care on a regular basis in **Vámosszabadi**.

The Menedék Association for Migrants within the framework of social work, provided regular individual support, information provision, legal counselling (information on the rights and obligations, furthermore on rules of employment, accommodation etc.) and organized community programs for the residents of Vámosszabadi. Since December 2018, they are also present in **Balassagyarmat**.

Reportedly, the Hungarian Red Cross was also present in **Vámosszabadi** on a regular basis and held programs for children until August, hence since then there has been no child placed there.

Cordelia Foundation was also present providing psychosocial services to the residents of **Vámosszabadi** and **Balassagyarmat**, as well (see for more detail Section Access to Health Care).

Additionally, in **Vámosszabadi** a couple of volunteers also assisted asylum seekers, mainly those who were in subsequent procedure and were denied food. According to HHC's report,[260] besides food, volunteers provided the residents of the reception centre with hygienic items and clothes, as well.

In each facility, general medical services are available. However, asylum seekers complain about the lack of interpretation services when accessing medical services. In Vámosszabadi interpreters were provided by SOS Children' Villages to assist asylum seekers when accessing medical services in the first half of 2018 before their project ended. For special treatment and examination, asylum seekers were accepted by nearby town hospitals (in Győr), where according to a volunteer assisting a pregnant asylum seeker, people encountered the same language obstacle.

The HHC is aware of two asylum seekers residing in Vámosszabadi, who were verbally abused and threatened by the security guards in 2017. Besides the lack of conflict resolution mechanism available in the reception centre, the fact that the security personnel did not speak English and had no interpreter to assist them hindered the smooth communication and the resolution of conflicts.

2.3. 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 2018, but may be estimated at a few days or weeks.

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

Nonetheless, there is one asylum seeker whose procedures had been started more than two years ago and owing to the lack of effective remedy, he was still struggling to obtain international protection in one of the reception facilities until July 2018.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market		
1.	Does the law allow for access to the labour market for asylum seekers?	☐ Yes ☒ No

As a result of the March 2017 amendments,[261] in the current state of crisis due to mass migration asylum seekers no longer have access to the labour market. They are neither entitled to work in the premises of the reception centres nor at any other work place. The new regulation is clearly in violation of Article 15 of the recast Reception Conditions Directive.

The March 2017 amendments are applicable in on-going asylum procedures, therefore, those asylum seekers who were to be entitled to work around the introduction of the new provision, because 9 months had passed since their procedure started, are also prevented access to the labour market.

According to the regulations[262] previously in force, asylum seekers were able to undertake employment in the premises of the reception centre, without obtaining a work permit. After 9 months from the start of the asylum procedure could asylum seekers also work outside the centres, in accordance with the general rules applicable to foreigners.

Under the regulations applied prior to March 2017, the employer had to request a work permit – valid for 1 year and renewable – from the local employment office. Asylum seekers could only apply for jobs, which were not taken by Hungarians or nationals of the European Economic Area, therefore subject to a labour market test.

2. Access to education

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

The Public Education Act provides for compulsory education (kindergarten or school) to asylum seeking and refugee children under the age of 16 staying or residing in Hungary. Children have access to kindergarten and school education under the same conditions as Hungarian children. Schooling is only compulsory until the age of 16.[263] As a consequence, asylum-seeking children above the age of 16 may not be offered the possibility to attend school, until they receive a protection status. In practice, this depends on the availability of places in schools accepting migrant children and the willingness of guardians and the Children's Home staff to ensure the speedy enrolment of children. In 2018, for the first time in the past years, all children in **Fót** were enrolled and attended school.

The Menedék Association offers alternative forms of education to children who are not yet enrolled in school.

261 Section 80/J(4) Asylum Act.
262 Section 5(1)(c) Asylum Act.
263 Section 45(3) Act CXC of 2011 on public education.

Refugee children are often not enrolled in the normal classes with Hungarian pupils but placed in special preparatory classes. Integration with the Hungarian children therefore remains limited. 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 Hungarian 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. This is a clear sign of intolerance of the Hungarian society in general. In some other cases, the local school only accepts asylum seeking children in segregated classes but without a meaningful pedagogical programme and only for 2 hours a day, which is significantly less than the 5-7 hours per day that Hungarian students spend in school.

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

Unaccompanied children in **Fót** attend elementary and secondary school in Budapest. Students of one secondary school reported that they only have access to school 2 days a week, although they would like and need to learn more. Children located in the Károlyi István Children's Home find it hard to enrol in formal education for a number of reasons, such as the delays in providing them with documents (such as an ID card) and the lack of available capacity in the few schools, which accept unaccompanied minors. The increasing number of very young unaccompanied minors placed a heavy burden on the educational system and shed light on systemic shortcomings such as the lack of an elementary school willing and able to enrol young asylum seeking children. Through the exemplary cooperation of guardians, the Children's Home staff and Menedék Association, all elementary school age children were enrolled in schools and could attend on a daily basis.

Full access to mainstream education is hindered in **Vámosszabadi**, where two (one school age and one kindergarten age) children did not have access to primary education, and could not attend school on the grounds that their asylum application was rejected and they were awaiting deportation in 2015. In 2017, the general experience of HHC was that there were no asylum-seeking children placed in Vámosszabadi.

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. There is a school operating at the premises of the community shelter, where resident children can be enrolled.

Education opportunities and vocational training for adults is only offered once they have a protection status under the same conditions as Hungarian citizens. In practice, asylum seekers can sometimes attend Hungarian language classes offered by NGOs for free of charge. In the reception centres, there was no Hungarian language classes provided to asylum seekers in 2018.

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

D. Health care

Indicators: Health Care

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

Access to health care is provided for asylum seekers as part of reception conditions.[264] It covers essential medical services and corresponds to free medical services provided to legally residing third-country nationals.[265] Asylum seekers have a right to examinations and treatment by general practitioners, but all specialised treatment conducted in policlinics and hospitals is free only in case of emergency and upon referral by a general practitioner.

According to the Asylum Decree, asylum seekers with special needs are "eligible for free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person's state of health."[266]

In practice, there are no guidelines for identifying vulnerable asylum seekers and a lack of specialised medical services. Furthermore, only a few experts speak foreign languages and even fewer have experience in dealing with torture or trauma survivors. The Cordelia Foundation, an NGO, is the only organisation with the necessary experience in providing psychological assistance to torture survivors and traumatised asylum seekers in a limited number of the reception centres. Their capacity is 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-by-project basis and not under the framework of a regular service provider contracted by the IAO. In 2017, the Cordelia Foundation was present in **Vámosszabadi** on alternate weeks until June, and since then on a weekly basis like in Kiskunhalas. Despite the utmost importance of the organisation's work, it has not been given an entrance permit to the transit zones so far. The therapeutic activities of the Foundation include verbal and non-verbal, individual, family and group therapies, and psychological and social counselling.

In 2018, the Cordelia Foundation was present in both operating reception facilities, namely in **Vámosszabadi** and **Balassagyarmat**. As a result of the low number of asylum seekers (and beneficiaries of international protection), the regularity of the visits of psychiatrists and psychologists became hectic although the Foundation would have had the capacity for visits on a weekly or fortnightly basis. The Foundation also plays a key role in the lives of asylum seekers who are placed in private accommodation, mainly in **Budapest**. In the last year, the Foundation with four psychiatrists and two psychologists provided therapeutic services to 107 persons in Budapest.

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 IAO, as well as due to capacity problems. Specialised health care is provided in nearby hospitals in all major towns, although similar language problems occur here in cases where a social worker is not available to accompany asylum seekers to the hospital to assist in the communication with doctors.

Emergency health care services must be provided even in the event of the reduction or withdrawal of reception conditions.[267]

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264 Section 26 Asylum Act.
265 A detailed list is provided under Section 26 Asylum Decree.
266 Section 34 Asylum Decree.
267 Section 30(3) Asylum Act.

The Asylum Decree states that asylum seekers residing in private accommodation are eligible for health care services at the general physician operated by the competent local government and determined by the residency address of the applicant.[268] In practice, these asylum seekers struggle with accessing medical services as physicians systematically refuse the registration and treatment of asylum seekers on the ground that they lack a health insurance card. According to the verbal information provided by the IAO in 2016, asylum seekers can be registered with the number of their humanitarian residency card and have to be treated in accordance with the law, although many health centres are not aware of this information.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

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

Furthermore, the Asylum Act provides that in case of persons requiring special treatment, due consideration shall be given to their specific needs.[269] 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.[270]

It is the duty of the IAO 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 IAO can request expert assistance by a doctor or a psychologist.[271] 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 Identification). However, since asylum seekers principally enter the transit zones and stay their during the entire asylum procedure, as of March 2017, there has been only exceptional cases when asylum seekers were accommodated in open reception facilities.

The HHC is aware of the case of a disabled woman who received special treatment in **Vámosszabadi** last year. She was provided by a flexible toilet placed in her room and a personal nurse.

Before the March 2017 amendments, when reception centres used up their capacities, single women were usually accommodated together with families on one floor. Families were not separated during the asylum procedure.

Unaccompanied asylum-seeking children below the age of 14 are placed in special homes in **Fót**, designated specifically for unaccompanied children, where social and psychological services are available.[272] However, it is the responsibility of the authorities to conduct an age assessment, and often their level of expertise is dubious at best (see section on Identification). If the assessment results in the person being considered either an adult or a child above fourteen, then this poses an obstacle to accessing the services that a child would need. In 2017, the HHC published its report "Best Interest Out

268 Section 27(2) Asylum Decree.
269 Section 4(3) Asylum Act.
270 Section 34 Asylum Decree.
271 Section 3(1)(2) Asylum Decree.
272 HHC, *Best Interest Out of Sight - The Treatment of Asylum Seeking Children in Hungary*, 17 May 2017, available at: http://bit.ly/2nMWtrs.

of Sight - The Treatment of Asylum Seeking Children in Hungary", detailing the problems facing child asylum seekers.[273]

Hungary has no specific reception facility for vulnerable asylum seekers except for unaccompanied children. Single women, female-headed families, and victims of torture and rape, as well as gay, lesbian or transgender asylum seekers are accommodated in the same facilities as others, with no specific attention, while there are no protected corridors or houses. In 2016 and 2017 several single women, as well as transgender asylum seekers had complained to the HHC about regular harassment by other asylum seekers, against which the IAO had not taken the necessary measures. As of 1 January 2018, if the gender identity of the asylum seeker is different from his registered gender, this must be taken into account when providing accommodation at the reception centre.[274]

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.

For special reception needs in the transit zones, see Conditions in Detention Facilities.

F. Information for asylum seekers and access to reception centres

1. Provision of information

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

Information is also provided orally to asylum seekers on the day when they arrive at the reception centre, in addition to an information leaflet. The information given includes the house rules of the reception centre, the material assistance to which applicants are entitled, and information on access to education and health care. The information is communicated both orally and in written form, in a language that the asylum seeker understands. 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.

Before the March 2017 amendments, the provision of information had proven to be a challenge especially in 2015. Most asylum seekers with whom the HHC spoke were lacking even the most basic information relating to the rules of the facility they were staying in and their rights and obligations. Information on the asylum procedure was clearly missing and interpretation into other languages continued to pose problems. Despite the changed reception conditions of 2017, the basic problems regarding the provision of information still persist.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

Reception centres are open facilities and residents may leave the centre according to the house rules of the facility, and are able to meet anyone outside. Family members do not often come to visit in practice, but they can enter the reception centres provided the asylum seeker living in the centre submits a written

273 *Ibid*.
274 Section 22 Asylum Decree.

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 are only specific NGOs who have a regular access to the reception centres without any issues. IAO unilaterally terminated the cooperation agreement (concluded in 1998) with HHC on 2 June 2017. The agreement entitled the HHC to enter reception or detention centres and conduct monitoring visits for asylum seekers, to provide free legal counselling and to request statistical data. The HHC had conducted 21 monitoring visits (and prepared reports on these visits) since January 2015.[275] Lacking free access to reception facilities, HHC lawyers and attorneys are able to meet asylum seekers upon their requests. As a result of the termination of the cooperation agreement asylum seekers do not have access to legal assistance on the premises of the reception centres. Asylum seekers may meet the lawyer of HHC in the front of the reception facility.

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

G. Differential treatment of specific nationalities in reception

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

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

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention	
1. Total number of asylum seekers detained in 2018:	565
❖ Asylum detention	7
❖ Transit zones	558
2. Number of asylum seekers in detention at the end of 2018:	193
❖ Asylum detention	1
❖ Transit zones	192
3. Number of detention centres:	3
❖ Asylum detention centres	1
❖ Transit zones	2
4. Total capacity of detention centres:	
❖ Asylum detention centres	105
❖ Transit zones	700

Detention has become a frequent practice rather than an exceptional measure in Hungary. In 2017, only 391 asylum seekers were detained in what is formally described as asylum detention: These numbers further decreased in 2018, since there were only 7 asylum seekers in asylum detention.[276]

Asylum detention of asylum seekers: 2014-2018			
	Asylum applicants detained	Total asylum applicants	Percentage
2014	4,829	42,777	11.28%
2015	2,393	177,135	1.35%
2016	2,621	29,432	8.9%
2017	391	3,397	11.5%
2018	7	670	1%

Source: IAO: http://bit.ly/2knRWuP.

However, the vast majority of asylum seekers (2,107) were detained in the transit zones. Taken together, the number of applicants detained in transit zones and asylum detention made up 94% of the total number of asylum seekers.

In 2016, it was frequently the case that there were more asylum seekers detained than in open reception centres. On 27 December 2016, the number of asylum seekers in detention exceeded those accommodated in open reception centres, as 273 applicants were detained while only 194 stayed in open reception facilities.[277] As of 27 December 2016, 8.9% of asylum seekers applying in Hungary were detained. In 2017 most of the asylum seekers were detained, as the new amendments to the Asylum Act that entered into force on 28 March 2017 introduced the mandatory requirement that all asylum seekers stay in the transit zone for the whole duration of the asylum procedure, with the exception of unaccompanied children below the age of 14.

The **Nyírbátor** asylum detention centre is not officially closed, however it is empty most of the time. At the time of writing, the centre is empty. **Kiskunhalas** and **Békéscsaba** are closed.

