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Asylum Information  
Database

# Country Report: Hungary



2021  
Update



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European Council  
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## Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2021, unless otherwise stated.

## The Asylum Information Database (AIDA)

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



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# Table of Contents

<b>Glossary &amp; List of Abbreviations .....</b>	<b>7</b>
<b>Statistics .....</b>	<b>8</b>
<b>Overview of the legal framework .....</b>	<b>10</b>
<b>Overview of the main changes since the previous report update.....</b>	<b>13</b>
<b>Asylum Procedure .....</b>	<b>17</b>
<b>A. General.....</b>	<b>17</b>
1. Flow chart .....	17
2. Types of procedures.....	18
3. List of authorities intervening in each stage of the procedure .....	18
4. Determining authority .....	19
5. Short overview of the asylum procedure .....	20
<b>B. Access to the procedure and registration .....</b>	<b>23</b>
1. Access to the territory and push backs.....	23
2. Registration of the asylum application.....	30
<b>C. Procedures.....</b>	<b>31</b>
1. Regular procedure .....	31
2. Dublin.....	41
3. Admissibility procedure.....	49
4. Border procedure (border and transit zones) .....	52
5. Accelerated procedure.....	52
<b>D. Guarantees for vulnerable groups .....</b>	<b>54</b>
1. Identification.....	54
2. Special procedural guarantees .....	57
3. Use of medical reports.....	60
4. Legal representation of unaccompanied children .....	61
<b>E. Subsequent applications.....</b>	<b>62</b>
<b>F. The safe country concepts.....</b>	<b>64</b>
1. First country of asylum.....	64

2. Safe third country.....	64
3. 'Hybrid' safe third country / first country of asylum.....	67
4. Safe country of origin.....	69
<b>G. Information for asylum seekers and access to NGOs and UNHCR .....</b>	<b>70</b>
1. Provision on information on the procedure .....	70
2. Access to NGOs and UNHCR .....	71
<b>H. Differential treatment of specific nationalities in the procedure .....</b>	<b>72</b>
<b>Reception Conditions.....</b>	<b>73</b>
<b>A. Access and forms of reception conditions.....</b>	<b>73</b>
1. Criteria and restrictions to access reception conditions .....	73
2. Forms and levels of material reception conditions .....	75
3. Reduction or withdrawal of reception conditions.....	76
4. Freedom of movement.....	77
<b>B. Housing.....</b>	<b>78</b>
1. Types of accommodation .....	79
2. Conditions in reception facilities .....	80
<b>C. Employment and education.....</b>	<b>82</b>
1. Access to the labour market .....	82
2. Access to education .....	83
<b>D. Health care .....</b>	<b>84</b>
<b>E. Special reception needs of vulnerable groups.....</b>	<b>87</b>
<b>F. Information for asylum seekers and access to reception centres .....</b>	<b>88</b>
1. Provision of information .....	88
2. Access to reception centres by third parties.....	88
<b>G. Differential treatment of specific nationalities in reception .....</b>	<b>89</b>
<b>Detention of Asylum Seekers .....</b>	<b>91</b>
<b>A. General.....</b>	<b>91</b>
<b>B. Legal framework of detention .....</b>	<b>93</b>
1. Grounds for detention.....	93
2. Alternatives to detention .....	94

3. Detention of vulnerable applicants.....	95
4. Duration of detention .....	97
<b>C. Detention conditions .....</b>	<b>97</b>
1. Place of detention .....	97
2. Conditions in detention facilities .....	98
3. Access to detention facilities.....	103
<b>D. Procedural safeguards .....</b>	<b>104</b>
1. Judicial review of the detention order.....	104
2. Legal assistance for review of detention.....	109
<b>E. Differential treatment of specific nationalities in detention .....</b>	<b>110</b>
<b>Content of International Protection .....</b>	<b>111</b>
<b>A. Status and residence .....</b>	<b>112</b>
1. Residence permit.....	112
2. Civil registration .....	113
3. Long-term residence .....	114
4. Naturalisation .....	115
5. Cessation and review of protection status .....	118
6. Withdrawal of protection status .....	120
<b>B. Family reunification .....</b>	<b>123</b>
1. Criteria and conditions .....	123
2. Status and rights of family members.....	125
<b>C. Movement and mobility .....</b>	<b>125</b>
1. Freedom of movement.....	125
2. Travel documents .....	126
<b>D. Housing.....</b>	<b>126</b>
<b>E. Employment and education.....</b>	<b>129</b>
1. Access to the labour market .....	129
2. Access to education and vocational training .....	131
<b>F. Social welfare.....</b>	<b>136</b>
<b>G. Health care .....</b>	<b>136</b>

<b>ANNEX I - Transposition of the CEAS in national legislation .....</b>	<b>139</b>
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## Glossary & List of Abbreviations

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

## Statistics

### Overview of statistical practice

Statistical information on asylum applicants and main countries of origin, as well as overall numbers and outcome of first instance decisions, was made available on a monthly basis by the former Immigration and Asylum Office (former IAO), although this practice stopped in April 2018.<sup>1</sup> Since then, statistics have been published annually in Hungarian by the National Directorate-General for Aliens Policing (NDGAP).<sup>2</sup> The Hungarian Helsinki Committee (HHC) also published brief statistical overviews on a monthly basis, although their regularity has also become more limited.<sup>3</sup>

### Applications and granting of protection status at first instance: 2021

	Applicants in 2021	Pending at end 2021	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
<b>Total</b>	38	0	21	17	19	36.8%	29.8%	33.3%

Breakdown by countries of origin of the total numbers

Unknown	11	0	3	8	0	27.3%	72.7%	0%
Iran	8	0	10	0	0	100%	0%	0%
Afghanistan	6	0	1	6	5	8.3%	50%	41.6%
Ethiopia	4	0	4	0	0	100%	0%	0%
Nepal	2	0	0	0	0	0%	0%	0%
Cameroon	2	0	2	0	0	100%	0%	0%
Syria	2	0	0	1	2	0%	33.3%	66.6%
Belarus	1	0	0	0	0	0%	0%	0%
Nigeria	1	0	0	1	2	0%	33.3%	66.6%
Egypt	1	0	0	0	1	0%	0%	100%

Source: NDGAP.

### Gender/age breakdown of the total number of applicants: 2021

	Number	Percentage
<b>Total number of applicants</b>	<b>38</b>	-
Men (incl. children)	18	47.40%

<sup>1</sup> Statistical reports of the former IAO may be found at: <https://bit.ly/3vgCALx>.

<sup>2</sup> Statistical reports of the NDGAP in Hungarian may be found at: <https://bit.ly/3mUlboB>.

<sup>3</sup> Statistical overviews by the HHC may be found at: <https://bit.ly/3xo6oZs>.



Women (incl. children)	20	52.60%
Children	23	60.50%
Unaccompanied children	3	7.90%

Source: NDGAP.

#### Comparison between first instance and appeal decision rates: 2021

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	57	100%	72	100%
Positive decisions	38	66.70%	27	37.5%
• <i>Refugee status</i>	21	36.80%	-	-
• <i>Subsidiary protection</i>	17	29.80%	-	-
Negative decisions	19	33.30%	32	44.4%

Source: NDGAP.

#### Embassy Procedure: 2021

Nationalities	Statement of intent	Authorization by NDGAP	Rejection	Pending as of 31 December 2021
Iran	29	8	21	15
Afghanistan	16	0	14	10
Iraq	7	0	7	0
Syria	1	0	0	0
<b>Total</b>	<b>53<sup>4</sup></b>	<b>8</b>	<b>42</b>	<b>25</b>

Source: NDGAP.

<sup>4</sup> Note the discrepancy that according to the information of the Ministry of Trade and Foreign Affairs there were 55 statements of intent submitted in 2021.

## 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	<a href="https://bit.ly/3rIOLZf">https://bit.ly/3rIOLZf</a> (EN)
Act LXXX of 2007 on Asylum	2007. évi LXXX. törvény a menedékjogról	Asylum Act	<a href="https://bit.ly/32tIEHb">https://bit.ly/32tIEHb</a> (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	<a href="https://bit.ly/3FX9wfa">https://bit.ly/3FX9wfa</a> (HU)
Act CL of 2016 on General Administrative Code	2016. évi CL. törvény az általános közigazgatási rendtartásról	GAC	<a href="https://bit.ly/3ub3mWT">https://bit.ly/3ub3mWT</a> (EN)
Act LXXX of 2003 on Legal Aid	2003. évi LXXX. törvény a jogi segítségnyújtásról	Legal Aid Act	<a href="https://bit.ly/3Ar8jvw">https://bit.ly/3Ar8jvw</a> (HU)
Act LV of 1993 on the Hungarian citizenship	1993. évi LV. törvény a magyar állampolgárságról	Citizenship Act	<a href="https://bit.ly/3FUYIDR">https://bit.ly/3FUYIDR</a> (HU)
Act I of 2017 on the Code of Administrative Court Procedure	2017. évi I. törvény a közigazgatási perrendtartásról	Code on Administrative Litigation	<a href="https://bit.ly/34474WW">https://bit.ly/34474WW</a> (EN)
Act LVIII on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness	2020. évi LVIII. törvény - a veszélyhelyzet megszűnésével összefüggő átmeneti szabályokról és a járványügyi készültségről	Transitional Act	<a href="https://bit.ly/3nVD5HT">https://bit.ly/3nVD5HT</a> (HU)

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

<b>Title (EN)</b>	<b>Original Title (HU)</b>	<b>Abbreviation</b>	<b>Web Link</b>
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	<a href="https://bit.ly/3fUA0DK">https://bit.ly/3fUA0DK</a> (HU)
Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals	114/2007. (V. 24.) Korm. rendelet a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról	TCN Decree	<a href="https://bit.ly/3ly0hE5">https://bit.ly/3ly0hE5</a> (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	<a href="https://bit.ly/3KB8ljM">https://bit.ly/3KB8ljM</a> (HU)
Government Decree no. 191/2015 (VII. 21.) on safe countries of origin and safe third countries	191/2015. (VII. 21.) Korm. Rendelet a nemzeti szinten biztonságosnak nyilvánított származási országok és biztonságos harmadik országok meghatározásáról	Decree 191/2015	<a href="https://bit.ly/2TV7DbJ">https://bit.ly/2TV7DbJ</a> (HU)
Government Decree no. 41/2016. (III. 9.) on ordering the crisis situation caused by mass migration in relation to the entire territory of Hungary, and other relevant rules concerning the declaration, existence and termination of the crisis situation	41/2016. (III. 9.) Korm. Rendelet a tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról	Decree 41/2016	<a href="https://bit.ly/3lznR3q">https://bit.ly/3lznR3q</a> (HU)
Interior Minister Decree no. 16/2020. (VI. 17.) on the procedure concerning the statement of intent for the purpose of lodging an asylum application	16/2020. (VI. 17.) BM rendelet a menedékjogi kérelem benyújtására irányuló szándéknyilatkozattal kapcsolatos eljárásról	Decree 16/2020	<a href="https://bit.ly/3qwWVYQ">https://bit.ly/3qwWVYQ</a> (HU)
Government Decree no. 292/2020. (VI. 17.) on the designation of embassies concerning the statement of intent for the purpose of lodging an asylum application	292/2020. (VI. 17.) Korm. Rendelet a menedékjogi kérelem benyújtására irányuló szándéknyilatkozattal kapcsolatban nagykövetségek kijelöléséről	Decree 292/2020	<a href="https://bit.ly/38Sp3j5">https://bit.ly/38Sp3j5</a> (HU)

Justice and Law Enforcement Minister Decree no. 52/2007 (XII. 11.) on the institutional system of asylum	52/2007. (XII. 11.) IRM rendelet a menekültügy szervezeti rendszeréről	Decree 52/2007	<a href="https://bit.ly/3tRlx2p">https://bit.ly/3tRlx2p</a> (HU)
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## Overview of the main changes since the previous report update

The report was previously updated in **April 2021**.

### Context

A quasi state of exception has been introduced into Hungarian law in September 2015, titled the “**state of crisis due to mass migration**”. During this state of crisis special rules apply to third-country nationals irregularly entering and/or staying in Hungary and to those seeking asylum, and certain provisions of the Asylum Act are suspended. The state of crisis has been used as a pretext to deviate from several EU law provisions on asylum. During his visit to Hungary in 2019, the United Nations (UN) Special Rapporteur on the human rights of migrants urged the government to immediately terminate this ‘state of emergency’; he noted that he could not see a single migrant approaching Hungary from the Serbian side of the border, and deemed the extension unnecessary.<sup>5</sup> **Six and a half years later, the state of crisis due to mass migration is still in force. This also means that police are still authorised to carry out pushbacks across the border fence of irregularly staying migrants (including those who wish to seek asylum in Hungary) from any part of the country, without any legal procedure or opportunity to challenge this measure.**

Between March 2017 and mid-May 2020 all asylum seekers (with exception of unaccompanied minors below 14 years old) were held in de facto detention in the transit zones for the whole duration of their asylum procedure. After the landmark CJEU ruling,<sup>6</sup> the transit zones were closed in May 2020 and people were released to the open reception facilities. Subsequently, Hungary hastily introduced **a new asylum system** whereby access to asylum is severely limited, including to those who are legally staying in Hungary. Asylum applications can only be lodged after a declaration of intent is approved by the asylum authority. Declarations of intent can only be lodged at the Hungarian embassy in Kyiv (Ukraine) or Belgrade (Serbia), except for beneficiaries of subsidiary protection, family members of recognized refugees and beneficiaries of subsidiary protection and those being subject to forced measures, and measures or punishments affecting personal liberty.