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

276 Information provided by IAO, 12 February 2019.
277 HHC, *Key asylum figures as of 1 January 2017*, available at: http://bit.ly/2j46z3R.

Since 28 March 2017, all asylum seekers entering the transit zones of Röszke and Tompa are *de facto* detained, although the Hungarian authorities refuse to recognise that this is detention. The fact that asylum seekers inside the transit zones are deprived of their freedom of movement is also confirmed by the UNWGAD, CPT and UNHCR.[278]

On 14 March 2017, the ECtHR issued a long-awaited judgment in the HHC-represented *Ilias and Ahmed v. Hungary* case. The Court confirmed its established jurisprudence that confinement in the transit zones in Hungary amounted to unlawful detention and established the violation of Article 5(1), a violation of Article 5(4) and a violation of Article 13 in conjunction with Article 3 of the Convention due to the lack of effective remedy to complain about the conditions of detention in the transit zone. The government's appeal against the judgment is currently pending at the Grand Chamber of the ECtHR.

In 2018, a total of 558 asylum seekers were *de facto* detained in the transit zones.

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

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

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

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

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

(1a) In order to carry out the Dublin transfer, the refugee authority may take into asylum detention a foreigner who failed to submit an application for asylum in Hungary and the Dublin handover can take place in his or her case.

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

278 UNWGAD, 'UN human rights experts suspend Hungary visit after access denied', 15 November 2018, available at: https://bit.ly/2B7X5Pu; UNHCR, *Hungary as a country of asylum*, May 2016.

The ground most commonly used was the "risk of absconding" under Section 31/A(1)(c), sometimes in combination with the "identification" ground.[279] The risk of absconding is defined in Section 36/E of the Asylum Decree as present: if "the third-country national does not cooperate with the authorities during the immigration proceedings, in particular if":

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

However, the HHC observes that the assessment of whether it is probable that a person will depart for an unknown destination was 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.[280] The HHC's attorneys observed the same in 2016: a risk of absconding was established if a person does not explicitly mention Hungary, but states that he or she wanted to reach a safe country. For example in the **Kiskunhalas** asylum detention centre, there was a case where asylum seeker entered Hungary legally through a transit zone and stated that his intention was to apply for asylum in Hungary. Nevertheless, he was detained on several grounds, amongst which was also the risk of absconding ground, which lacked any justification.

Moreover, the IAO 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** (now closed), 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.[281] 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. The CPT was struck by the approach of the Hungarian authorities, which continued the criminal proceedings even if a person applied for asylum after entering illegally.[282]

According to the Supreme Court (*Kúria*) opinion, contrary to the practice so far, asylum detention should only last, with regard to detention based on Section 31/A(1)(a) and (c) of the Asylum Act, until the adoption of the final decision of the authority. Conversely, in the judicial review phase, during the asylum appeal, asylum detention cannot be ordered or maintained based on these grounds. The fact that a case is in the judicial review phase does not affect the necessity or possible maintenance of detention for the purposes of national security, public safety or order.

According to the HHC, detention of asylum seekers in Hungary often did not comply with the requirements of ECHR. Asylum seekers in detention in Hungary receive a humanitarian permit while they are in detention, which means that they are explicitly authorised to stay in Hungary during the asylum procedure. Since this is the case, their detention cannot fall under the Article 5(1)(f) of the Convention, because their detention does not pursue the two purposes mentioned in this provision, namely detention for the purpose of deportation and detention in order to prevent unauthorised entry. Further on, detention for the purpose of establishing their identity also cannot fall under Article 5(1)(b) of the Convention since, under current legislation in Hungary, there is no obligation for asylum seekers to provide documentary evidence of their identity. Therefore, detention for the purpose of establishing their identity is unlawful, when asylum seekers make reasonable efforts to clear their identity. All the above is reflected in the *O.M. v. Hungary*

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

280 *Ibid*, 10.

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

282 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 14.

judgment of the ECtHR that became final on 5 October 2016.[283] The judgment also finds that detention was not assessed in a sufficiently individualised manner and that in case of the applicant, who belonged to a vulnerable group the authorities did not exercise particular care in order to avoid situations which may reproduce the plight that forced him to flee.

Since the entry into force of amendments to the Asylum legislation on 28 March 2017, asylum detention is hardly ever used. At the time of writing, no one is detained in asylum detention. The amended law provides that it is only possible to apply for asylum in the transit zones and that all asylum seekers, with the exception of unaccompanied minors below age of 14, have to remain in the transit zone for the whole duration of the asylum procedure. The stay in the transit zone is *de facto* detention.

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

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;[284]
(b) Designated place of stay;[285] and
(c) Periodic reporting obligations.[286]

Asylum detention may only be ordered on the basis of assessment of the individual's circumstances and only if its purpose cannot be achieved by applying less coercive alternatives to detention. However, the HHC's experience shows that the detention orders lacked individual assessments and alternatives were not properly and automatically examined. Decisions ordering and upholding asylum detention were schematic, lacked individualised reasoning with regard to the lawfulness and proportionality of detention, and failed to consider the individual circumstances (including vulnerabilities) of the person concerned. The necessity and proportionality tests were not used. The orders only stated that alternatives are not possible in a concrete case, but there is no explanation as to why.[287] According to the Supreme Court (Kúria) opinion, contrary to the current practice, alternatives must be considered not only in the course of the initial one, but also in subsequent decisions on extension.

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

UNHCR in 2015 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.[288]

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283 ECtHR, *O.M. v. Hungary*, Application No 9912/15, Judgment of 5 October 2016.
284 Sections 2(lc) 31/H Asylum Act.
285 Section 2(lb) Asylum Act.
286 Section 2(la) Asylum Act.
287 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 6-7.
288 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.

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. The application of bail remains very rare in practice. The HHC's attorneys reported that the IAO does not examine the possibility of applying bail automatically, which is not in line with the recast Reception Conditions Directive. Bail is examined only if the asylum seeker asks for it and is rejected in most of the cases. When asylum seekers were still detained in Békéscsaba, if they or their representative made the request for bail at the court in **Békéscsaba**, the court would reject such a request, stating that this decision has to be taken by the IAO. The HHC's attorney has witnessed cases where the IAO wrote in the detention order that the asylum seeker did not have any money for the bail, despite the fact that the possession of money was written on the document, which officially records the belongings of asylum seekers. The IAO does not transmit this document to the court. When this fact was raised by the attorney at the court, the court again said that this should be decided by the IAO and that the court does not have any competence in this.

Alternatives were applied as follows in 2016, 2017 and 2018:

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

Source: IAO.

In 2018, asylum detention was hardly used, along with the alternatives to detention. Most asylum seekers (83.3% of the total) were *de facto* detained in the transit zones, for which no alternative is prescribed in the law.

"House arrest" following criminal proceedings

On 15 September 2015, the Government introduced an amendment to the Act on Criminal Proceedings in order to allow for the "house arrest" of third country nationals, including asylum seekers, in reception and asylum/immigration detention centre in the event that criminal proceedings have been initiated in connection with border fence offences.[289] If a third-country national or asylum seeker has crossed the border fence in an unauthorised manner, or if he or she has destroyed the border fence or in any way hindered the building or erecting of the fence, and criminal proceedings have been instituted against him or her, the person may be kept under house arrest in the asylum/immigration detention centre or other facility where he or she is accommodated, during the period where a crisis situation caused by mass immigration prevails.

[289] Chapter XXVI/A relevant to crimes related to the border fence (introduced by Act CXL of 2015 As of 15 September 2015). Section 542/H provides that "[i]n case of criminal procedures initiated because of crimes stipulated in Section 542/D (i.e. unauthorized crossing of the border fence [Criminal Code Section 352/A], destroying the border fence [Criminal Code Section352/B] and the hindering the building/erecting of the border fence [Criminal Code Section 352/C], during a crisis situation caused by mass immigration, as a matter of priority, house arrest shall be ordered, in order to respect the interests of minors, and it shall be implemented in facilities providing reception conditions and detention covered by the Asylum Act and the Aliens Act." [Unofficial translation].

UNHCR believes that holding asylum seekers in closed detention centres is at odds with the ordinary purpose of "house arrest". Since the specific, more favourable conditions that are otherwise applicable in the context of house arrest,[290] such as greater freedom of movement and more flexible communication with the outside world, cannot be ensured in detention, in UNHCR's assessment, house arrest implemented in an immigration or asylum detention facility for immigration-related purposes essentially amounts to detention. As such, it would not appear to constitute a less coercive alternative to detention, which Member States are required to apply under Article 8(2) of the Reception Conditions Directive, before resorting to detention.[291] UNHCR is particularly concerned about the regime applied to families under house arrest in asylum/immigration detention facilities, as the principle of family unity is not upheld in all cases. Sometimes, family members of individuals under house arrest are detained in different locations. Children are sometimes separated from their parents and placed in a children's home. This situation is clearly at odds with the requirement contained in the amendment itself, which provides that house arrest in asylum/immigration detention centres is made possible to respect the interest of children.[292]

The HHC is not aware of any cases of house arrest in 2017 or 2018.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

3.1. Vulnerable applicants in asylum detention

Unaccompanied children are explicitly excluded from asylum and immigration detention by law.[293] While asylum detention was still widely used, despite that clear ban, unaccompanied children had been detained due to incorrect age assessment,[294] as the age assessment methods employed by the police and IAO are considerably problematic (see section on Identification above). For example, CPT found during its visit one unaccompanied minor who was detained for 4 days.[295]

In late October 2015, Human Rights Watch interviewed nine youth in the **Békéscsaba** and **Nyírbátor** asylum detention facilities who said they were between 14 and 17 years old and whose appearance strongly suggested that they were under 18. All nine said that they had told staff they were unaccompanied children, but staff failed to take the steps necessary to properly assess their ages. Directors at both asylum detention centres denied that any unaccompanied children were detained there. In its 17 November 2015 response to Human Rights Watch, the IAO said that no unaccompanied children were currently detained in asylum detention in Hungary, and that if there is any doubt about the age of an asylum seeker, authorities send the person for a medical examination to establish their age. However, the age-disputed children Human Rights Watch interviewed either had not been seen by a medical professional at all or had received a cursory examination consisting of questions. Some said medical staff only looked at them, and in one case, a staff member asked a detainee to remove his T-shirt.[296]

290 See Section 138 of Act XIX of 1998 on Criminal Proceedings.
291 UNHCR, *Hungary as a country of asylum*, May 2016, 24.
292 See Section 542/H of Act XIX of 1998 on Criminal Proceedings.
293 Section 56 TCN Act; Section 31/B(2) Asylum Act.
294 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 12.
295 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 60.
296 Human Rights Watch, 'Hungary: Locked Up for Seeking Asylum', 1 December 2015, available at: https://goo.gl/zcc8li.

From 28 March 2017, all unaccompanied children above age of 14 are *de facto* detained in the transit zones for the whole duration of asylum procedure. According to the statistics of IAO there were 91 unaccompanied children detained in the transit zones in 2017.[297] On 31 December 2018, there was only one unaccompanied asylum-seeking child who was placed in **Tompa**. In November and December 2018, no unaccompanied asylum-seeking child applied for asylum.[298]

Moreover, no other categories of vulnerable asylum seekers are excluded from detention. Whereas previously families with children were not detained in practice, they are again detained in some cases. The detention of families has been criticised as discriminating between children based on their family status contrary to Article 2(2) of the UN Convention on the Rights of the Child, according to the Hungarian Parliamentary Commissioner for Fundamental Rights.[299]

However, asylum detention must be terminated if the asylum seeker requires extended hospitalisation for health reasons.[300]

In 2016, there were 54 families detained for an average time of 24 days.[301] There were 36 families including children kept in asylum detention for an average time of 22 days. According to the statistics of IAO, in 2017, 24 children with their families were kept in detention for an average time of 22 days.[302] In 2018, there was no child in asylum detention.[303]

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

3.2. Vulnerable applicants in transit zones

On 7 March 2017, UNHCR expressed their deep concerns over the conditions in the transit zone that will have grave effects on children: “This new law violates Hungary’s obligations under international and EU laws, and will have a terrible physical and psychological impact on women, children and men who have already greatly suffered.”[304]

On 8 March 2017, the Commissioner of Human Rights of the Council of Europe also gave alarming signals after the adoption of the amendments to the Asylum Act: "As reported, the adopted Bill would allow the automatic detention of all asylum seekers, including families with children and unaccompanied minors from the age of 14, in shipping containers surrounded by high razor wire fence at the border for extended periods of time. Under the case law of the European Court of Human Rights, detention for the purpose of denying entry to a territory or for removal must be a measure of last resort, only if less coercive alternatives cannot be applied, and based on the facts and circumstances of the individual case. Automatically depriving all asylum seekers of their liberty would be in clear violation of Hungary’s obligations under the European Convention on Human Rights".[305]

In early May 2017, a high-level delegation consisting of three members of the European Parliament's Civil Liberties, Justice and Home Affairs Committee visited the transit zones. Members of the delegation (the Vice-President of the Group of the Progressive Alliance of the Socialists and Democrats (S&D Group) Josef Weidenholzer, Bureau member Peter Niedermüller and S&D Spokesperson for Civil Liberties, Justice and Home Affairs Birgit Sippel) declared in their joint statement that “The conditions asylum

297 Information provided by IAO, 12 February 2018.
298 Information provided by IAO, 12 February 2019.
299 Commissioner for Fundamental Rights, *Report in Case No. AJB 4019/2012*, June 2012, available at: http://bit.ly/1JKiBZN.
300 Section 31/A(8)(d) Asylum Act.
301 Information provided by the IAO, 20 January 2017.
302 Information provided by IAO, 12 February 2018.
303 Information provided by IAO, 12 February 2019.
304 UNHCR, ‘UNHCR deeply concerned by Hungary plans to detain all asylum seekers’, 7 March 2017, available at: http://bit.ly/2sGzPpR.
305 Council of Europe Commissioner for Human Rights, ‘Commissioner concerned about Hungary’s new law allowing automatic detention of asylum seekers’, 8 March 2017, available at: http://bit.ly/2HzHOby.

seekers are facing in Hungary are grim. Within the Röszke Transition Zone on the Hungarian-Serbian border, women, children and whole families are locked in narrow spaces and require a police escort to even visit a doctor. The conditions are not only inhumane but may also be in breach of international and European law. We remain convinced that only a common European asylum policy can help improve the situation refugees are facing and ensure order at the EU's external borders."

On 17 May 2017, the European Commission announced that it will move forward with the infringement procedure against Hungary concerning its asylum law. Amongst other issues, the Commission believes that the systematic and indefinite confinement of asylum seekers in closed facilities in the transit zone without respecting required procedural safeguards, such as the right to appeal, leads to systematic detentions, which are in breach of the EU law on reception conditions and the Charter of Fundamental Rights of the EU. The Hungarian law fails to provide the required material reception conditions for asylum applicants, thus violating the EU rules in this respect.[306] On 7 December 2017, the European Commission decided to move forward on the infringement procedure by sending a reasoned opinion.[307] On 19 July 2018, the European Commission decided to refer Hungary to the CJEU for non-compliance of its asylum and return legislation with EU law.[308]

On 12 September 2017 UN High Commissioner for Refugees Filippo Grandi called on Hungary to "do away with its so-called border transit zones", which he said are "in effect detention centres." The High Commissioner "expressed his concern that asylum-seekers, including children, were being kept in the transit zones" during their asylum process. "Children, in particular, should not be confined in detention', Grandi said Tuesday after touring the Röszke transit zone…"[309]

On 13 October 2017, the Council of Europe Special Representative on migration and refugees published a report on his fact-finding mission (12-16 June 2017) to the transit zones. He recorded that the metal containers accommodating asylum seekers "were directly exposed to the atmospheric conditions in both hot and cold weather; at the time of our visit there were several complaints by asylum-seekers about unbearable heat inside the containers." The Special Representative also accounts for a lack of "educational programmes, language learning programmes or curricula adapted to the particular needs and age of children in either transit zone and children cannot attend local schools." The Special Representative further reported on children complaining about the inadequacy of food provided for them.[310]

The Council of Europe Lanzarote Committee published an extensive report Special report further to a visit undertaken by its delegation to transit zones at the Serbian-Hungarian border.[311]

In its concluding observations, published on 9 May 2018, the UN Human Rights Committee expressed its concern that "the law adopted in March 2017, which allows for the automatic removal to transit areas of all asylum applicants for the duration of their asylum process, except unaccompanied children identified as being below the age of 14 years, does not meet the legal standards under the Covenant, owing to: (a) the lengthy and indefinite period of confinement allowed; (b) the absence of any legal requirement to promptly examine the specific conditions of each affected individual; and (c) the lack of procedural safeguards to meaningfully challenge removal to a transit area."[312]

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

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

308 European Commission, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', IP 18/4522, 19 July 2018, available at: https://bit.ly/2uMEJ2c.

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

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

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

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

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

> "The Special Representative of the Secretary General on migration and refugees and the UN High Commissioner for Refugees have both visited the transit zones and noted that asylum seekers are held in restricted spaces and cannot move freely, and that they are escorted by guards whenever they have to move outside their designated areas. They are housed in shipping containers with rolls of razor-blade wires on top and the transit zones are surrounded by barbed-wire fences. ECRI considers that these features strongly resemble imprisonment. The average duration of stay in transit zones is reported to range from a few weeks to three months."[313]

On 26 June 2018, the Hungarian Helsinki Committee released "Safety Net Torn Apart", an extensive study on the situation of vulnerable asylum seekers in Hungary. The research relies on first-hand information provided by asylum seekers in the transit zones and lawyers working with them, as well as official information provided by the IAO through freedom of information requests. The report accounts for a lack of careful assessment of individual vulnerabilities in the transit zone, lack of places where women can have privacy without men present, no specific, tailored information for women and minors in detention, inadequate basic healthcare services and ineffective psycho-social assistance and improper education.[314]

The CPT published its report on 18 September 2018, following its visit to Hungary from 20 to 26 October 2017. The Committee stressed the need to redesign the transit zones spaces in an effort to remove their carceral character and address overcrowding. General medical screening of the population in the transit zones seems to have been improved, but the handling of mental health and age assessment cases was found to be substandard.[315]

The HHC successfully halted the deportation from open centres to the transit zones – and thus to arbitrary detention – of 9 vulnerable asylum-seekers (8 unaccompanied children and one pregnant woman) by obtaining 2 interim measures from the ECtHR just before the March 2017 amendments entered into force.[316] The HHC obtained 15 other ECtHR interim measures concerning 14 families with children and one unaccompanied child from Afghanistan who were all detained in the transit zones. The ECtHR requested the Hungarian government to immediately place the applicants in conditions that are in compliance with the prohibition of torture and inhuman or degrading treatment. The Hungarian government only released the applicants when they obtained a form of protection and in the last two interim measures cases, the applicants were released only after the domestic courts annulled their placement in the transit zone, therefore it can be concluded that the interim measures were not respected.[317]

313 ECRI, *Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up*, CRI(2018)24, 15 May 2018, available at: https://bit.ly/2Ip1bsp.

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

315 CPT, *Report on the visit to Hungary from 20 to 26 October 2017*, CPT/Inf(2018) 42, 18 September 2018, available at: https://bit.ly/2TTgsTq.

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

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

4. Duration of detention

Indicators: Duration of Detention	
1. What is the maximum detention period set in the law (incl. extensions):	6 months
❖ Asylum detention	6 months
❖ Transit zones	None
2. In practice, how long in average are asylum seekers detained?	
❖ Asylum detention	40days
❖ Transit zones	Not available

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

In 2014 and 2015, detained asylum seekers were likely to spend the whole status determination procedure at first instance in detention.[318] Once the IAO adopted a decision on their case, asylum seekers were released, even in the case that the decision was negative.

After 15 September 2015, however, the detention of asylum seekers was 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.[319]

Practice on this issue varied in 2016, as asylum seekers were sometimes released even before the IAO would adopt a decision, in other cases they would be kept until they would receive the IAO decision, and in other cases for the maximum period of time. This clearly shows on arbitrariness of the system, where no clear policy could be established. Sometimes the release would depend on nationality, if asylum seekers who received negative IAO's decision were from a country into which deportation are possible, they would not be released, while if they were from the country where deportations are harder (e.g. Afghans) they would be released before.

In 2018, the average period of asylum detention was 40 days. According to the statistics of the IAO, there were no families with children placed in asylum detention.[320]

As of March 2017, asylum seekers who are *de facto* detained in the transit zone remain there until the end of their asylum procedure. Unaccompanied children were held there in 2017 for an average of 47 days.[321]

318 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 4.
319 Section 31/A(1)(c) Asylum Act.
320 Information provided by IAO, 12 February 2019.
321 The IAO stated it could not provide this data for 2018 free of charge.

C. Detention conditions

1. Place of detention

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

Since 2013, asylum seekers have been detained in asylum detention facilities.[322] In 2017, only a small number remained detained in asylum detention facilities. Asylum detention used to be implemented in three places: Kiskunhalas, Nyírbátor and Békéscsaba. At the time of writing, the only functioning asylum detention facility is **Nyírbátor**, with a capacity of 105 places, but is currently empty.

In 2017, most asylum seekers were *de facto* detained in the transit zones. The two transit zones in **Röszke** and **Tompa** can accommodate 450 and 205 persons respectively. At the end of 2018, total number of asylum seekers detained in Röszke transit zone was 90, while it was 102 in Tompa transit zone.[323]

2. Conditions in detention facilities

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

2.1. Living conditions and physical security

Asylum detention

Detained asylum seekers have the right to unsupervised contact with their relatives, to send and receive correspondence, to practice religion and to spend at least one hour per day outdoors.[324] The Asylum Decree also specifies minimum requirements for such facilities, including material conditions such as freedom of movement, access to open air, as well as access to recreational facilities, internet and phones, and a 24-hour availability of social workers. According to the Decree, there should be at least 15m^3 of air space and 5m^2 of floor space per person in the living quarters of asylum seekers, while for married couples and families with minor children there should be a separate living space of at least 8m^2, taking the number of family members into account.[325] In practice, asylum seekers' time outdoors is not restricted during the day. They are able to make telephone calls every day, but only if they can afford to purchase a phone card, as their mobile phones are taken away by the authorities on arrival.

Currently no one is detained in asylum detention, therefore there are no problems with overcrowding.

Men must be detained separately from women, with the exception of spouses, and families with children are also to be separated from other detainees.[326]

322 Section 31/F(1) Asylum Act and Sections 36/A-36/F Asylum Decree.
323 Information provided by IAO, 12 February 2019.
324 Section 31/F(2) Asylum Act.
325 Section 36/D Asylum Decree.
326 Section 31/F(2) Asylum Act.

In late 2015, Human Rights Watch found conditions in **Nyírbátor** to be poor. The detainees said the facilities were infested with bedbugs, and Human Rights Watch researchers observed rashes and bites on detainees. Staff said that eradicating the problem would be too costly. Though the temperature was cold, around 5 degrees, many people were without sweaters and were wrapped in bedsheets. Staff said detainees are expected to buy their own clothes.[327]

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

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

> "A considerable number of foreign nationals claimed that they had been subjected to physical ill treatment by police officers at the moment of apprehension, during transfer to a police establishment and/or during subsequent police questioning. It is of particular concern that some of these allegations were made by foreign nationals who claimed to be unaccompanied minors. In addition, a few allegations were received of physical ill-treatment by police officers and/or armed guards working in immigration or asylum detention facilities."[328]

Regarding records of ill-treatment, the CPT finds that "the records of medical consultations were often rather cursory, lacking details, in particular when it came to the recording of injuries. Moreover, it remained somewhat unclear to the delegation to what extent allegations of ill-treatment and related injuries were reported to the management and relevant authorities."[329]

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

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

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

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

Transit zones

The transit zones of **Röszke** and **Tompa** are in remote locations, made out of containers built into the border fence. There are different sectors: offices, a sector for families, a sector for unaccompanied minors, a sector for single men and a sector for single women. Containers are about 13 sq. meters in size

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327 Human Rights Watch, 'Hungary: Locked Up for Seeking Asylum', 1 December 2015, available at: https://goo.gl/zcc8li.

328 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 16.

329 *Ibid*, para 48.

(approximately 4 x 3 meters). Asylum seekers stay in containers furnished with 5 beds. Each asylum-seeker has a bed and a closable wardrobe. When five people are staying in a room, there is no moving space left. In case a family consists of more than 5 members, family members are accommodated in several accommodation units but without being placed together with non-family member persons.

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

The containers are placed in a square and in the middle, there is a courtyard with a playground for children and a ping-pong table. The entire transit zone is surrounded by a razor-wire fence, and is patrolled by police officers and armed security guards. There are cameras in every corner; there is no privacy or silence. The carceral nature of the transit zones has been confirmed by reports published by, for instance, ECRI and CPT, which concluded that such an environment cannot be considered adequate for the accommodation of asylum seekers, even less so where families and children are among them.[330]

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

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

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

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

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

Each sector has a TV. In the transit zones, free Wi-Fi is available and asylum-seekers may keep their mobile phones with them, but no public phones or computers are available. The asylum seekers complain of very poor Wi-Fi connection, which only enables them to send messages, not participate in calls. Those with no personal mobile phone remain disconnected from the outside word. This makes contact with the outside world, including legal representatives, particularly difficult.[331]

Summer 2017 was extremely hot (over 30 degrees during the day) and at that time, there were no ventilators provided in the containers.[332] People also could not leave the windows or doors of the

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

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

332 Reuters, ‘Hungary's tough asylum policy keeps thousands stranded in Serbia’, 14 June 2017, available at http://reut.rs/2FXatps.

containers opened because bugs would come in, and they complained of their bites. There was hardly any shading roof at the courtyard; therefore, people were obliged to stand in direct sunshine if they wanted to be outside during the day. As of August 2017, each room has a ventilator and there are some shades and parasols available. Residents of the transit zones – who are often families with young children – still complain about the excessive heat over the summer, not enough parasols and also of bugs coming into the containers and biting them. Making a draught is not possible since the windows and the doors are on the same side of the containers. Asylum seekers also complained that they want to use the bathroom or shower during winter, they have to walk from their containers to the bathroom containers through the very cold courtyard. The courtyard is covered with white gravel and when it rains, the entire outside area in the transit zone becomes so flooded that it is not possible to use the open-air part.[333]

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

Different sources from international monitoring bodies contain information on the conditions in the transit zones (see Detention of Vulnerable Applicants).[334]

2.2. Access to health care in detention

Asylum detention

Asylum seekers are entitled only to basic medical care. Paramedical nurses are present in the centre all the time and general practitioners regularly visit the facilities. However, medical care provided is often criticised by detainees. They rarely have access to specialist medical care when requested and are only taken to hospital in emergency cases. In severe cases of self-harm, detainees are taken to the local psychiatric ward. In the absence of interpretation services available, the patient is usually released after a short stay and some medical treatment provided. Such emergency interventions, however, do not contribute to detainees' overall mental wellbeing and sometimes even fuel further tensions between them. Those, however, whose condition is not deemed to fall under the scope of emergency treatment, are not eligible to see a dentist, cardiologist or psychiatrist. No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.[335] The detainees complain about receiving the same medication for a range of different medical problems (e.g. sleeping pills, aspirin). The language barrier is also an issue. There is no psychosocial support available in any of the detention centres. During consultation hours, interpretation is not provided in **Nyírbátor**. The CPT found in 2015 that the provision of psychological and psychiatric care was clearly insufficient, if not inexistent in all establishments visited.[336] In the absence of regular, state-funded psychological counselling and regular mental healthcare, the tension deriving from the closed circumstances, lack of information and forced close contact of persons from different national, cultural and social backgrounds is not mitigated. Instances of self-harm, suicidal attempts or thoughts, as well as

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

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

335 Cordelia Foundation *et al.*, *From Torture to Detention: Access of Torture Survivor and Traumatised Asylum-Seekers to Rights and Care in Detention, Hungary and Bulgaria*, January 2016, available at: https://goo.gl/iDSni4.