### Asylum procedure

- ❖ **No access to the asylum procedure:** In 2021, only 38 people managed to apply for asylum in Hungary, of whom 8 came via Embassy procedure. All together 12 persons arrived via Embassy procedure since this system was introduced on 26 May 2020. All of them were Christians from Iran. **Those whose intent submitted at the Embassy was rejected, receive only an email stating that they are not granted permission to enter Hungary. There were several domestic courts judgments finding that the lack of the most basic procedural guarantees, such as the disclosure of the reasoning behind the rejection decision, constitutes such a serious violation of procedural requirements that the asylum authority must conduct a new procedure at the end of which it must provide detailed justification of its decision. The asylum authority to date refuses to implement these judgments.**

Asylum seekers who do not fall under the above-mentioned limited exceptions allowing to apply for asylum in Hungary, but nevertheless tried to apply for asylum at the NDGAP (including legally staying) were issued a **refusal decision**, stating that they are requesting something impossible, as according to the current legislative framework in place, they should submit an intent at the Hungarian Embassy prior to being allowed to apply for asylum in Hungary. **In case of an Afghan applicant whose residence permit expired, the refusal decision was followed by a push back to Serbia, a country where he has never been before. Despite the court quashing the refusal decision in November 2021 and ordering that the applicant is brought back, the authorities have up to date still not complied with this ruling.**

- ❖ **Push backs:** In 2021, 72,787 people were pushed back to Serbia, which is almost 3 times more than in 2020. Despite the CJEU judgement from December 2020,<sup>7</sup> finding the push backs unlawful and the

<sup>5</sup> FRA, *Migration: Key fundamental rights concerns, Quarterly bulletin 4*, 2019, <http://bit.ly/30NBDe9>.

<sup>6</sup> C-924/19 PPU and C-925/19 PPU.

<sup>7</sup> C-808/18.

ECtHR's judgement in the first case against Hungary involving a pushback,<sup>8</sup> pushbacks continue to take place, as the Government refuses to implement these judgments.

- ❖ **No access to classified data in national security cases and no protection from refoulement:** The Security agencies are not obliged to provide justification of their opinion of why a person is considered a threat to national security and the underlying data substantiating the national security threat is classified. **Asylum seekers or persons with international protection considered a threat to national security and their legal representatives do not have access to the reasons why they are considered a threat** (not even to the summary of the reasoning, as required by the CJEU and ECtHR jurisprudence). **Therefore they have no possibility to submit defense arguments when they are excluded from international protection, their status is withdrawn or they are detained. The Hungarian immigration authority does not have access to classified data either. Moreover, the opinion of the Hungarian security agencies of a national security threat is binding on the Asylum authority (Section 57(3) of Asylum Act). Therefore, it begs the question of how the Asylum authority actually performs a thorough and individual examination of a case, taking into account individual circumstances and the assessment of necessity and proportionality.** The provisions and practice on exclusion based on national security grounds therefore remain not compliant with EU law.<sup>9</sup> Further on, the controversial decree removing the right to request suspensive effect of expulsion decision based on national security grounds is also still in force.<sup>10</sup>
- ❖ **Expansion of exclusion/withdrawal clauses:** **Since 1 January 2022 a foreigner shall not be granted subsidiary protection/protection is withdrawn if there are reasonable grounds for believing that, prior to his or her admission by Hungary, he or she has committed an offence in his or her country of origin punishable in Hungary by a term of imprisonment of up to three years or more and there are reasonable grounds for believing that the applicant left his or her country of origin only in order to avoid the penalty for the offence.** Although this amendment per se is not incompatible with the Qualification Directive, the Hungarian asylum provisions on exclusion from international protection due to serious crime are still not compliant with EU law.<sup>11</sup>
- ❖ **Ukrainians:** **All people who are crossing the Hungarian-Ukrainian border are given entry. As of 7 April 2022, the total number of Ukrainians entering Hungary directly from Ukraine and Romania reached 661,083.**<sup>12</sup> Information provision by the authorities to Ukrainian refugees is poor. In general, there is a shortage of interpreters at registration points, therefore, many are not aware of the temporary protection scheme at all and register for a 30-day-long permission to stay or leave Hungary. This explains the low number of registrations by the NDGAP according to which only 12,296 people have applied for temporary protection until 6 April 2022. **Hungary provides temporary protection to (1) Ukrainian citizens, (2) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022 and were displaced on or after that date and (3) to the family members of the above categories.**<sup>13</sup> **The temporary protection procedure lasts for 45 days. Applicants, as well as, beneficiaries of temporary protection are entitled to receive shelter, meals, health care, financial aid, reimbursement of certain travel and translation costs as well as have access to the labour market and education. Beneficiaries, furthermore, are eligible for free of charge Hungarian language courses and language exams.** Despite the elaborated legislative framework, **refugees from Ukraine face several difficulties regarding their rights enforcement. Access to state shelter, meals and financial aid is also hindered.**

<sup>8</sup> Shahzad v. Hungary, Appl. no. 12625/17, 8 October 2021.

<sup>9</sup> Hungarian Helsinki Committee: National Security Grounds for Exclusion from International Protection as a Carte Blanche: Hungarian asylum provisions not compliant with EU law, Information Update by the Hungarian Helsinki Committee, 20 December 2021, available at: <https://bit.ly/3f7n6ls>.

<sup>10</sup> Hungarian Helsinki Committee, Decree Justified by Pandemic Causes Immediate Risk of Refoulement Without Access to an Effective Judicial Remedy, available at: <https://bit.ly/3IREMEa>.

<sup>11</sup> Preserved legal deficiencies post-CJEU Ahmed judgement: Hungarian asylum provisions on exclusion from international protection still not compliant with EU law, Information Update by the Hungarian Helsinki Committee, 7 April 2021, available at: <https://bit.ly/3GdSA5k>.

<sup>12</sup> See: <https://bit.ly/3E7bYRd>; <https://bit.ly/3JCfIRf>.

<sup>13</sup> Section 1 of Government Decree no. 86/2022. (III. 7.)

To date, financial aid has not been granted to anyone. Much of the services and help are provided by charity and civil society organizations and volunteering citizens.

Hungarian legislation does not provide temporary nor other adequate protection to those third-country nationals who were permanent residents in Ukraine and cannot return in a safe and durable manner to their home country. The Government Decree no. 86/2022. (III. 7.) determines that such third-country nationals are subject to the general aliens policing procedure. Moreover, since access to the asylum procedure in Hungary is non-existent, not only permanent residents but also those who were in an asylum procedure in Ukraine or those Ukrainians who fled Ukraine before the war broke out or were on holidays and could not return to Ukraine as well as those who had legal residence in Ukraine but have fears to return to their country of origin are left without international protection.

#### *Reception conditions*

- ❖ **Low occupancy of reception centres:** Due to the low number of asylum seekers registered in 2021, reception facilities ran below their capacities most part of the year. Nevertheless, the temporary stay of Afghan evacuees rescued by the Hungarian Defense Forces in the reception centres of Vámoszabadi and Balassagyarmat between September and November resulted in overcrowding in both facilities. Afghan evacuees were not registered as asylum seekers but were channelled into aliens policing procedure (see under [Differential treatment of specific nationalities in reception](#)). At the end of 2021, Vámoszabadi was empty, whereas Balassagyarmat hosted only five asylum seekers.
- ❖ **Health safety measures:** Due to the COVID-19 pandemic, preventive measures are still in place, visits to the reception centres are suspended and access of NGOs thereto remains limited like in the previous two years.

#### *Detention of asylum seekers*

- ❖ **Low number of detainees, but long-standing systemic shortcomings:** Although only 2 persons were placed in asylum detention in 2021, the problems mentioned in the [previous AIDA reports](#) still persist (i.e. no adequate conditions regarding persons with special needs, lack of individual assessment and justification of detention grounds, no effective judicial review, etc.).
- ❖ **Limited access to detention facilities:** In 2021, NGOs were still banned from accessing detention facilities. As a result, monitoring could not be carried out, and necessary services such as free legal counselling, social assistance, psycho-social and therapeutic treatment, except on a case-by-case basis, could not be regularly provided.

#### *Content of international protection*

- ❖ **No public integration services:** Since June 2016, the Hungarian state has completely withdrawn integration services provided to beneficiaries of international protection, thus leaving recognised refugees and beneficiaries of subsidiary protection in destitution and homelessness. The capacity of non-governmental and church-based organisations to provide the necessary integration services such as housing, assistance with employment, Hungarian language classes or family reunification is seriously limited. Civil society and church-based organisations can provide such services only to a small number of beneficiaries, leaving many without any help.
- ❖ **Withdrawal of protection:** The NDGAP initiated the withdrawal of international protection status of 237 persons and issued a decision on withdrawal in the case of 349 persons in 2021, which is a huge increase compared to last year. Nonetheless, since the seizure of power by the Taliban in Afghanistan in August 2021, the HHC is not aware of any decision where the NDGAP would have expelled anyone to Afghanistan as a result of the withdrawal proceeding.

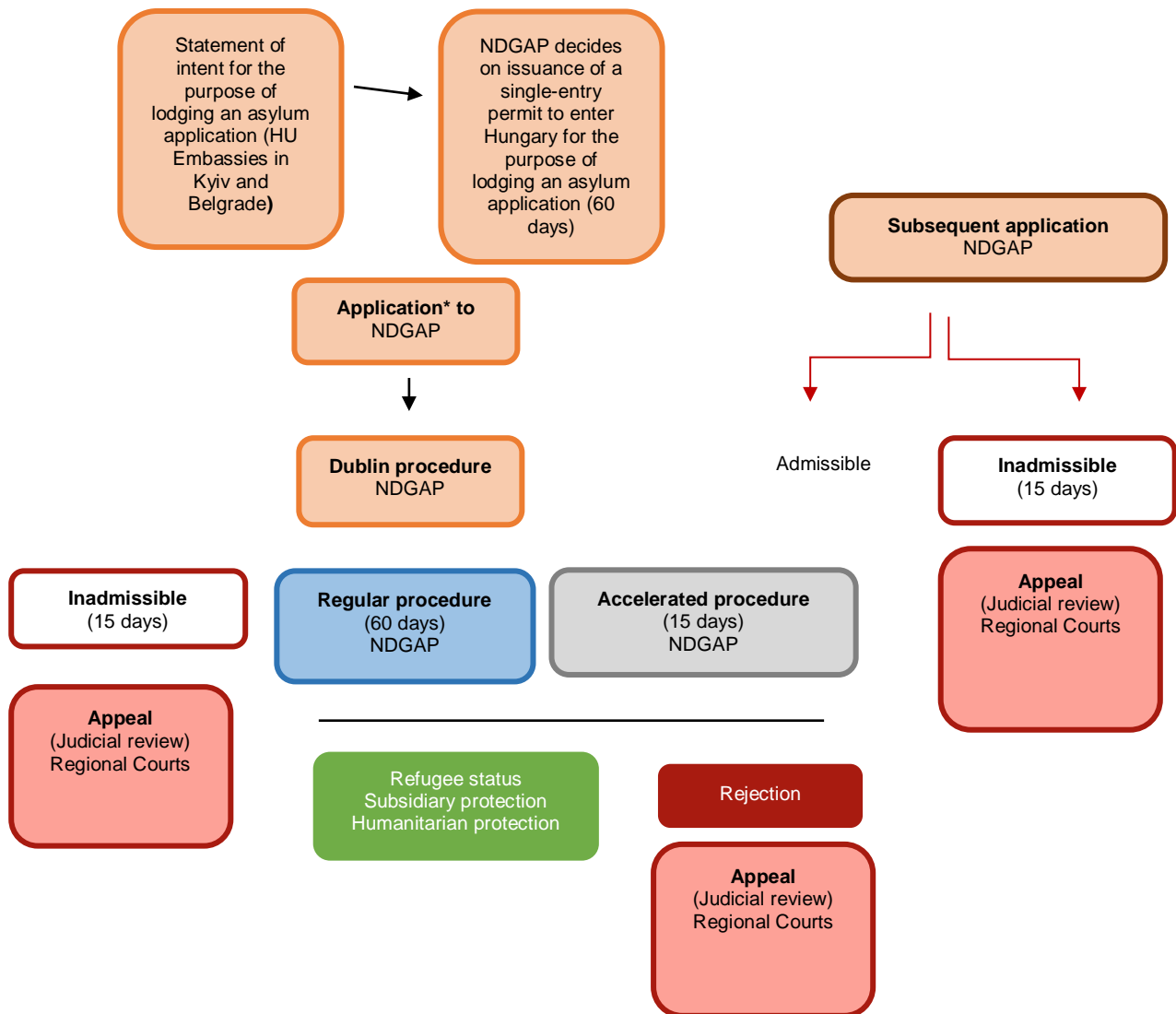
- ❖ **Detrimental impacts of the COVID-19 pandemic on integration:** In the absence of public and targeted integration and support programs, the COVID-19 pandemic has seriously affected the integration of beneficiaries of international protection as the existing disadvantages with regard to education, access to the labour market or health care and housing have been amplified.