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

aggressive outbursts towards fellow detainees or guards were witnessed as regular during all monitoring visits.[337]

Cordelia Foundation observes that crucial – even life-saving – medical information can be lost, as interpretation is not provided in moments such as the first medical check-up in detention centres. For example, the medication of a middle-aged, diabetic Syrian man, together with his personal belongings, was taken away from him upon arrival at the **Békéscsaba** asylum detention centre (now closed). At 03:00, during the initial medical check-up, aimed at ending the 24-hour quarantine of the man and his family, neither the doctor nor the nurses noticed that his blood sugar level was on 24,5 – at least 3 times more than the officially accepted average for diabetics. When accompanied by the monitors of the Cordelia Foundation to the nurse again, his blood sugar was measured and he was given his medication. The medical staff in charge and the camp management justified the incident as the result of a miscommunication between the detainee and the doctor, as no Arabic interpretation was provided during the check-up.[338]

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, handed out sanitary packs, clothes or other utensils while being mostly separated from their clients by iron doors or having their offices in a part of the centre where detainees have no access to. Social workers could play an active role in the identification of torture victims and other detainees with special needs. However, not only are they overburdened by administrative and basic service provision tasks, but they also lack possibilities to be trained specifically to this end, and they are not officially appointed to perform this task.[339]

Transit zones

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

When pregnant women have to be taken for a medical examination, 2 or 3 policemen escort them to a nearby hospital. A pregnant woman reported that the policemen had stayed in the examining room during her pre-natal medical check-up. No interpretation is provided during the medical examination, which makes communication and building confidence between doctor and patient extremely difficult. In one of the pending ECtHR cases,[340] the Court's interim measure granted explicitly requested the Hungarian government to provide interpretation at the medical check-ups of the applicant. Despite this interim measure being granted, the Hungarian government responded that according to the regulation they are only obliged to guarantee the translation during the administrative procedures and not during the medical examinations.

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

Since mid-November 2017, the IAO employs a clinical psychologist who speaks English and when an asylum seeker does not, a psychologist can request a translator. The psychologist visits both zones once a week. There are, however, reports of issues of interpretation and access.[341] The psychiatrist started to visit the transit zones on 24 January 2018. The visit takes place once a week. However, people complain

337 Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016, 24-25.
338 *Ibid*, 23.
339 *Ibid*, 25.
340 ECtHR, *R.R. v. Hungary*, Application No 36037/17.
341 HHC, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, 7-14, in particular 11.

that psychosocial care is not adequate, in particular there is no specific psychological care provided for children, often the psychologist would only talk to the parents and not to the child. The ECRI conclusions of May 2018 state that children held in the transit zones did not receive proper psychosocial counselling, and the Hungarian authorities did not provide them with proper recreational services and facilities in the transit zones. ECRI also stressed that detention conditions in the transit zones worsened since 2015.[342]

2.3. Conditions for vulnerable asylum seekers

Asylum detention

Under Section 31/F of the Asylum Act, detention must take into account special needs.[343]

Vulnerable persons, except unaccompanied children, are not excluded from detention. HHC in the past regularly saw that persons with special needs such as the elderly, persons with mental or physical disability were detained and did not get adequate support. A mechanism to identify persons with special needs does not exist. The lack of a systematic identification mechanism led to the frequent detention of torture victims and other traumatised asylum seekers, as well as making existing legal safeguards ineffective. There are no special conditions for vulnerable asylum seekers in detention.

There is no systematic training for those who order, uphold or carry out the detention of asylum seekers regarding the needs of victims of torture, rape or other serious acts of violence. It is therefore questionable to what extent the authority is capable to carry out the assessment of vulnerabilities and special needs in the framework of detention, given that no expert psychologists and doctors are employed to this end. The IAO may decide to use the assistance of external medical or psychological specialists. However, this is not a common or frequent practice.[344]

In late 2015, Human Rights Watch found five cases in both immigration and asylum detention where people with psychosocial or physical disabilities and a pregnant woman had been detained. There had not been adequate efforts to move them to a facility suitable to address their special needs.[345] For example, Jihad, 23, from Iraq, detained in **Nyirbátor** asylum detention facility for two weeks, showed Human Rights Watch scars on his arms and chest, saying they were from self-inflicted cutting resulting from mental distress: “I tried to commit suicide two days ago [by trying to swallow a lightbulb]. The doctor just gave me a sleeping pill.” The director at the centre told Human Rights Watch that Jihad had been taken to a general hospital when he attempted to swallow the lightbulb but had been given no psychiatric or psychological care.

Cordelia Foundation found a young Syrian man in September 2015 in **Békéscsaba** (now closed) who was missing the lower half of one of his legs. As the Békéscsaba asylum detention centre, similarly to other detention facilities, is not equipped to accommodate persons with physical disabilities, the man had to climb a floor in order to reach his room. Even in case of such a grave disability, the IAO considered that detention was appropriate. The detention centre staff, in agreement with the decision, told the monitoring team that the asylum seeker “had no problems coming all the way from Syria with only one leg”.[346]

Cordelia Foundation monitoring teams have witnessed that needs, even if urgent, of detainees suffering from PTSD or mental disorders not characterised by loud outbursts or aggression, often go unnoticed. In November 2015, the Cordelia Foundation’s psychiatrist identified a patient in one of the detention centres in the acute phase of paranoid psychosis, already detained for several weeks at the time of the visit,

342 ECRI, *Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up*, 15 May 2018.
343 Section 31/F(1) Asylum Act.
344 Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016.
345 Human Rights Watch, ‘Hungary: Locked Up for Seeking Asylum’, 1 December 2015, available at: https://goo.gl/zcc8li.
346 Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016, 15.

whose hallucinations and severe persecution delusions went completely unnoticed until then. As a result of the monitor's intervention, hospitalisation and medical assistance was initiated.[347]

Transit zones

The transit zones in their current state are unfit for accommodating people for a longer period of time and are unfit for accommodating people belonging to vulnerable groups for even a shorter period of time.[348] The conditions in the transit zones are dire and clearly do not meet international and EU law standards. Adequate care for vulnerable individuals is missing, similarly to systematic identification and support mechanisms for people with special needs.

Separate accommodation for vulnerable asylum seekers is missing. For example single women and unaccompanied girls are usually held together in a sector with families (and therefore men and boys), and in general there are no private women-only places.[349] There is no adequate support provided for victims of domestic violence, victims of torture and traumatised asylum seekers. Special needs of LGBTI people are not taken into account. The transit zones are not equipped to meet the needs of persons with mental or physical disabilities. For example, the HHC obtained an interim measure under Rule 39 in a case of an Iraqi family of six, with a 10-year-old child who is unable to use her limbs and is confined to a wheelchair. She is completely dependent on her parents in all aspects of everyday life and she faced severe difficulties living in the transit zone.

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

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

❖ Lawyers:	☐ Yes	☒ Limited	☐ No
❖ NGOs:	☐ Yes	☐ Limited	☒ No
❖ UNHCR:	☒ Yes	☐ Limited	☐ No
❖ Family members:	☒ Yes	☐ Limited	☐ No

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

In principle, media and politicians have access to asylum detention, but they need to ask for permission in advance. In practice, this rarely happens, since the interest is not very high. Access to the transit zones is more limited; media were let in only on one occasion, soon after the opening of the transit zones, when a press conference was organised by the Ministry of Interior in **Tompa** transit zone on 6 April 2017, which was virtually emptied of its inhabitants for the time of the press conference.[350]

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347 *Ibid*, 24.

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

349 HHC, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 20187-14.

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

In asylum detention, no NGO is present on a regular basis. In transit zones, the Charity Council,[351] which consists of six organisations, is the only organisation which is allowed to enter to provide certain type of assistance to asylum seekers based on an agreement with the Hungarian authorities: Red Cross distributes donations; The Hungarian Interchurch Aid distributes donations, holds children programmes and helps in conflict management; The Hungarian Reformed Charity Service distributes donations, organises community programmes and, in case of need, religious programmes; the personnel of the Migration Medical Health Service of the Hungarian-Maltese Charity Service operate a lung-screening bus for the medical screening of asylum seekers' lungs. In 2018, the Hungarian Interchurch Aid, the Hungarian Reformed Church and Caritas no longer regularly visited the transit zones.

In 2018, UNWGAD was denied access to the transit zones in Hungary as the authorities considered that transit zones do not fall under their mandate, as these were not places of deprivation of liberty.[352]

D. Procedural safeguards

1. Judicial review of the detention order

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

Asylum seekers are informed of the reasons of their detention and their rights orally in a language that they understand, but the detention order is given to them in Hungarian. Asylum seekers often complain that they were not properly informed, or they did not understand the grounds of their detention and the length thereof.[353] The CPT confirmed this and made an explicit recommendation to the Hungarian government regarding this issue, but also noted that the situation in this respect appeared to be less problematic in **Békéscsaba**, where an information office of the IAO was open every weekday and asylum-seekers could ask for updated information.[354]

CPT further finds that: "[…] many foreign nationals (including unaccompanied juveniles) complained about the quality of interpretation services and in particular that they were made to sign documents in Hungarian, the contents of which were not translated to them and which they consequently did not understand."[355] And that:

> "[A] number of the foreign nationals interviewed during the visit claimed that they had not been informed upon their arrival at the establishment of their rights and obligations in a language they could understand (let alone in writing) and that they had been made to sign documents which they had not understood. They were also uncertain, for example, whether and to whom they could lodge complaints. The examination by the delegation of a number of personal files of detained foreign nationals revealed that some of the files contained a copy of information materials provided to the foreign national concerned. However, in all cases, they were in Hungarian and only some of them were signed by the foreign national concerned and/or an interpreter."[356]

351 The six members of the national Charity Council are the following: Hungarian Red Cross, Maltese Charity Service, Hungarian Interchurch Aid, Caritas Hungarica, Hungarian Reformed Church, Baptist Aid: http://karitativtanacs.kormany.hu.

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

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

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

355 *Ibid*, para 59.

356 *Ibid*, para 62.

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

In recent years, the effectiveness of judicial review has been criticised by the CoE Commissioner for Human Rights expressed concern as to the lack of effective judicial review,[357] UNHCR[358] and the UNWGAD.[359]

1.1. Automatic judicial review

Judicial review of the administrative decision imposing detention on a foreigner is conducted by first instance courts in case of a decision for the purpose of extending the duration of detention. Detention may initially be ordered by the IAO for a maximum duration of 72 hours, and it may be extended by the court of jurisdiction upon the request of the IAO, which should be filed within 24 hours from the time it has been ordered. The court may grant an extension of asylum detention for a maximum duration of 60 days. Every 60 days, the IAO needs to request the court for another prolongation, 8 working days prior to the due date for extension. The court can prolong detention for 60 days repeatedly up to 6 months. The court has to decide on prolongation before the date of expiry of the detention order.

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

Judicial reviews of immigration and asylum detention are conducted mostly by criminal law judges. Judicial review of immigration detention has been found to be ineffective, as Hungarian courts fail to address the lawfulness of detention in individual cases or to provide individualised reasoning based upon the applicant's specific facts and circumstances. HHC's analysis of 64 court decisions from February 2014 (as does the experience of HHC lawyers in 2015) confirmed that the judicial review of asylum detention is ineffective because of several reasons:[360]

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 IAO's detention order, despite clear requirements under EU and domestic law to apply detention as a measure of last resort, for the shortest possible time and only as long as the grounds for ordering detention are applicable.[361] 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).[362] The judges are only able to make their decisions on the basis of the unilateral information in the motions submitted by the IAO, because the documents supporting those motions are not submitted to the courts. Therefore, it is not really possible to have individualised decisions on each case, resulting in a formulaic nature of the courts' statements of reasons.

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357 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.

358 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.

359 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/1IXSvlY.

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

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

362 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.

Moreover, 4 court decisions contained a date of birth which indicates an age lower than 18 years.[363] 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. Such group hearings still continued in 2017. If the asylum seeker has no attorney but one appointed *ex officio*, his or her hearing usually lasts 5 minutes. If a non *ex officio* attorney is present, the hearing lasts 10 minutes. There is no individualised examination, as 10 asylum seekers are interviewed together in one group.

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.[364] The HHC's attorneys report that if the asylum seeker is not represented by an attorney who is not an *ex officio* attorney, the chances of success at the court are equal to zero. If the asylum seeker is represented, then there is a very slim chance that he or she would be released. The same findings apply for 2018.

The 60-day interval for automatic judicial review *per se* excludes the use of detention only for as short a period as possible and only until the grounds for detention are applicable, as it would be required by EU law.[365] If for any reason, the relevant grounds for detention cease to be applicable, for example, one week after the last judicial review, this fact is extremely unlikely to be perceived by the detaining authority and the detainee will only have the first chance to bring this change to the attention of the district court and request to be released only 53 days later. Therefore, the 60-day intervals cannot be considered as "reasonable intervals" in the sense of Article 9(5) of the Recast Reception Conditions Directive.

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

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

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

Judges are overburdened, and the irrationally high number of cases they are assigned makes it impossible to provide effective judicial review. A systemic change is desperately needed in order to remedy the situation.

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363 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.

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

365 Article 9(1) recast Reception Conditions Directive.

1.2. Objection

According to Section 31/C(3) of the Asylum Act, an asylum seeker may file an objection against the ordering of asylum detention and the denial of certain rights of detainees during detention e.g. right to use a phone, right to special diets etc. The amendments to the Asylum Act that entered into force in January 2018 prescribe that objections should be submitted within 3 days after the issuance of the detention order.[366] The objection must be decided upon by the local court within 8 days.[367] Based on the decision of the court, the omitted measure shall be carried out or the unlawful situation shall be terminated.[368]

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 IAO, 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 IAO's decision, but that of the court. This means that only the first type of decision (that of the IAO) can be "objected" against. The objection can therefore still not be regarded as a stand-alone judicial remedy against the detention order, as following the 72-hour period asylum detention is subject to regular period review by the court, yet the period is too long (courts can prolong detention for a maximum of 60 days). Accordingly, the asylum seeker is left with no legal means to challenge the detention order at his or her own initiative (not only during the mandatory periodic judicial review).

Secondly, during the first 72 hours of detention, detained asylum seekers do not have access to professional legal aid. The Asylum Act ensures a case guardian for asylum seekers in asylum detention (who is an attorney at law appointed by the authority), but only for the regular prolongation of detention at 60-day intervals and the judicial assessment of an "objection" that has already been submitted to the court. No case guardian or *ex officio* appointed legal representative is present when asylum detention is ordered, nor is such assistance provided in the first 72 hours of detention. Therefore, no legal professional can help the detainee file an objection.

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

1.3. No review of placement in transit zones

The IAO issues a ruling ("*végzés*") ordering the applicant's place of residence in the transit zone based on Sections 80/J(5) and 5(2)(c) of the Asylum Act.[369] This ruling is not a detention order, as transit zones are not considered places of detention by the government. There is no possibility to seek legal remedy against the ruling. It can only be challenged within the potential judicial review request against the future decision of the IAO on the asylum application.

Such a remedy is ineffective for several reasons. On the one hand, asylum seekers granted desired status do not have any interest in appealing a positive decision. Persons who receive protection are released and therefore the appeal against the placement in the transit zone is deprived of meaning since asylum seekers cannot complain about the conditions in the transit zone since they are no longer detained there.

366 Section 31/C(3) Asylum Act.
367 Section 31/C(4) Asylum Act.
368 Section 31/C(5) Asylum Act.
369 Section 80/J(5)Asylum Act: "The refugee authority shall appoint the territory of the transit zone for the person seeking recognition as place of residence for the period until the adoption of a final decision: this cannot be challenged by way of applications for remedy or when an order on a Dublin transfer becomes enforceable. The person seeking recognition can leave the territory of the transit zone via the exit gate. "Section 5(2) Asylum Act: "A person seeking asylum is required: c) to stay and live in the place of accommodation designated by the refugee authority in due compliance with this Act, and to abide by the rules of conduct in such designated place of accommodation."

Additionally, the HHC is aware of cases where the Szeged Court did not adjudicate on the lawfulness of the asylum seekers' past placement in the transit zone, arguing that there was no need for that since the asylum seeker had been already released from the transit zone.

The HHC is also aware of cases where this type of remedy has already been proved ineffective even in case of those who had a – successful – judicial review performed in relation to the IAO's ruling (as well as the in-merit decision) and who had to stay in the transit zone for the duration of the appeal. Although the Szeged Court found that the IAO's ruling on placement in the transit zone was unlawful and therefore annulled the ruling and ordered the IAO to deliver a new ruling on the placement in the re-opened asylum procedure, the court had not carried out any assessment as to whether the plaintiff's placement in the transit zone was appropriate and met the legal requirements under the recast Reception Conditions Directive and Article 3 ECHR. More importantly, since the court has no reformatory powers, it cannot issue a ruling that would remedy the asylum seeker's situation to avoid future violations. Even in case of annulment, the IAO still avoided compliance with the court's order. The HHC is aware of several cases where despite the court ruling that placement in the transit zone was unlawful and ordering that asylum seekers should be placed in another open camp, the IAO ignored the court's decision and re-appointed the transit zone as a place of stay in the repeated procedure.[370]

Recently, the Szeged District Court annulled several transit zone placement decisions,[371] and the IAO actually respected the court decisions and placed the applicants in the open community shelter in **Balassagyarmat**.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention		
1. Does the law provide for access to free legal assistance for the review of detention?	☒ Yes	☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?	☐ Yes	☒ No

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

Since the cooperation agreements were revoked by the authorities in summer 2017, the HHC lawyers do not have direct access to the detention centres or transit zones. The HHC lawyers can only represent the clients if the asylum seekers explicitly communicate the wish to be represented by the HHC lawyer to the IAO (they sign a special form). Once this form is received by the IAO, the HHC lawyers can meet the client in a special room/container located outside the living sector of the detention centre/transit zone. This way the legal aid in the asylum detention and transit zones is seriously obstructed, as free legal advice does not reach everyone in the facility, but only those explicitly asking for it.

In 2016, the HHC lawyers provided legal advice to 997 asylum seekers detained and represented 178 clients during their judicial review of detention. For 2017 and 2018data is only available for the number of all representation by the HHC lawyers at courts.

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

Even though the presence of an officially appointed lawyer is obligatory, HHC has witnessed that the lawyers usually do not object to the prolongation of detention. Officially appointed lawyers often provide ineffective legal assistance when challenging immigration detention, which is caused by their failure to meet their clients before the hearing, study their case file, or present any objections to the extension of

370 HHC, T*he Immigration and asylum office continues to ignore court decisions and interim measures,* 14 December 2018.

371 See e.g. District Court of Szeged, Decisions No 6.K.27.060/2018/8 and 44.K.33.689/2018/11.

the detention order. Besides, this *ex officio* legal assistance is only provided at the first court prolongation of the detention order (after 72 hours). This is corroborated by the Hungarian Supreme Court 2014 summary opinion, finding that the *ex officio* appointed legal guardians' intervention is either formal or completely lacking and therefore the "equality of arms" principle is not applied in practice. The CPT observed that:

> "[S]ome detained foreign nationals met by the delegation were unaware of their right of access to a lawyer, let alone one appointed ex officio. A few foreign nationals claimed that they had been told by police officers that such a right did not exist in Hungary. Moreover, the majority of those foreign nationals who did have an ex officio lawyer appointed complained that they did not have an opportunity to consult the lawyer before being questioned by the police or before a court hearing and that the lawyer remained totally passive throughout the police questioning or court hearing. In this context, it is also noteworthy that several foreign nationals stated that they were not sure whether they had a lawyer appointed as somebody unknown to them was simply present during the official proceedings without talking to them and without saying anything in their interest."[372]

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

E. Differential treatment of specific nationalities in detention

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

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

Content of International Protection

A. Status and residence

Since June 2016, the Hungarian state has completely withdrawn integration services provided to beneficiaries of international protection, thus leaving recognised refugees and beneficiaries of subsidiary protection to destitution and homelessness. It is only non-governmental and church-based organisations that provide the needed services aimed at integration such as housing, assistance with finding an employment, learning Hungarian language or family reunification.[373] Keeping in mind the complete withdrawal of the state from the integration of beneficiaries of international protection, we discuss the content of international protection as follows:

1. Residence permit

Indicators: Residence Permit

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

In Hungary, persons with protection status do not get a residence permit, but a Hungarian ID. For refugees the duration of the status was 10 years, while for persons with subsidiary protection it was 5 years, but as of 1 June 2016 both were reduced to 3 years. According to the Asylum Act, refugee and subsidiary protection statuses shall be reviewed at least every 3 years.[374]

There are difficulties in the issuance of IDs in practice, notably the fact that it takes at least 1 month to issue a personal identification card. However, pursuant to the law the procedure should take up to 20 days.[375] According to the regulations in force from 1 June 2016, persons with international protection status are able to stay in the reception centres only for 30 days after the delivery of the decision.[376] Therefore, in 2017 it was a common experience that by the time that beneficiaries of international protection had to leave the camp, they will had not received their ID and address card, thereby facing greater difficulties in finding a job and accommodation. Since people dominantly leave the reception facilities after receiving international protection, this has been more of a theoretical problem in 2018.

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

According to the experiences of the Evangelical Lutheran Church, cases were mostly prolonged where the beneficiaries of international protection had left the country without waiting for their Hungarian personal documents but were afterwards transferred back to Hungary. In these cases the refugees/beneficiaries of subsidiary protection have to first request the IAO to contact the competent (based on the person's address) local government office and send them the case file of the person. This usually takes at least two weeks but can last even longer. After the local government office received the notification, the person can submit the application for address and ID cards. In 2018 in the case of a

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

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

375 See more information regarding the requirements and procedures to obtain an ID card int he report issued by the Immigration and Refugee Board of Canada,*Hungary: Identity cards and address cards for nationals and non-nationals, including requirements and procedures to obtain the cards; description of the cards, including information on the cards (2016-July 2018)*, [HUN106146.E], 10 August 2018, available at: https://bit.ly/2SK8waD.

376 Section 32(1) Asylum Act.

refugee the lack of permanent address (he could not register his dormitory address as a permanent one) did not let him to receive an ID card for two months.

In practice, there is a significant obstacle that children beneficiaries of international protection face in obtaining ID cards if only one of their parents resides with him/her in Hungary. According to the law,[377] in order to issue an ID card to children with no legal capacity (below the age of fourteen) both parents' consent is required. Thus, the parent of the child beneficiary of international protection has to set down his/her consent in writing (either in private document providing full evidence or a statement taken before the Hungarian Consulate) and has to deliver the original copy of it to Hungary. Consequently, it is obvious that in countries of origin such as Syria, Afghanistan or Somalia public service does not function or it functions in a highly limited way, and Hungarian Consulates do not operate. Not to mention the level of public security, which amounts to the fact that such a requirement from refugees and beneficiaries of subsidiary protection is absolutely unnecessary and disproportionate and means that the law is not tailored to the situation of beneficiaries of international protection. HHC is aware of a case from 2017 where it took approximately one year to obtain an ID card for a 10-year-old boy as a result of the afore-mentioned issues.

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

2. Civil registration

2.1. Registration of child birth

Pursuant to the Act on Civil Registration Procedure,[378] within one day from the birth of a child, parents have the obligation to register his/her birth at the competent Registry Office, which issues the birth certificate. Neither the HHC nor Menedék Association is aware of any cases regarding problems as to birth registration. Main challenges concern the establishment and registration of the new-born child's citizenship. Those children whose parents are beneficiaries of international protection are registered as unknown citizens given that Hungary does not have the competency to establish the nationality of another country. Provided that parents cannot contact the embassy of their country of origin in order to register their child, the new-born remains unknown citizen.

According to the current Hungarian legislation, children of persons with international protection do not receive Hungarian citizenship *ex lege* at birth, which is a clear violation of Article 1(2)(a)-(b) of the 1961 Convention on the Reduction of Statelessness and Article 6(2)(b) of the 1997 European Convention on Nationality. Furthermore, it is in breach of Articles 3 and 7 of the 1989 Convention on the Rights of the Child.[379] According to the Menedék Association, the struggle of obtaining citizenship for the child leads to frustration and anxiety for parents with international protection. The problem still persists in 2018.

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

378 Act I of 2010 on Civil Registration Procedure.

379 "Until 2002, the relevant Law-Decree did not contain any specific guidance for cases where the new-born child's nationality was not proven (e.g. neither of the parents was a Hungarian citizen, etc.). Based on anecdotal information and data gathered from individual cases known to the author, it appears that the practice was to register children automatically as having the same nationality as their parents." Source: Gábor Guylai, *Nationality unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*, January 2014 available at: http://bit.ly/2oeIgUC.

2.2. Registration of marriage

As regards marriage in general, the same rules apply to beneficiaries of international protection and to Hungarian nationals. There is only one additional requirement that refugees and persons with subsidiary protection have to fulfil. As it is set out in the Act on Civil Registration Procedure, non-Hungarian citizens have to prove that no obstacle of the marriage exists pursuant to their personal law.[380] The term "personal law" is defined in the Act on International Private Law,[381] meaning the law of any State of which the person is a national. Consequently, in practice beneficiaries of international protection would have the obligation to contact their embassy, which on one hand might be dangerous for the person. On the other hand, it is prohibited by the Asylum Act to do so, unless the person loses his/her international protection status. Therefore, in such cases, the Act on Civil Registration Procedure enables the applicants to ask for an exemption from the Registry Office[382] and provides *ex lege* exemption in cases where the country of origin is knowingly unable to issue the required certificate.[383]

As per the experiences of Menedék Association requests for exemption are mostly accepted by the Registry Office, nonetheless they are aware of a case when during the asylum procedure the applicant claimed to be married but lost his wife soon afterwards. As a result of the lack of proper Somalian state registration and since the refugee was not able to contact the embassy due to his fear of persecution, there was no way to prove the death of his wife with documents and to certify the change in his marital status.

In general, registration of marriage is a long procedure in which couples usually need the help of Menedék to write the application of exemption. The practice of the registry office regarding the required documents is diverse. This was confirmed by the experiences of the Evangelical Lutheran Church, as well. In 2018, according to Menedék Association on one occasion the birth certificate of the marrying party's mother was requested by the registry office without any legal ground for doing so.

Under the law, the state must provide an interpreter upon submitting the request to get married and during the ceremony in case the parties do not speak Hungarian. In contrast with that, in practice the parties are asked to bring an interpreter with themselves. The HHC is aware of a positive example, when the authorization procedure was accelerated by the Registry Office taking into account the pregnancy of the bride and the close date of the child's birth.

3. Long-term residence

Indicators: Long-Term Residence	
1. Number of long-term residence permits issued to beneficiaries in 2018:	Not available

Long-term residence is regulated by the TCN Act. Long-term residence status could be granted to those refugees or beneficiaries of subsidiary protection who have lawfully resided in the territory of Hungary continuously for at least the preceding three years before the application was submitted.[384] Continuity assumes that a person has not stayed outside the territory of Hungary for more than 270 days at all.[385] In practice, the 3-year term of residence must be understood as starting when people with international protection status have already moved out of the reception facilities and established a domicile.

The January 2019 amendments to the TCN Act and the Asylum Act exclude the possibility of residing concurrently under two legal titles in Hungary.[386] This means that by receiving another legal title for residence the person loses his or her international protection status.

380 Section 23(1) Act on Civil Registration Procedure.
381 As of 1 January 2018, Section 15 of Act XXVIII of 2017 on International private law.
382 Section 23(1) Act on Civil Registration Procedure.
383 Section 23(2) Act on Civil Registration Procedure.
384 Section 35(1)(a) TCN Act.
385 Section 35(2) TCN Act.
386 Section 1(7) TCN Act; Section 1(3) Asylum Act.

According to the law, the applicant has to submit the documents in proof of means of subsistence in Hungary and the Hungarian existing residence, such as the comprehensive health insurance.[387]

The IAO has 70 days to examine the case and take a decision.[388] The long-term residence permit is granted for an indefinite term of time but the document has to be renewed every 5 years.