# Asylum Procedure

## A. General

### 1. Flow chart



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

## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |  |   |  |
|--|---|--|
| ❖ Regular procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>14</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>15</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure: <sup>16</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |

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

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

Section 35(7) of the Asylum Act provides that in the case of an unaccompanied child, the asylum procedure shall be conducted as a matter of priority, but in practice this is not always the case.<sup>17</sup> In 2021, the National Directorate-General for Aliens Policing (NDGAP) processed the applications with priority in case of three unaccompanied children and two asylum seekers held in asylum detention.<sup>18</sup>

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

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

<sup>14</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>15</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>16</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

<sup>17</sup> For example, the HHC is aware of one unaccompanied child who was held in the transit zone for one year, after multiple negative decisions had been issued in his procedure.

<sup>18</sup> Information received from the NDGAP, 7 February 2022.

#### 4. Determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
National Directorate-General for Aliens Policing (NDGAP)	88	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Source: NDGAP, 7 February 2022.

The Asylum and Immigration Office ceased to exist on 1 July 2019 as the National Directorate-General for Aliens Policing (NDGAP) was established taking over the responsibility for asylum and aliens policing matters.<sup>19</sup> The Directorate continues to be under the supervision of the Ministry of Interior and having its own budget, but operating as a law enforcement body under the Police Act.<sup>20</sup> While the Directorate kept the institutional structure of its legal predecessor, as being a law enforcement body, the employees – who decided to stay at the Directorate – had to enter to the police personnel and therefore, lost their government employee status. The head of Directorate is the General Director, who is appointed in the same manner as the head of the Office used to be.<sup>21</sup> On 31 December 2021, there were 15 case officers handling asylum cases.<sup>22</sup>

The NDGAP is in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The NDGAP is also in charge of operating the transit zones (out of operation since 21 May 2020),<sup>23</sup> open reception centres and closed asylum detention facilities for asylum seekers.

According to the Justice and Law Enforcement Minister Decree no. 52/2007 (XII. 11.) on the institutional structure of asylum,<sup>24</sup> the authority provides regular training to its staff. Furthermore, the authority also makes sure that the personnel responsible for asylum cases obtains special knowledge on vulnerable asylum seekers, refugees, beneficiaries of subsidiary protection and beneficiaries of temporary protection.<sup>25</sup> According to the NDGAP, in 2020 and 2021 there were two modules of the EASO Training Curriculum available in Hungarian at the authority, titled as “*Personal interview of vulnerable persons*” and “*Personal interview of children*”.<sup>26</sup> In the autumn of 2020, one staff member of the NDGAP participated in the online training “*Reception of Vulnerable Persons Block A: identification of vulnerability and provision of initial support (Part A)*” and another staff member attended the training “*Reception of vulnerable persons: needs assessment and design of interventions (Part B)*”, both organized by EASO. Furthermore, one employee of the Asylum Department attended an online conference organized by EASO on the topic of “*Exclusion*”. In November 2021, two asylum case officers attended the training ‘*Junior Asylum Registration Experts*’ held in Warsaw by the EASO.<sup>27</sup> Furthermore, according to the NDGAP, currently there is no EASO training module that should be completed by all asylum case officers and social workers.<sup>28</sup> The Documentation Centre is responsible for organising trainings to the personnel of the authority regarding countries of origin and third countries.

<sup>19</sup> Sections 1, 2 and 4 of the Government Decree no. 126/2019 (V.30.) on the appointment of the aliens policing body and its powers.

<sup>20</sup> Act XXXIV of 1994 on the Police.

<sup>21</sup> Section 5 point g) of the Police Act.

<sup>22</sup> This information was provided first time by the NDGAP, 7 February 2022.

<sup>23</sup> The transit zones do not host asylum seekers anymore, but they are still officially not closed, the NDGAP staff works there.

<sup>24</sup> Section 1(3) of the Decree 52/2007.

<sup>25</sup> Section 1(4) of the Decree 52/2007.

<sup>26</sup> Information provided by NDGAP on 2 March 2021 and on 7 February 2022.

<sup>27</sup> Information provided by NDGAP on 7 February 2022.

<sup>28</sup> Information provided by NDGAP on 7 February 2022.

Similarly to 2019,<sup>29</sup> in the year of 2020, there were 8 trainings provided for a total of 88 personnel of the Asylum Directorate of the NDGAP.<sup>30</sup> In 2021, 14 persons from the Asylum Directorate attended 5 trainings.<sup>31</sup>

According to the NDGAP, the data on the types of trainings to the case officers and the educational material that is provided and used during these trainings do not qualify as public information. Consequently, they did not provide any information on this matter. NDGAP briefly stated that case officers are obliged to attend trainings that are relevant and necessary for fulfilling their scope of activities.<sup>32</sup>

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

## 5. Short overview of the asylum procedure

A quasi-state of exception operates under Hungarian legislation, entitled “state of crisis due to mass migration”. The state of crisis can be ordered by a government decree, on the joint initiative of the National Directorate-General for Aliens Policing (NDGAP) and the Police, for a maximum of 6 months to certain counties or the entirety of the country. Once in effect, among others, the Hungarian Defence Forces are tasked with the armed protection of the border and with the assistance of the police forces in handling issues related to migration. The state of crisis due to mass migration has been in effect in the two counties bordering **Serbia** (Bács-Kiskun and Csongrád) since 15 September 2015, and in the four counties bordering **Croatia**, **Slovenia** and **Austria** (Baranya, Somogy, Vas, Zala) since 18 September 2015. On 9 March 2016, the state of crisis was extended to the entire territory of Hungary. This has been extended twelve times since then and is currently in effect until 7 September 2022.

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

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

First due to the Gov. Decree 233/2020<sup>33</sup> and later due to the Transitional Act that temporarily regulates the asylum procedure (currently until 31 December 2022, with possibility of prolongation) the following special rules related to the state of crisis are no longer applicable as of 26 May 2020:

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

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

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<sup>29</sup> Information provided by NDGAP on 3 February 2020.

<sup>30</sup> Information provided by NDGAP on 2 March 2021.

<sup>31</sup> Information provided by NDGAP on 7 February 2022.

<sup>32</sup> Ibid.

<sup>33</sup> Government Decree 233/2020. (V. 26.) on the rules of the asylum procedure during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens.

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

On 26 May 2020 the Governmental decree and from 18 June 2020 the Transitional Act introduced new rules on asylum. Those wishing to seek asylum in Hungary, with a few exceptions noted below, must first personally submit a “statement of intent for the purpose of lodging an asylum application”,<sup>34</sup> at the Embassy of Hungary in **Belgrade** or in **Kyiv**.<sup>35</sup> The embassy must then forward the “statement of intent” to the NDGAP in **Budapest**, which shall examine it within 60 days.<sup>36</sup> The NDGAP should make a proposal to the embassy whether to issue the would-be asylum seeker a special, single-entry permit to enter Hungary for the purpose of lodging an asylum application.<sup>37</sup> The law does not clarify the criteria to be considered by the NDGAP in deciding on such applications. Applicants receive an email, with one paragraph stating that the NDGAP decided either to suggest or not to suggest the issuance of a single-entry permit. The decision therefore bears no reasoning and the law does not foresee any remedy. Those issued a single-entry permit can then travel to Hungary in order to submit an asylum application. In 2020, only one family, whereas in 2021 altogether 8 Iranian nationals were granted a single-entry permit to apply for asylum in Hungary, after submitting their statement of intent at the Embassy in Belgrade.<sup>38</sup>

Only people belonging to the following categories are not required to go through the process described above:<sup>39</sup>

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

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

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

**Inadmissibility:** An application is declared inadmissible if somebody (a) is an EU citizen; (b) has protection status from another EU Member state; (c) has refugee status in a third country and this country is willing to readmit the applicant; (d) submits a subsequent application and there are no new circumstances or facts; (e) has travelled through a safe third country; and (f) the applicant arrived through a country where he or she is not exposed to persecution or to serious harm, or in the country through which the applicant arrived to Hungary an adequate level of protection is available.

**Accelerated procedure:** The accelerated procedure can be used if the applicant (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

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<sup>34</sup> The form is available at: <https://bit.ly/3m33am8>.

<sup>35</sup> Section 1 of Government Decree 292/2020 (VI. 17.).

<sup>36</sup> Section 268(3)-(4) of the Transitional Act.

<sup>37</sup> Section 268(4)-(5) of the Transitional Act.

<sup>38</sup> Information received from the Ministry of Trade and Foreign Affairs, 4 February 2022 and from the NDGAP, 7 February 2022.

<sup>39</sup> Section 271 (1) of the Transitional Act.

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. At that point, biometric data is taken, questions are asked about personal data, the route to Hungary and the main reasons for asking for international protection. Sometimes the NDGAP will conduct more than one interview with the applicant.

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

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

Since 1st January 2021 a Gov. decree 570/2020. (XII. 9.) is in force and its Section 5 removes the possibility to ask for interim measures in order to prevent expulsion in case of violation of epidemic rules or when expulsion is ordered based on the risk to national security or public order. This has serious consequence for people, who have been expelled prior to submitting their asylum application, as in case their asylum application is rejected in an accelerated procedure, the appeal does not have a suspensive effect and even if it is requested, it does not suspend the expulsion that was ordered prior to the asylum procedure.<sup>40</sup>

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

In September 2017, the HHC published an information note on the asylum situation in Hungary following two years of successive reforms.<sup>41</sup> In July 2019, the HHC published an information note on the asylum situation one year after the legal changes introduced in July 2018.<sup>42</sup> In August 2020, the HHC published

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<sup>40</sup> Hungarian Helsinki Committee, Decree Justified by Pandemic Causes Immediate Risk of Refoulement without Access to an Effective Judicial Remedy, <https://bit.ly/3IREMEa>.

<sup>41</sup> HHC, *Two years after: What's Left of Refugee Protection in Hungary?*, September 2017, available at: <http://bit.ly/2EdCWqm>.

<sup>42</sup> HHC, *One year after. How legal changes resulted in blanket rejections, refoulement and systemic starvation in detention*, 1 July 2019, available at: <http://bit.ly/35V44Yn>.



an information note on the new asylum system in place as of 26 May 2020<sup>43</sup> and in November 2021 the HHC published another update on the system.<sup>44</sup>

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No
2. Is there a border monitoring system in place? ☐ Yes ☒ No
  - ❖ If so, who is responsible for border monitoring? ☐ National authorities ☐ NGOs ☐ Other
  - ❖ If so, how often is border monitoring carried out? ☐ Frequently ☐ Rarely ☐ Never

#### 1.1. Regular entry through transit zones

The barbed-wire fence along the 175 km long border section with **Serbia** was completed on 15 September 2015. A similar barbed-wire fence was erected a month later, on 16 October 2015, at the border with **Croatia**. So-called “transit zones” have been established as parts of the fence. Despite all of the measures taken with the explicit aim of diverting refugee and migrant flows from the Serbian border, this border section continues to be the fourth biggest entry point to Europe.<sup>45</sup>

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

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

#### 1.2. Embassy procedure

On 26 May 2020, the government issued a government decree that introduced a new asylum system, the so called “embassy procedure”.<sup>46</sup> This new system was later included in the Transitional Act, that entered into force on 18 June 2020. The system was first in place until 31 December 2020, with possibility of prolongation. Such prolongation already happened and the system is currently in force until 31 December 2022.

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

- ❖ A foreigner must personally submit a “statement of intent for the purpose of lodging an asylum application” (hereafter: statement of intent) at the Embassy of Hungary in **Belgrade** or in **Kyiv**.<sup>47</sup>

<sup>43</sup> HHC, Hungary de facto removes itself from the Common European Asylum System (CEAS), 12 August 2020, available at: <https://bit.ly/35UsGDy>.

<sup>44</sup> HHC, No access to asylum for 18 months, Hungary’s dysfunctional embassy system in theory and practice, November 2021, <https://bit.ly/3nB6tTG>.

<sup>45</sup> See Frontex, *Migratory routes map*, available at: <http://bit.ly/1FZMUyU>.

<sup>46</sup> Government Decree 233/2020. (V. 26.) on the rules of the asylum procedure during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens.

<sup>47</sup> Section 1 of Government Decree 292/2020 (VI. 17.).

- ❖ The Embassy must then forward the “statement of intent” to the NDGAP in Budapest, which shall examine it within 60 days.<sup>48</sup> During this period the NDGAP might remotely interview the foreigner.
- ❖ The NDGAP should make a proposal to the Embassy whether to issue the ‘would-be’ asylum seeker a special, single-entry permit to enter Hungary for the purpose of lodging an asylum application.<sup>49</sup>
- ❖ In case the permit is issued, the would-be asylum-seeker must travel on her/his own to Hungary within 30 days, and upon arrival, immediately avail her/himself to the border guards.<sup>50</sup>
- ❖ The border guards must then present the ‘would-be’ asylum-seeker to the asylum authority within 24 hours.<sup>51</sup>
- ❖ The ‘would-be’ asylum-seeker can then formally register her/his asylum application with the NDGAP.

Only people belonging to the following categories are not required to go through the process described above:<sup>52</sup>

- Beneficiaries of subsidiary protection who are staying in Hungary.
- Family members<sup>53</sup> of refugees and beneficiaries of subsidiary protection who are staying in Hungary.
- Those subject to forced measures, measures or punishment affecting personal liberty, except if they have crossed Hungary in an ‘illegal’ manner.

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

As regards the procedure at the embassy, the law does not clarify the criteria to be considered by the NDGAP in deciding on such applications. Those wishing to submit their statement of intent must first secure an appointment at the embassy. There is no clear procedure on how this could and should be arranged. According to the HHC's knowledge, people are regularly turned away at the embassy when attempting to lodge their “statement of intent” and are informed that they are placed on an undefined “waiting list” to get an appointment to lodge the intent. The HHC is aware of several cases where applicants waited over 6 months to get an appointment, while some received a date within weeks. Some also miss the appointment, as they do not speak English and the information about the appointment is sent to them in English by e-mail, or they are not used to use emails, or they were not able to arrive to the appointment, as they couldn't arrange their travel, since they were placed in a reception centre further away from Belgrade. The “statement of intent” form<sup>54</sup> has to be filled in English or Hungarian, for which no interpretation or legal assistance is provided. In 2020, 26, whereas in 2021, according to the NDGAP 53 and as per the Ministry of Trade and Foreign Affairs 55 statements of intent were submitted at the Embassy of Hungary in Belgrade.<sup>55</sup> Similar issues on the Embassy procedure in Belgrade have been reported in the [AIDA report on Serbia](#).

Only one family's “statement of intent” was assessed positively in 2020 and the NDGAP granted them a single-entry permit in order to apply for asylum in Hungary, they were later granted refugee status. All other applications were rejected in an email, by one paragraph stating that the NDGAP decided not to suggest the issuance of a single-entry permit. The decision therefore bears no reasoning and the law does not foresee any remedy. This clearly denies asylum seekers access to a fair and efficient asylum procedure as it raises fundamental concerns over the possibility of a substantive assessment without

<sup>48</sup> Section 2 (3)-(4) of Government Decree 233/2020. (V. 26.) and Section 268 (3)-(4) of the Transitional Act

<sup>49</sup> Section 2 (4)-(5) of Government Decree 233/2020. (V. 26.) and Section 268 (4)-(5) of the Transitional Act.

<sup>50</sup> Sections 3 and 4(2) of Government Decree 233/2020. (V. 26.) and Sections 269 and 270 (2) of the Transitional Act.

<sup>51</sup> Section 4 (3) of Government Decree 233/2020. (V. 26.) and Section 270 (3) of the Transitional Act.

<sup>52</sup> Section 271 (1) of the Transitional Act.

<sup>53</sup> Family members defined according to the Asylum Act (Section 2(j)) are the spouses, minor children and children's parents or an accompanying foreign person responsible for them under Hungarian law. The HHC is aware of cases, where the asylum application was not accepted from adult children who joined their parent with int. protection status through family reunification.

<sup>54</sup> The form available on NDGAP's website: <https://bit.ly/3shLiWw>.

<sup>55</sup> The numbers provided by the Ministry and the NDGAP in 2022 were controversial. There were two more statements of intent registered by the Ministry than by the NDGAP.



appropriate procedural guarantees being in place as required by international and EU law. In 2021, 8 persons (4 persons in April and 4 in September) were granted a single-entry permit in order to apply for asylum in Hungary.

The HHC represents a number of rejected people in domestic court procedures. Common to all the cases is that courts found that the lack of the most basic procedural guarantees, such as the disclosure of the reasoning behind the rejection decision, constitutes such a serious violation of procedural requirements that the asylum authority must conduct a new procedure at the end of which it must provide detailed justification of its decision. The courts also found that although the Transitional Act remains silent on this, given the nature of the procedure and the effect of the outcome, the notification of the decision is in fact an administrative act and as such, can be subject to judicial review. However, this is not enshrined in the Transitional Act, and applicants are not informed by the Embassy of these developments in Hungarian case law. The asylum authority to date refuses to implement these judgments.<sup>56</sup> Instead, using a loophole created recently to channel out sensitive cases from the ordinary court system,<sup>57</sup> it requested the Constitutional Court (CC) to quash the first such court decision. While that case is pending at the CC, despite it not having an automatic suspensive effect, and despite the CC's rejection of the request for suspensive effect,<sup>58</sup> the asylum authority refuses to implement this particular judgment, and the subsequent ones.<sup>59</sup>

The government aims to justify severe restrictions to access to protection incompatible with domestic, EU, and international law with the pretext of minimising exposure to COVID-19. Nevertheless, this system, besides all its human rights concerns, actually increases the risk of infection, by generating unnecessary cross-border movements.

UNHCR expressed its criticism over the new system,<sup>60</sup> and on 30 October 2020 the European Commission decided to launch an infringement procedure against Hungary.<sup>61</sup> This represents the fifth infringement procedure related to asylum policies from the Commission against Hungary since 2015.<sup>62</sup> On 15 July 2021, the Commission decided to refer Hungary to the CJEU for unlawfully restricting access to the asylum procedure in breach of Article 6 of the Asylum Procedures Directive (APD), interpreted in light of Article 18 of the Charter.<sup>63</sup>

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

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

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<sup>56</sup> HHC, Non-Execution of Domestic and International Court Judgments in Hungary, 2 December 2021, <https://bit.ly/34jT9fG>.

<sup>57</sup> New law threatens judicial independence in Hungary - again, January 2020, available at <https://bit.ly/3om0S3Z>, 3-5.

<sup>58</sup> Section 53 (4), 61 of Act CLI of 2011 on the Constitutional Court.

<sup>59</sup> HHC, No access to asylum for 18 months, Hungary's dysfunctional embassy system in theory and practice, November 2021, <https://bit.ly/3nB6tTG>.

<sup>60</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Position on Hungarian Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger*, June 2020, available at: <https://bit.ly/3KWCvtl>.

<sup>61</sup> European Commission, October infringement package: key decision, 30 October 2020 available at: <https://bit.ly/3khzbpG>.

<sup>62</sup> ECRE, 'Hungary: Facing Fifth Infringement Procedure Related to Asylum Since 2015', 6 November 2020, available at: <https://bit.ly/3s95VDT>.

<sup>63</sup> European Commission, Commission refers Hungary to the Court of Justice of the European Union for unlawfully restricting access to the asylum procedure, 15 July 2021, available at: <https://bit.ly/3HILMTy>.

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

According to the Child Protection Act, only guardians working at TEGYESZ (Child Protection Guardian Services of Budapest) may be appointed to be guardians of unaccompanied children. The Implementation Decree to the Child Protection Act contains an exhaustive list of the necessary qualifications a person needs to possess in order to be able to become a guardian. For instance, they need to hold a degree (or be certified in) one of the following: law, public administration manager, administration manager, social work, pedagogy (except for religious studies), psychologist or mental hygiene, child protection counsellor, family advisor holding a legal certificate (not a law degree), district nurse, theologian, teacher of religious studies, pastoral advisor.<sup>64</sup>

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

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

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

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<sup>64</sup> Save the children, Guardianship advanced instruments for child protection in Europe (G.A.IN.), <https://bit.ly/3Jro4G5>.

### 1.3. Irregular entry and police violence

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

While their asylum applications have suspensive effect, and a “penitentiary judge” can impose a prohibition on enforcement of a court sentence of expulsion where the individual concerned is entitled to international protection,<sup>65</sup> 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.<sup>66</sup>

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 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 was not aware of any case between 2018 and 2020 and the National Office for the Judiciary (NOJ) did not provide any information in this regard, as they did not have relevant statistics.<sup>67</sup> In contrast to that, the NOJ reported that there were 5 persons convicted for ‘illegally crossing the border fence’ in 2021.<sup>68</sup> According to the Police, one criminal procedure was started with the charge of illegal crossing of the border fence in 2019, in 2020 a total of 33, whereas in 2021, a total of 11 criminal procedures were initiated.<sup>69</sup>

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).<sup>70</sup> Legalising pushbacks from within Hungarian territory denies asylum seekers the right to seek international protection, in breach of international and EU law,<sup>71</sup> 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, are denied the right to apply for international protection, despite most of them coming from war zones such as **Syria**, **Iraq** or **Afghanistan**, and many of them are also physically abused by personnel in uniforms and injured as a consequence.<sup>72</sup>

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

<sup>65</sup> 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.”

<sup>66</sup> UNHCR, *Hungary as a country of asylum*, May 2016, available at: <http://bit.ly/1XmHUGA>, paras 60-62.

<sup>67</sup> Information provided by the National Office for the Judiciary, 8 February 2019.

<sup>68</sup> Information provided by the National Office for the Judiciary, 18 January 2022.

<sup>69</sup> Information provided by the Police, 2 February 2021 and 4 February 2022.

<sup>70</sup> HHC, *Hungary: Access denied*, Information Note, 14 July 2016, available at: <https://bit.ly/3xodQU9>.

<sup>71</sup> *Ibid.*

<sup>72</sup> See Frontex, *Migratory routes map*, available at: <http://bit.ly/1FZMUJU>.

and have entered Hungary through Ukraine or Romania. Migrants who arrive at the airport and ask for asylum there, are also pushed back to Serbia, although they have never even been there, since they arrived by plane from another country.

In 2019, 11,101 migrants and asylum seekers were pushed back from the territory of Hungary to the external side of the border fence and 961 were blocked entry at the border fence.<sup>73</sup> In 2020, 25,603 migrants and asylum seekers were pushed back and 14,151 were blocked entry.<sup>74</sup> In 2021, 72,787 migrants and asylum seekers were pushed back and 47,323 were blocked entry.<sup>75</sup> 63% of those pushed back were Syrian, whereas 19% were Afghan nationals.<sup>76</sup>

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.<sup>77</sup> 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.<sup>78</sup> In 2019, ECtHR communicated another case addressing ineffective investigation of police violence during a push back.<sup>79</sup>

The Commissioner for Human Rights of the Council of Europe Dunja Mijatović wrote in the report following her visit to Hungary from 4 to 8 February 2019 that, *“Human rights violations in Hungary have a negative effect on the whole protection system and the rule of law. They must be addressed as a matter of urgency”. This includes the arbitrary detention of asylum seekers in transit zones along the Hungarian-Serbian border and “repeated reports of excessive violence by the police during the forcible removals of foreign nationals”*.<sup>80</sup> On 8 June 2019, the Parliamentary Assembly of the Council of Europe published a report on Pushback policies and practice in Council of Europe member States.<sup>81</sup> Pushbacks and violent policing practices in the Balkan Region remain a serious matter of concern in 2019, according to a report published by the Border Violence Monitoring Network,<sup>82</sup> as well as in 2020.<sup>83</sup> On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it recommended ending the pushbacks and to stop the violence by Police and border police inflicted on children during removal.<sup>84</sup> On 1 February 2021, the Hungarian Helsinki Committee’s presented a submission to the UN Special Rapporteur on the rights of migrants in response to the call for input of the Special Rapporteur, to inform his report to the 47<sup>th</sup> session of the United Nations Human Rights Council on push-backs.<sup>85</sup> As part of the Protecting Rights at Borders initiative, quarterly reports on pushbacks on the Western Balkan Route were published in 2021.<sup>86</sup>

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<sup>73</sup> Information provided by the Police.

<sup>74</sup> See the statistics published by the Police: <https://bit.ly/2OWxQJO>.

<sup>75</sup> See the statistics published by the Police: <https://bit.ly/3rw7vmm> (EN) and answers received from the Police, 4 February 2022.

<sup>76</sup> *Ibid.*

<sup>77</sup> UNHCR, ‘UNHCR alarmed at refugee death on Hungary-Serbia border’, 6 June 2016, available at: <https://bit.ly/2VliBoC>.

<sup>78</sup> ECtHR, *Alhowais v. Hungary*, Application No. 59435/17, available at: <http://bit.ly/2NI7nf0>.

<sup>79</sup> *Shahzad Khurram v. Hungary*, Appl. No. 37967/18, available at: <http://bit.ly/30BPXWV>.