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

According to the TCN Act, in cases of exceptional circumstances the third-country national may be given a national permanent residence permit by decision of the minister in charge of immigration even in the absence of the relevant statutory requirements. The minister in charge of immigration may consider the individual circumstances, family relationships and health conditions of the third-country national as exceptional circumstances, and may take into account the economic, political, scientific, cultural and sporting interests of Hungary.[389]

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	
❖ Refugees	3 years
❖ Subsidiary protection beneficiaries	8 years
2. Number of citizenship grants to beneficiaries in 2018:	19

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

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

The minimum period of residence prior to the naturalisation application is shorter for a number of categories of applicants who are treated preferentially. Recognised refugees and stateless persons are two of the categories benefitting from preferential treatment, and are required to have resided in Hungary continuously for a period of at least three years prior to the submission of the application.[390] Although regarding stateless persons the actual waiting time is 6 years, since they are not entitled to establish a domicile after they were granted stateless status. In practice, this means that stateless persons at first have to apply for a national long-term residence permit and only after obtaining it together with the registered domicile can they apply for Hungarian citizenship. According to the Menedék Association, in practice after 3 years with an established domicile refugees cannot be granted citizenship, because they usually have troubles fulfilling other criteria due to the lack of proper integration support.

As per the recent experiences of the HHC, having no stable accommodation (but living in a homeless shelter) and the lack of adequate Hungarian language skills are dominant within the difficulties persons with international protection face as an obstacle of applying for Hungarian citizenship. Also, the high fees of the Hungarian Office for Translation and Attestation Ltd. might result in further difficulties when it comes to the application for citizenship.

387 Section 94(1) TCN Decree.
388 Section 35(6) TCN Act.
389 Section 36(1) TCN Act.
390 Section 4(2) Citizenship Act.

Section 4(2) of the Citizenship Act clarifies the distinction between refugee status and subsidiary protection, by providing preferential treatment only to refugees, while persons with subsidiary protection fall under the general rule of 8-year-longprevious residence in Hungary. Moreover, the Asylum Act expressly states that beneficiaries of subsidiary protection shall not be entitled to the conditions for preferential naturalisation made available to refugees in the Citizenship Act.[391]

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

On the authentication of foreign documents – the relevant obligation of the authentication being provided by Section 14(5)(a) – that might result in difficulties in case of refugees the study on Hungarian nationalisation written in 2016 by the HHC's Gábor Gyulai points out the following:

> "[O]fficial foreign documents must go through diplomatic legalisation (authentication) before submission, unless this would take an unreasonably long time (according to the declaration of the competent consular officer) or if this would result in seriously adverse legal consequences for the applicant. This latter exception could constitute an important safeguard for refugees and other beneficiaries of international protection; nonetheless, there is no information whether it is applied as such in practice."[392]

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

As the law states, decisions in connection with petitions for the acquisition of Hungarian citizenship by way of naturalisation or repatriation shall be adopted by the President of the Republic based upon the recommendation of the Minister of Interior.[393]

There is an existent *ex lege* practice of the Government Office of Budapest, which is that the authority summons the applicant for a "data checking". In fact, there is a proper interview held with the applicant about the very detail of his or her professional and private life, including questions regarding his or her family life, past, hobbies and everyday life in Hungary, worldview, income, housing, political opinion, religion and future plans etc. There are only hand written notes taken by the questioning officer, but there is no copy served to the applicant. Since the procedure is not transparent, the interview's role as to the decision is not clear.

There is no procedural deadline set out in the law concerning the maximum deadline for issuing a decision, although the Government Office of Budapest shall forward the applications for naturalisation to the Minister of Interior within three months.[394] In practice, the general procedural time takes at least approximately one year.

The President of the Republic shall issue a certificate of naturalisation attesting the acquisition of Hungarian citizenship. Subsequently, the applicant must take a citizenship oath or pledge of allegiance, for which the invitation shall be sent by the mayor of the district of his or her residence.[395] The naturalised person shall acquire Hungarian citizenship on the date of taking the oath or pledge of allegiance.

In practice, the applicant has to wait for a long time – meaning at least a year– for a decision. Since the decision on granting citizenship is not an administrative one, it cannot be appealed, nor can judicial review be mounted against the decision. Therefore, the procedure for naturalisation lacks the provision of

391 Section 17(4) Asylum Act.
392 HHC, *The Black Box of Nationality: The naturalisation of refugees and stateless persons in Hungary*, 2016, available at: https://goo.gl/V7OVT5, 18.
393 Section 6(1) Citizenship Act.
394 Section 17(2) Citizenship Act.
395 Section 4(2) Citizenship Act.

information and the most basic procedural safeguards of transparency, accountability and fair procedure.[396] The experience of Menedék Association confirms the aforementioned, as according to them, in the beginning of last year several applicants were granted citizenship although at the end of 2018 applicants with substantially similar background were rejected.

In 2018, 68 beneficiaries of international protection applied for Hungarian citizenship. In the same year 13 refugees and 6 subsidiary protection beneficiaries obtained citizenship. The applications of beneficiaries of international protection were rejected in 52 cases.[397]

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No

2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No

3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No

5.1. Criteria for cessation and revocation

The Asylum Act rules the grounds for cessation of status and the revocation of the recognition under the same Section.[398] Section 11(1) provides that refugee status shall cease if (i) the refugee acquires Hungarian nationality or (ii) recognition as refugee is revoked by the refugee authority. There are several grounds of revocation determined in the law as follows:[399]

(a) The refugee has voluntarily re-availed him or herself of the protection of the country of his or her nationality;
(b) The refugee has voluntarily re-acquired his or her lost nationality;
(c) The refugee has acquired a new nationality and enjoys the protection of the country of his or her new nationality;
(d) The refugee has voluntarily re-established him or herself in the country which he or she had left or outside which he or she had remained owing to fear of persecution;
(e) The circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, subject to the exception of a well-founded fear arising from past persecution;[400]
(f) The refugee waives the legal status of refugee in writing;
(g) The refugee was recognised in spite of the existence of the reasons for exclusion referred to in Section 8(1) of the Asylum Act or such a reason for exclusion prevails in respect of his or her person;
(h) The conditions for recognition did not exist at the time of the adoption of the decision on his/her recognition;
(i) The refugee concealed a material fact or facts in the course of the procedure or made a false declaration in respect of such a fact or facts or used false or forged documents, provided that this was decisive for his or her recognition as a refugee.

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

396 HHC, *The Black Box of Nationality*, 2016.
397 Information provided by the Registry of the Government Office of Budapest, 15 February 2019.
398 Sections 11 and 18 Asylum Act.
399 Section 11(2) Asylum Act.
400 Section 11(4) Asylum Act.

5.2. Procedures and guarantees

According to the Asylum Act, the asylum authority shall examine the compliance with the conditions for refugee status and subsidiary protection at a minimum three-yea interval.[401] IAO shall also examine compliance with the conditions for refugee status or subsidiary protection if his or her extradition was requested.

The review of the international protection status is to be governed by the general rules of the asylum procedure (set out in Chapter VII of the Asylum Act),[402] and Sections 57-68 of the Asylum Act. The procedure shall be conducted within 60 days.[403]

Proceedings for the withdrawal of refugee status or subsidiary protection are opened *ex officio*.[404] The rules of the general asylum procedure shall be applied during the withdrawal proceedings.[405] The IAO shall interview the person holding international protection status and in 60 days decide if the conditions of refugee status or subsidiary protection are still applicable. If there is no ground of the revocation of the status, the proceedings shall be terminated.

The resolution on the withdrawal of recognition of refugee status or subsidiary protection may be subject to judicial review.[406] The petition for judicial review shall be submitted to the refugee authority within 8 days following the date of delivery of the decision.[407] The petition for judicial review shall be decided by the court, within 60 days following the receipt of the petition, in contentious proceedings. The court review shall provide for a full and *ex nunc* examination of both facts and points of law.[408] The court may not overturn the decision of the IAO, but shall only abolish the decision it finds unlawful and, if necessary, shall order the refugee authority to reopen the case. The court's decision adopted in conclusion of the proceedings is final, and it may not be appealed.[409]

With regard to the review of protection status in the last years, the HHC experienced that there have been many cases where Afghan beneficiaries of subsidiary protection did not have their status renewed after 3 years (and before July 2016, 5 years) because the IAO has considered that return to Afghanistan would be safe. In these cases, the IAO has systematically claimed either the city of Kabul or the province of Balkh as an internal protection alternative for Afghans whose region of origin is struggling with instability, even though the deteriorating situation of both destinations reported by different sources and the lack of family links or sufficient means of subsistence.

The IAO did not provide statistics on cessation and withdrawal for 2018.

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

6. Withdrawal of protection status

Pursuant to the amendment to the Asylum Act that entered into force on 1 January 2018, the grounds of exclusion from refugee status were extended. According to Section 8(5) of the Asylum Act – the version in force in 2018 – a foreigner sentenced by a court's final and enforceable resolution for having committed

401 Sections 75/A(1) and (2) and 14(1)(2) Asylum Act.
402 Section 75/A(1) Asylum Act.
403 Section 75/A(2) Asylum Act.
404 Section 72/A(1) Asylum Act.
405 Section 72/A(2) Asylum Act.
406 Section 75(1) Asylum Act.
407 Section 75(2) Asylum Act.
408 Section 75(3) Asylum Act.
409 Section 75(5) Asylum Act.

a crime, which is punishable by at least five-year imprisonment may not be recognised as a refugee. The provision clearly violated Article 1F(b) of the Geneva Convention since it prescribes that only those are excluded from refugee status who had committed a crime "outside the country of refuge prior to his or her admission to that country as a refugee". Furthermore, this was the only provision of the January 2018 amendment, which had to be applied in on-going procedures. Based on this provision, IAO could also revoke the recognition as a refugee if a court with a final and absolute decision sentences the refugee for having committed a crime, which is according to the law punishable by five years or longer-term imprisonment.[410]

Until 31 December 2018, the Asylum Act prescribed, similarly to the exclusion from refugee status, that an applicant is excluded from subsidiary protection if "he or she has committed a crime that is punishable under Hungarian law by five years of imprisonment or more."[411] Regarding this provision, a preliminary ruling was requested by the Metropolitan Administrative and Labour Court on 29 May 2017. The claimant was represented by Gábor Győző, a contracted attorney of HHC. According to the HHC, this domestic legal interpretation is more restrictive than the parallel EU norm (and thus unlawful), as the latter only allows for exclusion if the applicant committed a serious non-political crime, because the Asylum Act defines seriousness exclusively on the basis of the years of possible imprisonment. In its judgment of 13 September 2018, the CJEU declared that Article 17(1)(b) of the Qualification Directive "must be interpreted as precluding legislation of a Member State pursuant to which the applicant for subsidiary protection is deemed to have 'committed a serious crime' within the meaning of that provision, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under the law of that Member State. It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned."[412]

Due to the aforementioned CJEU judgment, the relevant provisions of the Asylum Act were amended with effect as of 1 January 2019. However, the new regulation is still not in line with the CJEU ruling since excludes again the possibility for the decision maker to carry out "a full investigation into all the circumstances of the individual case concerned". The amended relevant provision declares that a person cannot be recognised as a refugee,[413] or as a beneficiary of subsidiary protection,[414] who has been sentenced by the court:

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

In accordance with the regulations currently in force, both refugee status[415] and subsidiary protection[416] have to be revoked on the basis of Section 8(5) of the Asylum Act.

The January 2018 amendment provides that the IAO may not deviate from the opinion of the special authorities; not just in exclusion cases.[417] Although this had not been present *expressis verbis* in the former version of the Asylum Act, even before this amendment the asylum authority did not have the right and competency not to decide in line with the content of the opinion of the special authorities. Consequently, there is no change in the practice. As of January 2018, the IAO is also authorised to take data from the INTERPOL FIND international database and use them in the asylum proceedings.[418]

410 Section 11(3) Asylum Act.
411 Section 15(ab) Asylum Act.
412 CJEU, Case C-369/17 *Ahmed*, Judgment of 13 September 2018.
413 Section 8(5) Asylum Act.
414 Section 15(ab) Asylum Act.
415 Section 11(3) Asylum Act.
416 Section 18(1)(g) Asylum Act.
417 Section 57 Asylum Act.
418 Section 86/A Asylum Act.

The procedure for withdrawal is the same as for Cessation.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

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

Under Hungarian law, the 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.[419] Refugees' family members are often themselves refugees in countries neighbouring the country of origin. In most cases, the family members stuck in the first country of asylum are unable to obtain a legal status (and documentary proof thereof) there that would be considered as "lawful stay" in the sense of Hungarian law. This is particularly problematic for **Afghans** in Iran since many are not provided with documents in Iran and face danger if returned to Afghanistan.

Although family members are required to apply at the competent Hungarian consulate, it is the IAO that considers the application and takes a decision. On the one hand, the applicants are required to prove their relationships with the sponsor and the necessary resources to return to their country of origin. The consulate records the biometric data of the applicants when submitting the application. The consulate must delete the data immediately when a rejecting decision becomes final and enforceable. The final decision may be challenged in an administrative lawsuit. If the applicant wins the lawsuit, the IAO has to repeat the procedure. When the residence permit and the visa are granted in the repeated procedure, the consulate will record the biometric data again. It can cause financial and bureaucratic difficulties for the applicant to travel once again to the country where the application was submitted. On the other hand, the sponsor has to verify his/her subsistence, accommodation, and a comprehensive health insurance for the family members. The requirements regarding the volume of funds verifying the subsistence are not defined in the law. This causes uncertainty on the one hand. On the other hand, usually a very high income is necessary compared to the Hungarian labour market. According to the Hungarian law, there is no time limit for family reunification.

In Hungary, only refugees are entitled to family reunification under favourable conditions within three months following the recognition of their status.[420] They are exempted from fulfilling the usual material conditions: subsistence, accommodation, health insurance. No preferential treatment is applied for beneficiaries of subsidiary protection. Most persons who received subsidiary protection in 2018 in Hungary were Syrian, Afghan and Iraqi 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.

419 Section 47(2) TCN Decree.
420 The favourable rule was amended by Section 29 Decree 113/2016. (V.30).

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. 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. The decisions made by the IAO are predominantly based on these documents and there is relatively small space for other ways to prove family relations. This is especially relevant to DNA tests, which cannot be requested by the applicants as of 2017, but it has to be ordered by the IAO.