<sup>80</sup> Commissioner for Human Rights of the Council of Europe Dunja Mijatović; Report following the visit to Hungary from 4 to 8 February 2019, 21 May 2019, <http://bit.ly/2TwWslO>.

<sup>81</sup> Council of Europe, Parliamentary Assembly: Pushback policies and practice in Council of Europe member States [Doc. 14909], 8 June 2019, <http://bit.ly/30pgxm8>.

<sup>82</sup> Border Violence Monitoring Network, <https://bit.ly/367bl86>.

<sup>83</sup> Border Violence Monitoring Network: Illegal push-backs and border violence reports; Balkan region April/May 2020, June 2020, available at: <https://bit.ly/3bCb8xJ>

<sup>84</sup> Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, 10 February 2020, available at: <https://bit.ly/3op1QK0>.

<sup>85</sup> HHC, Submission of the Hungarian Helsinki Committee to the UN Special Rapporteur on the human rights of migrants, February 2021, available at: <https://bit.ly/3fh1STb>.

<sup>86</sup> Danish Refugee Council, Protecting Rights at Borders (PRAB), available at: <https://bit.ly/344g3YU>.



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.<sup>87</sup> The Commission considered that within its territory, Hungary failed to provide effective access to asylum procedures as irregular migrants are escorted back across the border, even if they wish to apply for asylum. On 17 December 2020 the CJEU issued a judgement in the case C-808/18 and ruled that moving illegally staying third-country nationals to a border area, without observing the guarantees surrounding a return procedure constitute infringements of EU law.<sup>88</sup> No legislative amendments followed the judgement and the practice still remains the same. At the end of February 2021, the Hungarian Minister of Justice requested the interpretation of the Hungarian Fundamental Law (the Constitution) by the Hungarian Constitutional Court, arguing that the implementation of the CJEU judgment regarding pushbacks would be in breach of the Fundamental Law.<sup>89</sup> On 7 December 2021, the Constitutional Court delivered a judgment that met only partially the government's expectations, as it rejected directly ruling on the primacy of EU law and clearly stated that even in Hungary foreigners - including asylum-seekers - do have a right to human dignity. However, the judgement is worrying as it interprets the right to self-determination in the sense that Hungarians have a right to 'constitutional identity', to be interpreted as the right to live in a culturally homogeneous country, essentially associating the arrival of migrants and asylum seekers with a threat to said identity.<sup>90</sup> The Government's response to the judgment was that it confirms the Hungarian approach to migration and that pushbacks are as such allowed to continue.<sup>91</sup>

Following the CJEU judgment C-808/18 and in light of the Hungarian authorities' disregard of its findings, the HHC requested at the beginning of January 2021 that Frontex suspend its operations in Hungary to avoid complicity in unlawful practices.<sup>92</sup> At the end of January, Frontex, for the first time in the Agency's history, decided to suspend its activities in Hungary, following increased attention from media, the European Parliament and the European Commission.<sup>93</sup>

On 9 June 2021, the European Commission sent a letter of formal notice to Hungary for failing to comply with the ruling of the CJEU (C-808/18).<sup>94</sup> On 8 October 2021, the ECtHR issued a judgement in the first case against Hungary involving a pushback. The Court ruled that pushbacks carried out by Hungary under a domestic regulation are in breach of the prohibition of collective expulsions enshrined in Article 4 of Protocol 4 of the Convention.<sup>95</sup>

Despite the above judgments push backs continue on a daily basis. The following example is particularly striking as it shows how it is not only impossible to apply for asylum in Hungary, but such an attempt leads to a push back as well. An Afghan man, who, after having overstayed his study visa in Hungary, wanted to apply for asylum in September 2021 because of the Taliban takeover. Mr. H. Q. showed up in person at the NDGAP's asylum authority and expressed his wish to seek asylum. Instead of being admitted into the asylum procedure, he was removed from Hungary by the police on the same day. He was carried to the external side of the Hungarian border fence situated at the official Hungarian-Serbian state border and had no other choice but irregularly entering Serbia – a country where he had never been in his life.<sup>96</sup> His asylum application was rejected as inadmissible, as the NDGAP held that, based on Section 32/F(1)b) of Act LXXX of 2007 on Asylum, he was requesting something impossible within the established legal framework. His asylum claim was thus rejected without even launching an examination. In the decision, the NDGAP cites Act LVIII of 2020 on the transitional measures following the termination of the state of

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<sup>87</sup> 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>.

<sup>88</sup> CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, European Commission v Hungary, C-808/18, 17 December 2020, ECLI:EU:C:2020:1029.

<sup>89</sup> Minister of Justice, "Case X / 00477 /2021", available at: <https://bit.ly/2QHXdW>.

<sup>90</sup> Hungarian Constitutional Court, X/477/2021, available at: <https://bit.ly/3rlxIUB>.

<sup>91</sup> Euronews, 'Hungarian Constitutional Court ruling is a migration milestone', 15 December 2021, available at: <https://bit.ly/3flr4kv>, see HHC's response: <https://bit.ly/3lgsQps>.

<sup>92</sup> DRC, Pushing Back Responsibility. Rights Violations as a "Welcome Treatment" at Europe's borders, April 2021, <https://bit.ly/3nG6c1V>.

<sup>93</sup> EU Observer, Frontex suspends operations in Hungary, 27 January 2021, available at: <https://bit.ly/37DEllx>.

<sup>94</sup> European Commission, June infringements package: key decisions, 9 June 2021, available at: <https://bit.ly/3GmcJ8j>.

<sup>95</sup> Shahzad v. Hungary, Appl. no. 12625/17, 8 October 2021.

<sup>96</sup> For more information on the case please see: <https://bit.ly/3FNx5Hw>.

danger, according to which asylum applications can only be submitted through a “statement of intent” at the embassies of Hungary in Belgrade or in Kyiv, and can by no means be submitted from Hungary itself. The NDGAP held that it has therefore no competence to examine this asylum application and excluded the possibility of submitting an appeal against the decision. Nevertheless, the applicant appealed the decision and requested to be granted the right to remain on the territory during the appeal procedure. However, the Police drove the applicant to the Serbian border and escorted him through the gate in the fence, despite the Police being aware of his interim measure request and the suspensive effect that such a request should have. The removal took place outside the scope of the readmission agreement with Serbia and without the presence of Serbian border guards or police officers. Neither the Police nor the Immigration authority conducted an assessment as to whether the applicant’s removal to Serbia would constitute refoulement and Serbian authorities were not informed of his removal. After being summarily removed, he was left without any assistance (with nothing else than what he had on him, as he had not been given the chance to retrieve his belongings from his house before being forcibly removed). He was denied access to a shelter in camps near the border, which run above its capacity. He was subjected to physical violence while sleeping rough and the Serbian police twice refused to register him as an asylum seeker and physically attacked him.

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time limits laid down in law for making an application? ☐ Yes ☒ No  
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? ☐ Yes ☒ No  
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? ☐ Yes ☒ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☒ Yes ☐ No
5. Can an application for international protection be lodged at embassies, consulates or other external representations? ☒ Yes<sup>97</sup> ☐ No

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

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

The application should be lodged in writing or orally and in person by the person seeking protection at the NDGAP.<sup>98</sup> If the person staying in Hungary seeking protection, who is allowed to apply for asylum, appears before another authority to lodge an application for asylum, that authority should inform the asylum seeker about where to turn to with his or her application. If the asylum claim is made in the course of forced measures, measures or punishment affecting personal liberty, the proceeding authority must record the statement and forward it to the asylum authority without delay.

Numbers of applications for international protection are presented below:

<sup>97</sup> It concerns the possibility to submit only the intent to apply for asylum, and not the application itself. The procedure is described in the section on the [Embassy procedure](#)).

<sup>98</sup> Section 80/I(b) and 80/J(1) Asylum Act.

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

Source: Former IAO and NDGAP

## C. Procedures

### 1. Regular procedure

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

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

#### 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 2021: 0
4. Average length of the first instance procedure in (2021): N/A

The asylum procedure in Hungary starts with an assessment of whether a person falls under a Dublin procedure. If this is not the case, the NDGAP proceeds with examining of whether the application is inadmissible or whether it should be decided in an accelerated procedure. The decision on this shall be made within 15 days.<sup>99</sup>

The procedural deadline for issuing a decision on the merits is 60 days.<sup>100</sup> The amendment of the Asylum Act that entered into force on 1 January 2018 provides that the head of the former IAO, and now NDGAP, may extend this administrative time limit on one occasion before its expiry, by a maximum of 21 days. The following shall not count towards the administrative time limit:

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

In 2019, as well as in 2020 the HHC observed that time limits in in-merit cases were usually respected, however because of the above procedural steps that do not count into the 60 days deadline, the NDGAP issues the first decision in around 3 to 4 months. Time to obtain COI, an opinion from other special

<sup>99</sup> Section 47(2) Asylum Act.

<sup>100</sup> Section 47(3) Asylum Act.

authorities or any Dublin related procedural steps are excluded from the 60 days deadline. The cases of unaccompanied children that are supposed to be privileged under the law are also not always decided within the deadline. In 2021, according to the HHC's experience some cases were decided within time limits, but some cases took longer, even more than 6 months.

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

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

Amendments to the Asylum Act that entered into force on 1 January 2018 provide an additional ground for termination of the procedure that is unclear and its application could be problematic: "The refugee authority shall terminate the procedure if the client failed to submit any document requested by the refugee authority in time or failed to comply with the invitation to make a statement within the time limit and, in the absence of the document or statement, the application cannot be decided on."<sup>101</sup> The HHC has not observed any such termination practice.

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

According to the NDGAP, the average length of an asylum procedure, from submitting the application for asylum until the first instance decision is delivered was 82 days in 2019. In case of Syrian asylum seekers, this time was shorter, a total of 69 days, while the applications of Afghan applicants were decided in 78 days. In case of Iraqi asylum seekers, the average length of the asylum procedure was longer than the average for all asylum seekers, lasting for a total of 87 days. In 2020 and 2021, according to the answers of the NDGAP it did not have the requested data.<sup>102</sup>

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

In 2019, as well as in 2020, the HHC observed significantly extended asylum procedures. This is due to the fact that most of the negative decisions are quashed at the court and the NDGAP has to conduct a new procedure that in many cases results in another negative decision that is then quashed again by the court. The average therefore increased to 6 – 10 months. Following the closure of the transit zones and the placement of asylum-seekers to open facilities, several cases pending before the courts were suspended. There was a heavily divergent practice among judges as to whether the change in placement would also mean a change in jurisdiction. The ensuing legal procedures to appoint the Court with jurisdiction prolonged the procedures considerably.

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

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<sup>101</sup> Section 32/I Asylum Act.

<sup>102</sup> Information provided by NDGAP on 2 March 2021 and on 7 February 2022.



## 1.2. Prioritised examination and fast-track processing

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

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.<sup>103</sup> Note that the Government did not consider transit zones as detention; therefore, the prioritisation did 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
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☒ Yes ☐ No  
❖ If so, is this applied in practice, for interviews? ☒ Yes (but not always) ☐ No

The personal interview of the asylum seeker is mandatory in the asylum procedure. The NDGAP may omit the personal interview in the following cases, where the asylum seeker:<sup>104</sup>

- (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 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. In 2021, the HHC reported that some of the case officers made rude comments about the applicants in Hungarian. In one interview, an officer from the CPO was present and made highly inappropriate comments regarding the Afghan applicant and his family members. The case officer conducting the interview did not intervene; instead, he also made inappropriate comments. In any case, positive practices are also worth noting. Case officers were in some cases open to adjust the interview appointment to the needs of the applicant. For example, the interviews could be arranged in the afternoon so that the applicant did not have to miss work. In one case the applicant, dependent on a wheelchair, was not required to be present in person at the announcement of the decision. Case officers often called legal representatives before making an appointment, to inform them and to make sure the appointment would be appropriate.

<sup>103</sup> Section 35/A Asylum Act.

<sup>104</sup> Section 43 Asylum Act.

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

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

In 2019, the NDGAP conducted a total of 549 personal interviews.<sup>105</sup> In 2020 and 2021, according to the answers of the NDGAP it did not have the requested data.<sup>106</sup>

### 1.3.1. Interpretation

Section 36 of the Asylum Act and Section 66 of the Asylum Decree set out rules relating to the right to use one's native language in the procedure and on gender-sensitive interviewing techniques. A person seeking asylum may use his or her mother tongue or the language he or she understands orally and in writing during his or her asylum procedure. If the asylum application is submitted orally and the asylum seeker does not speak Hungarian, the determining authority must provide an interpreter speaking the applicant's mother tongue or another language understood by that person. There may be no need for using an interpreter if the asylum officer speaks the mother tongue of that person or another language understood by him or her, and the asylum seeker consents in writing to not having an interpreter.

Where the applicant requests so, a same-sex interpreter and interviewer must be provided, where this is considered not to hinder the completion of the asylum procedure.<sup>107</sup> For asylum seekers who are facing gender-based persecution and make such a request, this designation is compulsory.<sup>108</sup> 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.<sup>109</sup> Nevertheless, the HHC is not aware of any gender or vulnerability-specific guidelines applicable to eligibility officers conducting interviews (see [Special Procedural Guarantees](#)). The HHC lawyers reported that in the transit zones the NDGAP officers were quite reluctant to appoint the interpreter of the same gender, even if the client requested. The explanation was that this will prolong the procedure significantly and therefore the applicants usually decided not to insist on this request.

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

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

An asylum seeker from **Ghana** entered the transit zone in July 2019, but was still not heard in January 2020. The attempts were made, but the client did not understand the interpreter and since then no new Hausi-Hungarian interpreter has been found. On the other hand, HHC lawyers are aware of good

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<sup>105</sup> Information provided by NDGAP, 3 February 2020.

<sup>106</sup> Information provided by NDGAP on 2 March 2021 and on 7 February 2022.

<sup>107</sup> Section 66(2) Asylum Decree.

<sup>108</sup> Section 66(3) Asylum Decree.

<sup>109</sup> Section 66(3a) Asylum Decree.

examples, as well, when upon the request of the converted Christian applicant from **Afghanistan** the former IAO respected the wish of the asylum seeker and appointed a Christian, Hungarian nationality interpreter who spoke perfectly the Farsi language and had a very sensitive manner towards the applicant.

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

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

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

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

### 1.3.2. Videoconferencing

Interviews are frequently conducted through videoconferencing and the applicant's approval over the use of videoconferencing is not required. It happened several times that there were 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 was hard to hear and to concentrate on what the interpreter is saying. In general, the connection is reported as of poor quality, as it is often not working and everyone has to wait. Sometimes it is hard to understand what the person on the other side is saying, so both parties have to shout. Conducting an interview through a videoconference does not sufficiently protect the personal data and the flight story of an asylum seeker from those who are not entitled to hear it and it therefore raises confidentiality issues, as it is possible to hear the interviews of other applicants at the same time. The videoconference hearing is also very impersonal, it does not help the applicants and beneficiaries to talk about their past and traumas. It is also unnecessary that in order to communicate a decision, a videoconference has to be used, if the case officer is not present at the place of the applicant. It would be easier if the case officer would fax the decision to the NDGAP officer present at the place of the applicant and he or she would then read it out to the applicant.

Despite the closure of the transit zones, asylum interviews are still occasionally held through videoconferencing, as some of the case officers remained stationed in transit zones. The asylum seeker

and their lawyer as well as translator are present at the Immigration office in Budapest, but the interview is done via videoconferencing, because the case officer is in the transit zone.

### 1.3.3. Recording and transcript

Interviews are not recorded by audio-video equipment.

The questions and statements are transcribed verbatim by the asylum officers conducting the interview. The interview transcript is orally translated by the interpreter to the asylum seeker who will have an opportunity to correct it before its finalisation and signature by all present persons. In 2019, 2020 and 2021, the HHC lawyers observed that if they are present, the interview transcripts are always read back to the asylum seeker. However, the HHC did hear of some complaints from people representing themselves that the transcript was not read back to them.

Based on the adopted amendments of the Asylum Act,<sup>110</sup> as of July 2020 the asylum authority might seize the electronic device of asylum seekers if the facts of the case could not be ascertained without the seizure, or without it, the establishment of the facts would result in a significant delay or if without the seizure the success of the procedure would be at stake. In the view of HHC, the new regulation violates the asylum seekers' right to private and family life (right to correspondence), as it gives the NDGAP unlimited access to all the personal data stored on the device. Furthermore, it is also in breach of the right to an effective remedy, since the decision on the seizure can only be subject to judicial review together with the petition submitted against the decision on the application. The legislation is not necessary because the obligation has already been imposed on the asylum seeker to cooperate with the asylum authority, by which he/she is obliged to reveal the circumstances of his/her flight, to provide all the necessary information in order to ascertain his/her identity, moreover, he/she is obliged to hand over all the documents in his/her possession to the case officer. All these obligations, therefore, should be enough to ascertain the facts of the case.<sup>111</sup> The provision is also in breach of Article 4(5) Qualification Directive which does not require the provision of further evidence in case the asylum seeker lacks documents or other evidence substantiating his/her citizenship, identity and the reasons of fleeing. Finally, the provision is not in line with the legal observations of the UNHCR issued on the Seizure and Search of Electronic Devices of Asylum-Seekers either by not providing any room for requesting the consent of the applicant prior to the implementation of the measure.<sup>112</sup> HHC is not aware of the application of the provision as of March 2022.

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

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

- |                            |  |  |
|----------------------------|--|--|
| ❖ If yes, is it            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No  |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative                                      |
|                            | <input type="checkbox"/> Yes                 | <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> No |

2. Average processing time for the appeal body to make a decision: 3 months

A decision must be communicated orally to the person seeking asylum in his or her mother tongue or in another language he or she understands. Together with this oral communication, the decision shall also be made available to the applicant in writing, but only in Hungarian. In 2019, 2020 and 2021, the HHC's lawyers reported that usually the decision is translated to the applicant by an interpreter. Whether the justification is translated depends on the case officer, but it was translated in most of the cases and always if the lawyer is present. Detailed description of the justification was quite rare, although it did happen a few times.

<sup>110</sup> Section 32/Z Asylum Act.

<sup>111</sup> Section 5(3)-(4) Asylum Act.

<sup>112</sup> See UN High Commissioner for Refugees (UNHCR), UNHCR Preliminary Legal Observations on the Seizure and Search of Electronic Devices of Asylum-Seekers, 4 August 2017, available at: <https://bit.ly/37FIqOj>.

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

### Competent court

Szeged Administrative and Labour Court had jurisdiction over the asylum cases in the transit zone until February 2019. From then on, all decisions in asylum cases have been issued in Budapest and therefore the Metropolitan Court of Budapest has jurisdiction to adjudicate the cases from the transit. This however changed again, when the amendments to the Code of Administrative Court Procedure entered into force in April 2020, following which the administrative branches of the regional courts have jurisdiction. Following the closure of the transit zones and the placement of previously arbitrarily detained asylum-seekers to open facilities, several cases pending before the courts were suspended. There was a heavily divergent practice among judges as to whether the change in placement would also mean a change in jurisdiction. The ensuing legal procedures to appoint the Court with jurisdiction prolonged the procedures considerably.

### Time limits

The deadline for lodging a request for judicial review is only 8 days.<sup>113</sup> The drastic decrease of the time limit to challenge the NDGAP's (and before the IAO's) decision, in force since 1 July 2013, has been sharply criticised by UNHCR and NGOs such as HHC, which have argued that this will jeopardise asylum seekers' access to an effective remedy.<sup>114</sup> For example, the short deadline proved to be problematic when a person receives subsidiary protection and is not sufficiently informed about the opportunity to appeal this and is not informed about the benefits the refugee status would bring him or her (e.g. possibility of family reunification under beneficial conditions). Within 8 days, it is sometimes impossible to meet a lawyer and the person might miss the deadline for the appeal.

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

The request for judicial review does not have a suspensive effect. The Asylum Act does not specifically state that appeals do not have a suspensive effect, but the amendments in 2015 removed the relevant provision, with the motivation that the Asylum Procedures Directive and the right to an effective remedy do not require an automatic suspensive effect, which should instead be requested by the interested party. In practice, the attorneys report different approaches. Some do not request the suspensive effect, while others do. However, the lack of suspensive effect in regular asylum procedure was never an issue in practice. The HHC is not aware of any case, where an alien policing procedure would have been started before the appeal was decided in a regular procedure. On 17 December 2020 the CJEU issued a judgement in the infringement case C-808/18 and ruled that Hungary has not respected the right, conferred by the Asylum Procedures Directive on any applicant for international protection, to remain in the territory of the Member State concerned after the rejection of his or her application, until the time limit

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<sup>113</sup> Section 68 Asylum Act.

<sup>114</sup> UNHCR, *UNHCR Comments and Recommendations on the Draft modification of certain migration-related legislative acts for the purpose of legal harmonisation*, 12 April 2013, available at: <https://bit.ly/3aiJvaP>, 14.



within which to bring an appeal against that rejection or, if an appeal has been brought, until a decision has been taken on it.<sup>115</sup> Despite the judgement, there was no change in legislation.

Section 68(3) of the Asylum Act provides that the court should take a decision on the request for judicial review within 60 days. However, in practice the appeal procedure takes more time, around 3 months or even more, depending on the number of hearings the court holds in a case. A preliminary reference was asked, whether the above deadline for the judges to decide is compatible with the requirements of an effective remedy. On 5 December 2019, the Advocate General in his opinion concluded that judges must disapply the applicable time limit if they consider that the judicial review cannot be carried out effectively.<sup>116</sup> The CJEU confirmed this position in a judgement on 19 March 2020 (C-406/18).

## Hearing

The hearing is only mandatory if the person is in detention. And even this is subject to some exceptions, where:<sup>117</sup>

- (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** were not heard if the case is adjudicated by the Metropolitan Court. The reason was that the technical requirements were not met by the court, as the videoconference system was not set up 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 the Metropolitan Court had the sole territorial jurisdiction to adjudicate all asylum cases, as mentioned above. This changed in April 2020. HHC is aware of a recent case, where the Metropolitan Court judge actually ordered the applicants from the transit zone to be brought to the Court for a hearing. But the NDGAP filed an objection, claiming that according to the law, due to the mass migration crisis, the hearing can only take place through the video conference and that the law does not allow the applicants to be brought to the court. After that the judge established that since there is no possibility to conduct a videoconference at the Metropolitan Court, the applicants will not be heard.<sup>118</sup>

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

Hearings in asylum procedures are public. Individual court decisions in asylum cases are published on the Hungarian Court portal.<sup>119</sup> However, personal data - including nationality - of the appellant are deleted from published decisions.

The court carries out an assessment of both points of fact and law as they exist at the date in which the court's decision is taken (only *ex tunc* and not *ex nunc* examination). The court may not alter the decision of the NDGAP; it shall annul any administrative decision found to be against the law – with the exception of the breach of a procedural rule not affecting the merits of the case – and it shall order the NDGAP to conduct a new procedure if necessary.<sup>120</sup> On 29 July 2019, the CJEU delivered its ruling on the question of compatibility of such a remedy with the right to an effective remedy under Article 47 of the EU Charter.<sup>121</sup> The CJEU clearly stated that courts must substitute their own decision on the merits of an asylum claim where the administrative body had disregarded their earlier decision on the case. This is a landmark

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<sup>115</sup> CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, European Commission v Hungary, C-808/18, 17 December 2020, ECLI:EU:C:2020:1029.

<sup>116</sup> Opinion of advocate general Bobek (CJEU), Case C-406/18, *PG v. Bevándorlási és Menekültügyi Hivatal*, 5 December 2019.

<sup>117</sup> Section 68(4) Asylum Act.

<sup>118</sup> 17.K.33.700/2019/10, 3 January 2020.

<sup>119</sup> Asylum cases published on the Hungarian court portal are available in Hungarian at: <http://bit.ly/1IwxZWq>.

<sup>120</sup> Section 68(5) Asylum Act.

<sup>121</sup> CJEU, Case C-556/17, *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal*, 29 July 2019.

decision for asylum seekers in Hungary, who had been locked in a ping-pong game between the asylum authority and the courts.

There were 35 appeals submitted against the decisions of the NDGAP in 2021.<sup>122</sup> The courts issued a total of 72 decisions in asylum cases in 2021. In 32 cases, the courts rejected the appeal of the asylum seekers while in 27 cases the courts annulled the decisions of NDGAP and subsequently, in 25 cases the NDGAP was ordered to conduct a new procedure. In 12 cases, courts terminated the judicial procedure<sup>123</sup> and in 7 cases rejected the appeals as inadmissible.<sup>124</sup>

### 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:<sup>125</sup> ☒ 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.<sup>126</sup>

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

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

Section 37(4) of the Asylum Act provides that legal aid providers may attend the personal interview of the asylum seeker, have access to the documents produced in the course of the procedure and have access to reception and detention facilities to contact their client. Furthermore, a modification to the Asylum Act emphasizes the right of the legal representative for being present at the personal interview even if the

<sup>122</sup> According to the information provided by the NDGAP earlier, this number also includes the appeals submitted against the decisions on status withdrawal.

<sup>123</sup> Information provided by the National Office for the Judiciary on 18 January 2022.

<sup>124</sup> Information provided by NDGAP on 7 February 2022.

<sup>125</sup> This refers both to state-funded and NGO-funded legal assistance.

<sup>126</sup> Section 5(2)(d) Legal Aid Act.

interview was conducted by a closed telecommunication network (i.e. either the translator or the case officer is not present at the sight of the asylum seeker).<sup>127</sup>

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.<sup>128</sup> 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 could not choose the state legal aid representative from the list.