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

127 family reunification applications were submitted to the IAO in 2016, of which 80 applications were approved and 30 appeal cases are pending.[422] Data for 2017 and 2018 were not provided.

2. Status and rights of family members

When granted residence permission and a visa, family members of the sponsor have 30 days from entering Hungary to either take the residence permit or apply for asylum. In the asylum procedure, family members of recognised refugees are automatically granted the same status as the sponsor, as stated in the Asylum Act.[423] However, according to the definition of family members provided by the Asylum Act,[424] only the sponsor's children, spouse and parents are considered family members. Adult children and siblings are not automatically granted refugee status. Regardless of the connection, all family members are required to submit an application and start the procedure.

Family members of beneficiaries of subsidiary protection are not automatically granted subsidiary protection, they have to apply for asylum and prove their cases.

During the asylum procedure, family members of the sponsor have the same rights as asylum seekers. Under Hungarian law, asylum seekers who obtain legal residence in Hungary, do not have to move into the transit zones and are able to apply for a designated place of residence in private accommodation. This practically means that before applying for asylum, the grantees of family reunification actually obtain their residence permits. In case they decide not to apply for asylum but take their residence permit, they will not have the same rights and entitlements of the sponsor.

421 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).

422 Information provided by the IAO, 20 January 2017.

423 Section 7(2) Asylum Act.

424 Section 2(j) Asylum Act.

C. Movement and mobility

1. Freedom of movement

Refugees and beneficiaries of subsidiary protection have freedom of movement within the territory of the State. There is no related restriction prescribed in law. Most NGOs providing shelter for refugees and persons with subsidiary protection are located in **Budapest**, which means that the placement of beneficiaries is mainly concentrated in the capital of Hungary.

2. Travel documents

The duration of validity of travel documents issued to beneficiaries of international protection is one year, both for persons with refugee status and subsidiary protection. Refugees receive a "refugee passport", a bilingual travel document specified in the 1951 Refugee Convention, while holders of subsidiary protection receive a special travel document, not a refugee passport.[425]

A refugee is entitled to a bilingual travel document under the Refugee Convention, unless compelling reasons of national security or public order otherwise require.[426] There are no geographical limitations, except for travelling to the country of origin.

The IAO can deny the issuing of a travel document for beneficiaries of international protection in case the National Security Authority, the National Tax and Customs Administration of Hungary or the Police provides information to the IAO according to which the person should not get a travel document for reasons of national security and public order.[427] The resolution rejecting the issuance of a bilingual travel document to the refugee may be subject to judicial review.[428] As it is fixed in the Asylum Act, the petition for judicial review shall be submitted to the refugee authority within 3 days following the date of delivery of the decision.[429] The IAO shall, without delay, forward the petition for judicial review to the competent court together with the documents of the case and any counterclaim attached.[430] The petition for judicial review shall be adjudged by the court within 8 days in non-contentious proceedings, relying on the available documents.[431] The court may overturn the decision of the refugee authority. The court's decision adopted in conclusion of the proceedings is final, and it may not be appealed.[432]

For beneficiaries of subsidiary protection, the same rules are applied as to refugees.

In practice in order to receive the travel document beneficiaries of international protection have to apply in a separate form at the competent office of IAO. The fee of the procedure is around €20 and the applicant needs to have his or her ID card and the address card. Obtaining the latter could be problematic because of the difficulties beneficiaries face concerning housing. The authority issues the travel document within 22 working days.[433]

According to the statistics of IAO, 1,654 travel documents were issued to beneficiaries of international protection in 2017.[434] No data are available for 2018.

425 Section11/A Decree 101/1998. (V. 22.) on the execution of Act XII of 1998 on travelling abroad.
426 Section 10(3) (a) Asylum Act.
427 Section 4/A Asylum Decree.
428 Sections 10(5) and 17(2a) Asylum Act.
429 Section 10(6) Asylum Act.
430 Section 10(6) Asylum Act.
431 Section 10(7) Asylum Act.
432 Section 10(8) Asylum Act.
433 IAO, *Kétnyelvü úti okmányok kiállítása*, available at: http://bit.ly/2jrKbou.
434 Information provided by IAO, 12 February 2018. As to 2018 the IAO could not provide this data free of charge.

D. Housing

Indicators: Housing	
1. For how long are beneficiaries entitled to stay in reception centres?	30 days
2. Number of beneficiaries staying in reception centres as of 31 December 2018	0

Recognised refugees and beneficiaries of subsidiary protection can stay in the reception centre for 30 days after receiving the decision on their status.[435] In practice, in 2017 this meant that they were required to leave the centres before being issued with an ID (see section on Residence Permit). Between the introduction of the March 2017 amendments and the July 2018 amendments, beneficiaries of international protection were accommodated in Vámosszabadi, and were placed in Kiskunhalas, as well. In 2018, beneficiaries of international protection were accommodated in Vámosszabadi until the new inadmissibility ground was adopted and got to be applied on 10 August 2018. Since then, there has been only one unaccompanied minor who received tolerated status and was transferred to Fót, therefore, no person with international protection status was accommodated in Vámosszabadi since then.

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

The July 2013 amendments to the Asylum Act had introduced a new integration system moving away from camp-based integration to community-based integration. As of January 2014, integration support was provided via an integration contract concluded by the asylum authority and the person granted international protection upon request of the latter within 4 months following their recognition. The maximum period of validity of the contract was 2 years. The amount of integration support was set in the integration contract and the services were provided via the family care service of the local municipality. A social worker was appointed supporting the beneficiary of international protection throughout the integration process.

In April and June 2016, as a result of legislative changes, all forms of integration support were eliminated. Therefore, since the entry into effect of Decrees 113/2016 and 62/2016 and the June 2016 amendments of the Asylum Act, beneficiaries of international protection are no longer eligible to any state support such as housing or financial support, additional assistance and others.

In the last years, NGOs and social workers have reported extreme difficulties for beneficiaries of international protection moving out of reception centres and integrating into local communities in practice.[436] Accommodation free of charge is provided exclusively by civil society organisations and church-based organisations. The situation was aggravated by the fact that the Ministry of Interior withdrew all the calls for tenders funded by AMIF in the beginning of 2018.[437] This means that by 30 June 2018 all those programmes whose integration support activity relied on this funding had ceased. In the absence of housing services provided by the state/local government, only homeless shelters – e.g. **Temporary Homeless Shelter of the Baptist Integration Centre**– and a few NGOs and church-based organisations' housing programmes remained available for beneficiaries of international protection.

The Evangelical Lutheran Church in Hungary arranged short-term crisis placement for 61 persons with international protection in 2018. The Lutheran Church provided accommodation for single persons mainly in workers' shelter in a 4-bed room. Nine families were hosted either in the flat owned by the Lutheran

435 Section 41(1) Asylum Decree.
436 EASO, *Description of the Hungarian asylum system*, May 2015, 10.
437 The withdrawn calls *inter alia* covered the improvement of reception conditions for unaccompanied children, the support of their integration, legal assistance to asylum seekers, housing and integration programs. BelügyiAlapok, 'Tájékoztatás pályázati kiírások visszavonásáról', 24 January 2018, available in Hungarian at: http://bit.ly/2CzR1Nv.

Church in the 8th district or in dormitories and temporary shelters for disabled people or families, all run by the Church. The Lutheran Church also supported financially the apartment rental for a maximum period of 6 months for 55 beneficiary of international protection last year. The program was financed by AMIF. Many people who were first supported in the crisis program later on received rent subsidy.

The building of the Hungarian Baptist Aid's **Temporary Shelter for Families** caught fire in the end of 2017. Despite of losing the building of the Shelter, until mid-2018, the organisation could provide two refugee families with accommodation but currently due to the construction of the new building there is no place to host families. The Baptist Integration Centre provided housing to 81 persons with international protection at four shelters in 2018.

Kalunba provided a housing programme for 280 persons in the last two years. This number included single beneficiaries of international protection and families, as well. The programme ceased to exist with the closure of the AMIF funding. Within the framework of the programme, Kalunba assisted beneficiaries in renting apartments lasting between half a year to one-year period of time (based on the individual needs of the person). After 30 June 2018, the organisation still supports eight families with apartment rents. Others, approximately 40 persons – previously supported by the housing programme – still receive coaching with job market counselling and mentoring.

Besides NGOs, there is an important service provider, namely the Budapest Methodological Centre of Social Policy and Its Institutions (BMSZKI).BMSZKI is the homeless service provider of Budapest Municipality.[438] The Institution offered a housing program for beneficiaries of international protection from 1 January 2016 until 30 June 2018, the project was funded by AMIF and the Interior Ministry. The program aimed at, through an individual social worker, facilitating the access to housing (individual counselling, contacting landlords, assistance at the contract conclusion) and supporting financially the accommodation of beneficiaries (payment of the rent or the overheads). Indigent families and single persons were the target groups. In 2018, the program supported 24 (during the 1,5 years 96 persons) beneficiaries with finding an apartment and with the payment of the rent. With the end of the project, given the non-availability of the AMIF funding, BMSZKI is not able to offer specialized programs to refugees and persons with subsidiary protection. The organisation runs temporary accommodation shelters and night shelters for homeless people that are open for beneficiaries of international protection, as well. However, the temporary accommodation shelters are running with full capacities and have long waiting lists to get in, while night shelters are also full and provide 15-20 bedrooms. According to BMSZKI, these conditions are not in line with the needs of refugees who are often severely traumatised, do not know the language – interpreter is not available - and cannot guarantee the respect of the unity of families.[439]

Due to the lack of apartments on the market, the rental fees are too high to be affordable for beneficiaries who have just been granted status. In addition to these difficulties, landlords prefer to let their apartments to Hungarian rather than foreign citizens.

A further problem regarding housing is the difficulty of getting an address card. Landlords usually require prospective tenants to have an address card, which is impossible to obtain, unless someone has a contract and the confirmation statement of the owner of the flat that he or she can use the address as his/her permanent address. On the other hand, landlords dominantly are not willing to give their approval to tenants and allow them to register the leased property's address as their place of permanent residence. Moreover, as per the experience of BMSZKI, landlords usually prefer tenants with no children, which makes it even more difficult for families to find an adequate accommodation. Keeping contact with the owner is made difficult by language barriers and the lack of interpreters. BMSZKI also reported about prejudices against refugees in the apartment market.

According to the experiences of the Lutheran Church, a recent practice of the local government offices requires the refugee to provide a copy of the property sheet and the consent of the owner not only as to the address registration but also to the cover of the person's full subsistence. Another case from 2018

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

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

was of a refugee who had been residing already in Hungary with a student residence permit before receiving the refugee status. It took him around two months while he could get an address card, as the government office did not accept his address of dormitory registered in the student residence permit.[440]

E. Employment and education

1. Access to the labour market

Refugees and persons with subsidiary protection have access to the labour market under the same conditions as Hungarian citizens.[441] This means that no labour market test is applicable regarding the employment of beneficiaries. There is only one provision established in the Asylum Act, which makes a difference in the case of beneficiaries of international protection. According to the Asylum Act, beneficiaries may not take up a job or hold an office or position, which is required by law to be filled by a Hungarian citizen.[442] Typically, the positions of public servant and civil servant demand Hungarian citizenship even though these can be fulfilled by persons having a long-term residence permit.

There is no statistical data available on the employment of beneficiaries,[443] thus the effectiveness of their access to employment in practice cannot be measured. In practice, the main obstacle beneficiaries of international protection have to face when searching a job is the Hungarian language. There is no special existing state support for the purpose of obtaining employment. Beneficiaries of international protection are entitled to use the services of the National Labour Office under the same condition as Hungarian citizens, even though it is hard to find an English-speaking case officer to help to beneficiaries seeking jobs.

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

Menedék Association provided employment mediation between employers and beneficiaries of international protection through the "MentoHRing" programme launched in June 2016.[444] The programme closed with the end of the AMIF funding, on 30 June 2018. Since then, the organisation still has certain activities regarding the facilitation of job finding for beneficiaries of international protection.

The Maltese Care Nonprofit Ltd. offers services for beneficiaries of international protection regarding job finding. Within their project, called "Jobs for you" individual labour market counselling, labour market training and personalized help with job seeking are offered. Until 31 March 2018 the project was funded by AMIF, since then, the Hungarian Charity Service of the Order of Malta maintains the programme with an extended target group.

Kalunba has a coaching programme within which it supports currently approximately 40 persons since June 2018.

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

In practice, reportedly, due to language and cultural barriers access to employment is limited to certain sectors such as physical labour (as working in construction, storage etc.) and hospitality. The average

440 Immigration and Refugee Board of Canada,*Hungary: Identity cards and address cards for nationals and non-nationals, including requirements and procedures to obtain the cards; description of the cards, including information on the cards (2016-July 2018)*, [HUN106146.E], 10 August 2018, available at: https://bit.ly/2SK8waD.

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

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

443 Information provided by the Employment Department of Budapest Government Office, 14 March 2018.

444 See the programme at: http://menedek.hu/en/projects/mentohring.

working hours are 12 hours per day (although in many cases they are provided only with a part-time contract), which render the integration of beneficiaries more difficult, since they do not have any free time beside their work. According to the experiences of Menedék, further problem is the lack of proper certification of the education or trainings completed by refugees or persons with subsidiary protection, which often results in that they do not have any other choice than undertake employment in which they are overeducated / trained. It is also important to note that employers usually treat beneficiaries of international protection less favourably than Hungarian citizens and they often lack trust towards foreigners.

2. Access to education

In the case of unaccompanied children, the law provides for a right to education. The reception centre and guardians struggle with actively assisting children to enrol in schools and helping them to attend classes. Unaccompanied children who have been granted international protection are enrolled in the mainstream Hungarian child welfare system and the same rules apply to them as to all other children, which means the right to education.

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

While all unaccompanied minors in the Children's Home in **Fót** were enrolled in schools, some complained of the low quality of education in their secondary schools. Schools were not always chosen for students based on their abilities, wishes and potential, but rather on the availability of empty places.

In the case of children with families, the situation is also difficult. Hardly any school is ready to offer the specialised care and support that refugee children need. The growing anti-refugee sentiment may make it even more difficult for schools to admit children receiving international protection for fear of facing a backlash from parents or donors.