In 2019, the NDGAP – following a series of Court rulings<sup>129</sup> – abandoned its practice of not allowing lawyers who are not yet members of the Bar Association to represent asylum seekers. This practice was started in 2017 and was in stark contrast with the wording of the Asylum Act and the Act on General Rules of Administrative Proceedings. Consequently, HHC lawyers who are not yet members of the Bar Association can again represent asylum seekers in their administrative proceedings.

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

The HHC attorneys or any other non-government affiliated attorneys did not have access to the transit zones, neither to the open reception centres or detention centres. The HHC attorneys can only represent the clients if the asylum seekers explicitly communicate the wish to be represented by the HHC attorney to the NDGAP and sign a special form. Once this form is received by the NDGAP, the HHC attorney can meet the client – accompanied by police officers – in a special container located outside the living sector of the transit zone, or in a special room inside the reception centre or detention. This way the legal aid is seriously obstructed, as free legal advice does not reach everyone, but only those explicitly asking for it. Besides, it was impossible to obtain legal assistance by the HHC attorney during the first NDGAP interview, since the interview usually happened immediately when the person was admitted to the transit zone and therefore there was no opportunity to access an attorney first. If an asylum seeker would request assistance from a HHC attorney at the first interview, the NDGAP would never postpone the interview and inform the HHC attorney that his or her presence is requested. HHC attorneys therefore usually get involved only in subsequent interviews. The phone signal in the transit zone was also very weak, which often obstructed the interpretation conducted by the phone during lawyer-client meetings.

The Legal Aid Service is run by the Ministry of Justice. Initially, statistics for 2020 were not available since the Ministry of Justice claimed that it did not have the requested data.<sup>130</sup> However, upon a subsequent request, the Ministry provided the information to the HHC in May 2021. Accordingly, in 2020, state legal aid in extrajudicial procedures was provided in 38 asylum related cases.<sup>131</sup> As opposed to that, in 2021, state legal aid in extrajudicial procedures was provided in 2 asylum related cases.<sup>132</sup>

State-funded legal aid in asylum procedures				
	2020		2021	
	Extrajudicial procedures	Court procedures	Extrajudicial procedures	Court procedures
<b>Total requests made</b>	38	4	2	5

<sup>127</sup> 43(5) Asylum Act, adopted by the Act CXXXIII of 2018 and in effect since 1 January 2019.

<sup>128</sup> Chapter VIII Legal Aid Act.

<sup>129</sup> 33.K.32.469/2018/5. judgment dated on 30 August 2018; 45.K.30.841/2018/8. judgment, dated on 14 September 2018; 45.K.30.838/2018/9. Judgement dated on 14 September 2018; 45.K.30.845/2018/9. Judgement dated on 14 September 2018.

<sup>130</sup> Information provided by the Ministry of Justice, 15 January 2021.

<sup>131</sup> Information provided by the Ministry of Justice, 21 May 2021.

<sup>132</sup> Information provided by the Ministry of Justice, 5 April 2022.



Bács-Kiskun County (Tompá)	2	0	0	0
Csongrád County (Röszke)	9	2	0	0
Szabolcs-Szatmár-Bereg County	23	2	1	0
Győr-Moson-Sopron County	4	0	1	0
Budapest	0	0	0	5

Source: Ministry of Justice, 21 May 2021 and 5 April 2022.

In 2020, all requests were granted, whereas in 2021 one request was rejected and in one case the procedure for state legal aid was terminated. According to the Ministry of Justice, only three persons provided legal aid in asylum cases throughout 2020. The Ministry claimed that it does not have this data for 2021.<sup>133</sup>

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

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

## 2. Dublin

### 2.1. General

#### Dublin statistics: 1 January – 31 December 2021

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	<b>40</b>	<b>19</b>	<b>Total</b>	<b>1,400</b>	<b>1</b>
<b>Take charge</b>	<b>1</b>	<b>0</b>	<b>Take charge</b>	<b>451</b>	<b>1</b>
Poland	1	0	Germany	322	1
			France	69	0
			Austria	34	0
			Switzerland	9	0
			Belgium	8	0
<b>Take back</b>	<b>39</b>	<b>19</b>	<b>Take back</b>	<b>949</b>	<b>0</b>
Germany	15	7	France	686	0
Austria	6	3	Germany	156	0
Italy	6	5	Belgium	54	0
France	5	1	Bulgaria	9	0
Denmark	2	1	Austria	7	0

Source: NDGAP, 7 February 2022. Requests refers to both sent and accepted requests. Transfers refers to the number of transfers actually implemented, not to the number of transfer decisions.

<sup>133</sup> Information provided by the Ministry of Justice, 21 May 2021 and 5 April 2022.

Dublin requests by criterion: 2021		
Dublin III Regulation criterion	Outgoing requests	Incoming requests
<b>“Take charge”: Articles 8-15:</b>	<b>1</b>	<b>451</b>
Article 8 (minors)	0	0
Article 9 (family members granted protection)	0	13
Article 10 (family members pending determination)	0	0
Article 11 (family procedure)	0	30
Article 12 (visas and residence permits)	1	228
Article 13 (entry and/or remain)	0	160
Article 14 (visa free entry)	0	19
“Take charge”: Article 16	0	0
“Take charge” humanitarian clause: Article 17(2)	0	1
<b>“Take back”: Article 18</b>	<b>40</b>	<b>949</b>
Article 18 (1) (a)	1	0
Article 18 (1) (b)	30	894
Article 18 (1) (c)	0	1
Article 18 (1) (d)	9	50
Article 20(5)	0	4

Source: NDGAP, 7 February 2022. Statistics on the number of requests accepted are not available.

### 2.1.1. Application of the Dublin criteria

The Dublin procedure is applied whenever the criteria of the Dublin III Regulation are met, and most outgoing requests are issued based on a previous application in another Member State or a rejection of a previous application in another Member State. Most requests issued in 2017, 2018 and 2019 concerned **Bulgaria**. In 2020 and 2021, most requests, 15 out of 41 were addressed to **Germany**.

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

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

The HHC is aware of one case from 2019 when a DNA test was used to verify the family link between two brothers. The costs of the test were not borne by the applicant. As opposed to the last such case from 2017, the NDGAP communicated the procedural steps with the applicant and the legal representatives in a swift and speedy manner.

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

Before 2018, the Hungarian authorities refused to apply Article 19(2) of the Dublin III Regulation with regard to Bulgaria in cases of asylum seekers who have waited more than 3 months in Serbia before being admitted to the transit zone. According to Article 19(2), the responsibility of Bulgaria should have ceased in such situations, but the Hungarian authorities argued that this is not something that the applicants can rely on, but it can only be invoked by Bulgaria. The Hungarian authority's stance on this did not change, however, Bulgaria no longer accepts incoming requests from Hungary.

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

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

### 2.1.2. The dependent persons and discretionary clauses

Hungary decided in a total of 227 cases<sup>134</sup> in 2017, 82 cases in 2018, 17 cases in 2019 only in 3 cases in 2020 and 2021, each under Section 17(1) of Dublin Regulation to examine an application for international protection itself.<sup>135</sup>

Hungary established the responsibility of other Member States in 1 case<sup>136</sup> under the “humanitarian clause” in 2019, whereas in 2020 and in 2021 there was no such case recorded.<sup>137</sup> There were no requests under humanitarian clause sent to Hungary by other Member States in 2019 and 2020, whereas Hungary received one such request from Austria in 2021.<sup>138</sup> There were no cases where dependent persons clause was applied since 2019.

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

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?  
☒ Yes ☐ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?  
50.5 days<sup>139</sup>

The Dublin Unit had 8 NDGAP staff members on 31 December 2021.<sup>140</sup>

Where an asylum seeker refuses to have his or her fingerprints taken, this can be a ground for an accelerated procedure,<sup>141</sup> or the NDGAP may proceed with taking a decision on the merits of the application without conducting a personal interview.<sup>142</sup>

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.<sup>143</sup> The suspension ruling cannot be subject to individual appeal.<sup>144</sup> Even though a Dublin procedure can also be started after the case has been referred to the in-merit asylum procedure, Dublin procedures can no longer be initiated once the NDGAP has

<sup>134</sup> Once in relation to Germany, at another time regarding Bulgaria and in 225 cases the former IAO examined the application in relation to Greece.

<sup>135</sup> Information provided by former IAO, 12 February 2018; 12 February 2019; and by NDGAP on 3 February 2020, 2 March 2021 and 7 February 2022.

<sup>136</sup> Information provided by NDGAP on 3 February 2020 and 2 March 2021.

<sup>137</sup> Information provided by NDGAP on 2 March 2021 and on 7 February 2022.

<sup>138</sup> Information provided by NDGAP on 7 February 2022.

<sup>139</sup> Information provided by NDGAP on 7 February 2022.

<sup>140</sup> Information provided by NDGAP on 7 February 2022.

<sup>141</sup> Section 51(7)(i) Asylum Act.

<sup>142</sup> Section 66(2)(f) Asylum Act.

<sup>143</sup> Section 49(2) Asylum Act.

<sup>144</sup> Section 49(3) Asylum Act.

taken a decision on the merits of the asylum application. Finally, the apprehension of an irregular migrant can also trigger the application of the Dublin III Regulation.

### 2.2.1. Individualised guarantees

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

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

In 2019, no Dublin decisions were issued with regard to irregular entry criteria (e.g. with respect to Bulgaria, Greece or Croatia), whereas in 2020, there were 2 decisions issued on the ground of Section 13 of Dublin Regulation both with regard to Greece. In 2021, no decision concerned Greece.<sup>145</sup>

### 2.2.2. Transfers

If another EU Member State accepts responsibility for the asylum applicant, the NDGAP has to issue a decision on the transfer within 8 days, and this time limit is complied with in practice.<sup>146</sup> Once the NDGAP issues a Dublin decision, the asylum seeker can no longer withdraw his or her asylum application.<sup>147</sup>

All asylum seekers, including asylum seekers under Dublin procedure, except minors below 14 years of age were held in transit zones until 21 May 2020, 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 and the Expulsion and Transfer Unit of the NDGAP, in cooperation with the receiving Member State, but the actual transfer is performed by the police. In case of air transfer, the police assist with boarding the foreigner on the airplane, and – if the foreigner's behaviour or his or her personal circumstances such as age do not require it – the foreigner travels without escorts. Unaccompanied minors travel with their legal guardian who hands them over to the authorities of the receiving Member State. Otherwise, the person will be accompanied by Hungarian police escorts. In case of land transfers, the staff of the police hand over the foreigner directly to the authorities of the other state. According to HHC's experience, voluntary transfers are rare. According to NDGAP, in 2021, the average time-period between the request and the execution of the transfer was 55 days. If another Member State has taken responsibility the average time-period between the acceptance of the responsibility and the execution of the transfer was 50,5 days. The average time-period between the receipt of an incoming request and the execution of the transfer from Hungary to another EU Member State was 219 days in 2021. The average time-period between the acceptance of the responsibility by Hungary and the execution of the incoming transfer was 156 in 2021.<sup>148</sup>

In 2021, Hungary issued 40 outgoing requests and carried out 19 transfers. In the same year, Hungary received 1400 requests out of which only one transfer was executed from Germany.

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<sup>145</sup> Information provided by NDGAP on 7 February 2022.

<sup>146</sup> Section 83(3) Asylum Decree.

<sup>147</sup> Section 49(4) Asylum Act.

<sup>148</sup> Information provided by NDGAP on 7 February 2022.

In 2021, 23 persons were detained because of Dublin procedure (Section 31/A(1a) Asylum Act).<sup>149</sup> These persons were not asylum seekers in Hungary.

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

☐ Same as regular procedure

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

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

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

### 2.4. Appeal

#### Indicators: Dublin: Appeal

☐ Same as regular procedure

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

Asylum seekers have the right to request judicial review of a Dublin decision before the competent Regional Administrative and Labour Court within 3 days.<sup>150</sup> 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.<sup>151</sup>

The request for review shall be submitted to the NDGAP. The NDGAP shall forward the request for review, together with the documents of the case and its counter-application, to the court with no delay.<sup>152</sup>

The court can examine points of fact and law of the case, however only on the basis of available documents. This has been interpreted by the courts as precluding them from accepting any new evidence that were not submitted to the NDGAP already. This kind of interpretation makes legal representation in such cases meaningless, since the court's assessment is based on the laws and facts as they stood at the time of the NDGAP's decision and the court does not at all examine the country information on the quality of the asylum system and reception conditions for asylum seekers in responsible Member State submitted by the asylum seeker's representative in the judicial procedure. The court has to render a decision within 8 calendar days.<sup>153</sup> In practice, however, it can take a few months for the court to issue a decision.

<sup>149</sup> Information provided by NDGAP on 7 February 2022.

<sup>150</sup> Section 49(7) Asylum Act.

<sup>151</sup> UNHCR has also criticised the effectiveness of Dublin appeals, citing CJEU, Case C-69/10 *Diouf*, Judgment of 28 July 2011, paras 66-68. See UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <https://bit.ly/2I7fL4P>, 20.

<sup>152</sup> Section 49(7) Asylum Act.