The Menedék Association provided a so-called school programme to all children hosted in **Fót**, which consists of games and learning through play. Though attendance is not compulsory, based on HHC lawyers' experience on the field children did make a point to attend since they considered it as a useful gateway to formal education. Menedék also offers preparatory classes for those who are about to enter formal education. Given the very low number of unaccompanied minors in Fót, the school programme ceased to operate on a daily basis in 2018.

Young adults and adults normally have access to courses offered by NGOs or independent bodies such as the Central European University. Although, CEU suspended its OLIve programme specifically targeting asylum seekers and refugees in the autumn semester of 2018 as a result of the ambiguity of the so-called "Stop Soros" legislation package,[445] that came into force in August 2018 levying a 25% tax on financing or activities "supporting" immigration or "promoting" migration in Hungary.[446] Those unaccompanied children receiving a protection status before they turn 18 are eligible to aftercare services, which grants

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

446 The programme continues as of January 2019.

them the right to free education and housing. Depending on their individual circumstances and the level of education they are receiving, they may benefit from aftercare until they turn 30.[447]

Until the termination of AMIF funding, Kalunba Charity provided free of charge accredited Hungarian language course with different levels ranging from illiteracy to intermediate language exam. Since June 2018, the organisation is still capable to provide language course for free of charge for those refugees who have just been granted status. Everyone else needs to pay 1,000 HUF per hour. Additionally, Kalunba also provides so-called afterschool program, which targets children and young adults, as well.

BMSZKI organised volunteers who once a week taught Hungarian language for mothers in their homes. Later on, as a result of the big number of volunteers the target group was broadened.

MigHelp Association is an adult education institute. According to their website, the association has provided beginners with classes in Hungarian, German, French, and English, computer training, classes in vehicle driving, and child day care for migrants and refugees. In 2018, MigHelp offered Hungarian and English classes, IT coding workshop for children, basket DIY for women. Moreover, the organisation provided driving licence courses and an IT administration and European Computer Driving license course. In average 20-30% of the participants were beneficiaries of international protection. Their programmes are free of charge although according to the organisation, those not speaking English on an intermediate level are not able to attend their courses. It frequently happens that beneficiaries of international protection cannot finish the courses due to their precarious employment and housing situation.

F. Social welfare

In general, the law provides access to social welfare for beneficiaries of international protection and does not make any distinction between refugees and subsidiary protection beneficiaries. [448]Therefore, beneficiaries of international protection are entitled to attendance of persons in active and retired age, limited public health care and unemployment benefit, amongst other entitlements e.g. family allowances, sickness and maternity benefits.[449] Social welfare is provided to beneficiaries under the same conditions and on the same level as for nationals.

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

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

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

447 Section 77(1)(d), (2) and Section 93 Child Protection Act.

448 Ministry of Human Resources, *Tájékoztató a szociálisellátásokról*, 2017, available in Hungarian at: http://bit.ly/2EI1PPm.

449 For a summary, see US Social Security Administration, *Social Security Programs Throughout the World; Europe 2018*, September 2018, available at: https://bit.ly/2GOgIiU.

G. Health care

According to the Hungarian Health Act,[450] beneficiaries of international protection fall under the same category as Hungarian nationals. Although for 6 months (before June 2016, this period was 1 year) after refugees and persons with subsidiary protection are granted status, they are entitled to health services under the same conditions as asylum seekers. Therefore, the asylum authority funds the health care expenses of the beneficiaries for 6 months, if they are in need and cannot establish other health insurance format. However, as per Menedék Association's experience, in practice this is not acknowledged by the health care service provider. This means that already in the reception centres the asylum authority requests the health insurance card based on destitution that takes a long time. The card (unlike earlier)is since 2018 delivered by post which takes longer then receiving it in person thus extends the duration of the procedure and delays the start of the employment.

In practice, similar to asylum seekers, beneficiaries face significant barriers regarding access to health care. Barriers are mainly stem from language difficulties, lack of interpreters or the lack of basic knowledge of English of the doctor and also emerge as a result of administrative difficulties and the lack of awareness of law. According to a research from 2017, which is based on interviews carried out with 18 refugees and 4 social workers, refugees generally feel marginalised regarding the healthcare system.[451] The research highlights the importance of social workers and volunteers who "act as links between health care system and refugees" helping with interpretation and as an information point for the health care institute's personnel.

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

As to the issuance of health insurance card besides the cited research, SOS Children's Villages notes that it is extremely problematic since it takes long time until the beneficiary of international protection is provided with the card. As per the Evangelical Lutheran Church, there has been a case in 2018 that a person with subsidiary protection requested to be registered as homeless and to issue a health insurance card for him but has not been provided with the card since the beginning of last year. . On the other hand, the experiences of the Baptist Aid showed the opposite so that beneficiaries were usually within one week provided with the health insurance card, it took longer if first the health insurance status of the person had to be clarified.

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

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

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 and gaps in implementation

Provision in Directive / Regulation	Provision in National Law / Practice
Article 3 recast Reception Conditions Directive	The recast Reception Conditions Directive is not fully applied in the transit zones. This is against the Article 3 of the Directive, which provides that the Directive should apply also at the border.
Article 8(1) recast Reception Conditions Directive	Automatic detention of asylum seekers in the transit zone is clearly not in line with the Directive.
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. Detention orders lack individualisation and alternatives are not assessed automatically. Also “house arrest” imposed on those asylum seekers who are under criminal procedure due illegal crossing of the border does not constitute a less coercive alternative to detention. By automatically detaining every asylum seeker (except unaccompanied minors below 14 years of age, the Hungarian legislation is clearly not in line with the Reception Conditions Directive.
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(l), 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. There are no alternatives to the detention in the transit zones.
Article 9(1) and (5) 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. Detention in the transit zone lasts until the end of asylum procedure, which is definitely not for the shortest time possible. The detention of families with children is a form of discrimination on the ground of the family status of the child as detention of unaccompanied / separated asylum-seeking children are prohibited by Hungarian law, whereas the same national law provides a ground for detention of children who are accompanied by a family member. This is contrary to international human rights standards, in particular Article 2(2) of the UN Convention on the Rights of the Child. All families with children as well as unaccompanied minors above the age of 14 are automatically detained in the transit zones for indefinite period of time.
Article 9(2) recast Reception Conditions Directive	Asylum seekers detained in the transit zones receive no detention order.

Articles 9(3), 9(4) and 9(5) recast Reception Conditions Directive	There is no possibility to appeal against the placement to the transit zones until the final decision in the asylum procedure is issued. The applicants are not informed of this possibility, since it does not exist.
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. No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
Article 11(2) and 11(3) recast Reception Conditions Directive	Minors are not detained as a last resort, but automatically if they are below 14 years of age or with a family. Their best interest is not taken into consideration and there are no activities appropriate to their age for teenage unaccompanied minors.
Article 11(5), first sub-paragraph recast Reception Conditions Directive	**Article 31/F(1) Asylum Act**, **Article 36/D(3) Asylum Decree** 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 14(1) recast Reception Directive	Education provided in transit zone definitely does not meet the standards required by the Directive.
Article 15 recast Reception Directive	This Article is clearly breached, since asylum seekers in Hungary do not have a right to work, not even after 9 months.
Article 17(2) recast Reception Directive	The conditions in the transit zone are clearly not adequate.
Article 18(2)(c) recast Reception Directive	Several professional NGOs active in the field of asylum for decades are not allowed to enter the transit zones.
Article 19(2) recast Reception Conditions Directive	No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention or in the transit zones.
Article 20(5) recast Reception Conditions Directive	Not providing food to the subsequent asylum applicants detained in the transit zone it is not in line with Article 20(5) of recast Reception Conditions Directive, according to which even in case of withdrawal or reduction of material conditions, the authorities shall ensure a dignified standard of living for all applicants.
Article 21 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.
Article 22 recast Reception Conditions Directive	There is no official protocol and effective identification mechanism in place to systematically identify torture victims and other vulnerable asylum seekers in the framework of the asylum procedure or when ordering or upholding detention, in breach of the Recast Reception Conditions Directive.
Article 23 recast Reception Conditions Directive	Placement of minors in transit zone is not in compliance with this provision. No rehabilitation services are provided.
Article 24(1) recast Reception Conditions Directive	The system of temporary guardians appointed in the transit zones is not in line with this provision.
Article 24(2) recast Reception Conditions Directive	Transit zones are not an appropriate accommodation for unaccompanied minors.
Article 25(1) recast Reception Conditions Directive	No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum, immigration detention or transit zones.
Article 25(2) recast Reception Conditions Directive	In breach of Article 25(2) of the recast Reception Conditions Directive, there is no systematic training for those who order, uphold or carry out the detention of asylum seekers regarding the needs of victims of torture, rape or other serious acts of violence.
Article 26 recast Reception Conditions Directive	Domestic law does not provide any legal remedy to complain against the conditions in the transit zone.
Article 28 recast Reception Conditions Directive	No appropriate monitoring of transit zones is ensured.
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, Article 6(2) and Article 9 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. EU law obliges Hungary to ensure that every person in need of international protection has effective access to the asylum procedure, including the opportunity to properly communicate with the competent authorities and to present the relevant facts of his or her case. EU law also provides that asylum seekers should – as a general rule with very

	strict exceptions – be provided with the right to stay in the Member State's territory pending a decision by the competent asylum authority. Under the **amended Asylum Act** and the **Act on State Border**, the Hungarian police automatically pushes out from Hungarian territory any irregular migrant apprehended anywhere on the territory, regardless of eventual protection needs or vulnerabilities, denying any opportunity to file an asylum claim. Further, on, extremely limited acceptance into the transit zone is incompatible with Article 6(2) of the recast Asylum Procedures Directive.
Article 7(4) recast Asylum Procedures Directive	**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.
Article 8(2) recast Asylum Procedures Directive	Access of NGOs to the transit zone is hindered.
Article 15(2) recast Asylum Procedures Directive	Confidentiality during the interviews was not always ensured in the transit zones, when because of the heat the doors of a container were opened and the policeman standing in front of the door could hear everything, or IAO officers who were not conducting the interview would be coming in and going out during the interview.
Article 15(3)(c) recast Asylum Procedures Directive	Interpreters are not always adequate.
Article 24(1) recast Asylum Procedures Directive	**Article 3 Asylum Decree** transposes 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, there is no formal identification mechanism in place and the 'reasonable period of time' is not implemented by the Hungarian law. Therefore, it is not exactly clear when the examination process is carried out by the refugee authority and without this time guarantee, an asylum seeker belonging to vulnerable group may lose the ability to benefit from the rights and comply with the obligations provided for an 'applicant in need of special procedural guarantees'. Furthermore, there is a huge concern on how the refugee authority examines the applicant as the employees of the refugee authority are neither doctors nor psychologists (assumed based on Article 3(2) Asylum Decree). Hence, it is not clear how and in what basis they can make judgment on whether an applicant is a victim of torture, rape or suffered from any other grave form of psychological, physical or sexual violence. Based on Article 3(2) of the Asylum Decree, the refugee authority 'may' use the assistance of a medical or psychological expert, therefore it is clear that people working for the refugee authority are not medical or psychological experts.
Article 24(3), first sub-paragraph recast Asylum Procedures Directive	**Article 29 Asylum Act**, **Article 33(1)** and **Article 35(4) Asylum Decree** 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 *ad litem* 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) Asylum Decree** 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. In practice, the age assessment methods are definitely not adequate.
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).
Article 26 recast Asylum Procedures Directive	Asylum seekers are automatically detained in transit zones and no speedy judicial review is available.
Article 28(2) recast Asylum Procedures Directive	The Hungarian legislation does not provide for the option of re-opening a discontinued case, as foreseen in Article 28(2) of recast Asylum Procedures Directive. An asylum seeker is obliged to submit a new application, which is considered a subsequent application as per Article 40 of Asylum Procedures Directive.
Article 33(2) recast Asylum Procedures Directive	This newly established inadmissibility ground (**Article 51(2)(f) Asylum Act**) is not compatible with current EU law as it arbitrarily mixes rules pertaining to inadmissibility based on the concept of "safe third country" and that of "first country of asylum". Article 33(2) of the recast Asylum Procedures Directive provides an exhaustive list of inadmissibility grounds, which does not include such a hybrid form.
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 several NGOs. . Currently there is no other EU Member State that regards Serbia as a safe third country for asylum seekers. - The amendment to the Asylum Act obliges the IAO 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. - Hungary has not laid down rules in its national law on the methodology by which the competent authorities may satisfy themselves that a third country may be designated as a safe third country within the meaning of Section 2(i) of the Act on Asylum. Nor is any explanation or justification provided in Government Decree 191/2015 as to how the Government arrived at the conclusion that each country listed qualifies as safe. The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.
Article 46(1)(b) recast Asylum Procedures Directive	Based on **Article 80/K(4) Asylum Act** there is no possibility to appeal against the termination of the procedure, which is not in line with Article 46(1)(b) of recast Asylum Procedures Directive.
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 *ex nunc* examination of both facts and points of law" as prescribed by EU law. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter. During the judicial review the court is limited to an *ex tunc* rather than an *ex nunc* examination of both facts and law, i.e. the facts and law as applicable at the time of the original decision, and not that of the review. The restrictions introduced to the judicial review of admissibility decisions taken in border procedures in the transit zones, in particular regarding the scope of the review and the possibility of a hearing do not meet the requirements for an effective remedy under the Recast Asylum Procedures Directive.
Article 46(5) and (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.
Article 18(2) Dublin III Regulation and Article 28(3) of recast Procedures Directive	Persons who withdraw their application tacitly or in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore, they will have to submit a subsequent application and present new facts or circumstances. This is not in line with the second paragraph of Article 18(2) of the Dublin III Regulation, as when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive. The asylum procedure would also not continue, when the returned foreigner had previously received a negative decision and did not seek judicial review. This is problematic when the IAO issued a decision in someone's absence. The asylum seeker who is later returned under the Dublin procedure to Hungary will have to submit a subsequent application and present new facts and evidence in support of the application. According to Article 18(2) of the Dublin III Regulation, the responsible Member State that takes back the applicant whose application has been rejected only at the first instance shall ensure that the applicant has or has had the opportunity to seek an effective remedy against the rejection.