<sup>153</sup> Section 49(8) Asylum Act.

A personal hearing is specifically excluded by law; therefore, there is no oral procedure.<sup>154</sup> This was particularly problematic in the past, since the asylum seeker was usually not asked in the interview by the former IAO about the reasons why he or she left the responsible Member State and, since the court does not hold a hearing, this information never reaches the court either. In 2018 and 2019, the HHC observed that the interview questions did touch upon the conditions faced by the applicant in the EU countries crossed on his or her journey. Instead, asylum seekers were asked regarding the Member States they transited during their route about the following: “For how long and where did you stay there? What did you do meanwhile? Why you did not apply for asylum? Did you consider it as a safe country? Why do you think it is not safe? What would happen to you upon your return there? Did you try to apply for accommodation in a reception centre? What kind of documents were you issued?”

Appeals against Dublin decisions do not have suspensive effect. Asylum seekers have the right to ask the court to suspend their transfer. Contrary to the Dublin III Regulation,<sup>155</sup> according to the TCN Act and Asylum Act this request does not have suspensive effect either.<sup>156</sup> However, the Director-General of the former IAO issued an internal instruction, stating that if a person requests for suspensive effect, the transfer should not be carried out until the court decides on the request for suspensive effect.<sup>157</sup> 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.<sup>158</sup>

## 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?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover:
 

<input checked="" type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> 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 an hearing before the court. In such a short time it proves difficult to access legal assistance, which is even more crucial since there is no right to a hearing. The importance of legal assistance is, on the other hand, seriously undermined by the fact that courts are only performing an *ex tunc* examination and do not take into account any new evidence presented during the judicial review procedure.

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

<sup>154</sup> Section 49(8) Asylum Act.

<sup>155</sup> Article 27(3) Dublin III Regulation.

<sup>156</sup> Section 49(9) Asylum Act.

<sup>157</sup> 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.

<sup>158</sup> It can be noted that, prior to 2018, court decisions were often delivered by the court clerk rather than by the judge. After Section 94 of Act CXLI of 2017 amending certain acts relating to migration entered into force, however, clerks have no longer been allowed to issue judgements.



## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

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

#### Greece

Until May 2016, because of the European Court of Human Rights (ECtHR)'s ruling in *M.S.S. v. Belgium and Greece*,<sup>159</sup> transfers to Greece have occurred only if a person consented to the transfer. However, in May 2016, the former IAO started to issue Dublin decisions on returns to Greece again. The former IAO was of the opinion that the *M.S.S.* case was no longer applicable, since Greece had received substantial financial support and the reception conditions in Greece were not worse than in some other EU countries. In some cases, the HHC lawyers successfully challenged such decisions in the domestic courts and in two cases the HHC obtained Rule 39 interim measures from the ECtHR, because the domestic courts confirmed the transfer decision of the former IAO.<sup>160</sup> In both cases, the court decision was not issued by a judge but by a court secretary. Both cases were struck out in 2017 because the applicants left Hungary and the Court was of the opinion that they are no longer at risk of being sent back to Greece because of the constrained resumption of Dublin transfers to Greece and the cautious treatment of transfers to Hungary.<sup>161</sup>

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 were issued. The same is valid for 2017, 2018, 2019 and 2021.<sup>162</sup> In 2020 however, two decisions were issued with regard to Greece, but no transfer took place.

#### 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.<sup>163</sup> 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.<sup>164</sup> One case was found inadmissible by UNHRC because the applicant left Hungary<sup>165</sup> while in the other case UNHRC did not find any violation.<sup>166</sup> 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. There was never any follow-up communication on the case from the UNHRC. Meanwhile, in one of the three cases the former IAO established the responsibility of Hungary based on Article 29(1) and (2) of the Dublin Regulation and conducted 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

<sup>159</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

<sup>160</sup> HHC, *Hungary: Update on Dublin transfers*, 14 December 2016, available at: <https://bit.ly/379R33Y>.

<sup>161</sup> ECtHR, *M.S. v. Hungary*, Application No 64194/16 and *H.J. v. Hungary*, Application No 70984/16.

<sup>162</sup> As to 2021, information was provided by the NDGAP on 7 February 2022.

<sup>163</sup> See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014, available at: <http://bit.ly/1dsMr2Y>.

<sup>164</sup> See e.g. Human Rights Committee, *B. v. Hungary*, Communication No 2901/2016, 9 December 2016.

<sup>165</sup> CCPR/C/125/D/2901/2016, 22 May 2019, <https://bit.ly/3qLrZXW>.

<sup>166</sup> CCPR/C/125/D/2923/2016, 3 June 2019, <https://bit.ly/3GRBlqu>.

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.<sup>167</sup>

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.<sup>168</sup>

The HHC observed that in 2018 Bulgaria stopped accepting responsibility for requests sent by the Dublin Unit. There were no Dublin decisions and transfers to Bulgaria since then.<sup>169</sup>

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 would usually be treated as first-time asylum applicants. However, according to the current asylum legislation in force (Transitional Act), only 3 exceptions (see [Embassy procedure](#)) can apply for asylum within the Hungarian territory. If a person, who did not yet apply for asylum in Hungary, would be returned under the Dublin Regulation, he/she would have to apply for asylum upon return, but the current legislation in force does not allow for this possibility. “Dublin returnees” do not figure among the exceptions, who are allowed to apply for asylum within the Hungarian territory. Despite such legislation, the HHC is aware of one case, where a Syrian woman returned under Dublin from Germany was allowed to submit an asylum application. The NDGAP clarified that, according to the authority’s interpretation and the practice, applicants returned through the Dublin procedure have to declare upon arrival whether they intend to uphold their asylum application lodged in the transferring country, and if they do, the asylum procedure will commence.<sup>170</sup>
- (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. Moreover, the current asylum legislation in force (Transitional Act), does not even allow “Dublin returnees” to apply for asylum within the Hungarian territory. This is also not in line with second paragraph of Article 18(2) of the Dublin III Regulation, which states that when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive.
- (c) The asylum procedure would also not continue, when the returned foreigner had previously received a negative decision and did not seek judicial review. This is problematic when the NDGAP issued a decision in someone’s absence. The asylum seeker who is later returned under the Dublin procedure to Hungary will have to submit a subsequent application and present new facts and

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<sup>167</sup> Administrative and Labour Court of Szeged, Decision No 11. Kpk.27.469/2017/12, 3 July 2017.

<sup>168</sup> Administrative and Labour Court of Szeged, Decision No 4. 10.K.27.051/2018/5, 7 February 2018.

<sup>169</sup> As to 2021, information was provided by the NDGAP on 7 February 2022.

<sup>170</sup> EASO, EASO Asylum Report 2021, <https://bit.ly/3oBAuUg>, 97.



evidence in support of the application (see section on [Subsequent Applications](#)). However, the current asylum legislation in force (Transitional Act), does not even allow “Dublin returnees” to apply for asylum within the Hungarian territory. According to Article 18(2) of the Dublin III Regulation, the responsible Member State that takes back the applicant whose application has been rejected only at the first instance shall ensure that the applicant has or has had the opportunity to seek an effective remedy against the rejection. According to the NDGAP, the applicant only has a right to request a judicial review in case the decision has not yet become legally binding. Since a decision rejecting the application becomes binding once the deadline for seeking judicial review has passed without such a request being submitted, the HHC believes that the Hungarian practice is in breach of the Dublin III Regulation because in such cases Dublin returnee applicants are not afforded an opportunity to seek judicial review after their return to Hungary.

### 3. Admissibility procedure

#### 3.1. General (scope, criteria, time limits)

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

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

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

Since 2019, the NDGAP has not provided the number of inadmissibility decisions, claiming that it does not have the data.<sup>171</sup>

A new inadmissibility ground, merging the concepts of “safe third country” and “first country of asylum”, is in effect since 1 July 2018<sup>172</sup> (see [Hybrid Safe Third Country / First Country of Asylum](#)), however it was not applied in practice in 2021.

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.

#### **Refusal of applications without examination on the merits**

According to Section 32/F of Asylum Act, the refugee authority shall refuse an application by way of a ruling, without examination as to merits, if:

- a) it has no jurisdiction for the assessment of the application;
- b) the application pertains to an objective that is manifestly impossible;
- c) the application has apparently been filed by a person other than the rightful applicant.

This procedure however does not fall under the scope of the APD.

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<sup>171</sup> Information provided by NDGAP on 3 February 2020, 2 March 2021 and 7 February 2022.

<sup>172</sup> Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.

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

As previously mentioned in the report, in one case in which an Afghan citizen applied for asylum, while staying in Hungary in a undocumented way, he was immediately pushed to Serbia after such a “refusal decision” was issued. The HHC appealed the “refusal decision” and on 12 November 2021; the court quashed the decision and ordered the applicant’s return to Hungary so that a new asylum procedure could start. As of March 2022, the authorities have still not complied with the ruling. The HHC turned once more to the court, requesting the enforcement of the judgement. The case is still pending.

The HHC is also representing two adult children who came to Hungary via family reunification with their parents who were granted international protection and who also received a “refusal decision” based on Section 32/F b). The HHC appealed and both cases were pending as of March 2022.

The HHC is also representing a Ugandan asylum seeker who reached Hungary legally by plane and was also issued a “refusal decision”. The court quashed the decision and ordered a new procedure. However, after initiating the procedure, the NDGAP immediately suspended it based on the pending request for the Constitutional court review of a judgment issued in the embassy procedure<sup>173</sup>.

Issuing “refusal decisions” has become common practice since second half of 2021. Previously, the NDGAP would simply refuse to accept an asylum application and turn the applicants away immediately. In one case, where the HHC lawyers accompanied the client and reminded NDGAP officials that refusing to accept an application is a crime (abuse of authority, Section 305 of the Criminal Code). As a result, the NDGAP took in the application, but the case officer present said they would not register the claim. After that, NDGAP issued a simple “information note” notifying the applicant that they could not examine his application due to the Transnational Act rules. The HHC appealed and UNHCR intervened.<sup>174</sup> On 8 June 2021, the Metropolitan court ruled that the asylum application must be considered lodged and that the NDGAP has to conduct a procedure and issue a formal decision.<sup>175</sup>

### 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?

- |                            |  |  |
|----------------------------|--|--|
| ❖ If yes, is it            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No  |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative                                      |
|                            | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> Some grounds <input type="checkbox"/> No |

<sup>173</sup> IV/03538-1/2021, <https://bit.ly/3Lx6nH4>.

<sup>174</sup> UN High Commissioner for Refugees (UNHCR), *Written observations by the Office of the United Nations High Commissioner for Refugees in the case of A.H. v National Directorate-General/or Aliens Policing (11.K.706.750/2020) before the Budapest Capital Regional Court*, 25 November 2020, available at: <https://bit.ly/3Lh0rSy>.

<sup>175</sup> 11.K.703.256/2021/7.

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.<sup>176</sup> The March 2017 amendment to the Asylum Act further shortened the appeal time to 3 calendar days.<sup>177</sup>

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.<sup>178</sup> The applicant therefore cannot refer to new facts or new circumstances during the judicial review procedure. This also means that if the applicant did not present any country of origin information (COI) reports during the first instance procedure, or the NDGAP did not refer to these on their own, the applicant cannot present these reports at the judicial review procedure, despite the fact that these reports already existed before and were publicly available. A hearing is not mandatory; it only takes place "in case of need".<sup>179</sup> Moreover, the review procedure in admissibility cases differs from those rejected on the merits, since the court must render a decision within 8 days, instead of 60. A preliminary reference was asked, whether this short deadline for the judges to decide is compatible with the requirements of an effective remedy. On 5 December 2019, the Advocate General in his opinion concluded that judges must disapply the applicable time limit if they consider that the judicial review cannot be carried out effectively.<sup>180</sup> The CJEU confirmed this position in a judgement on 19 March 2020 (C-564/18).

A request for judicial review against the NDGAP decision declaring an application inadmissible has no suspensive effect, except for judicial review regarding inadmissible applications based on safe third country grounds.<sup>181</sup> This is very worrying in light of the Gov decree 570/2020. (XII. 9.) in force as of 1 January 2021. Its Section 5 removes the possibility to ask for an interim measure in order to prevent expulsion in case of violation of epidemic rules or when expulsion is ordered based on the risk to national security or public order. This can have serious consequences for people, who have been expelled prior to submitting their asylum application, as in case their asylum application is rejected as inadmissible, the appeal does not have a suspensive effect and even if it is requested, it does not suspend the expulsion that was ordered prior to the asylum procedure.

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.<sup>182</sup> Although those applicants who submit a court appeal against an inadmissibility decision still have the right to remain on the territory of Hungary,<sup>183</sup> they were expelled and ordered to stay in the transit zone, where they were denied access to food.<sup>184</sup>

The former IAO did not consider that it was obliged to provide food to foreigners under alien policing procedures in the transit zones. The former IAO argued that the government decree on the implementation of alien policing procedures only prescribes the provision of food in community shelters, and does not specifically mention the transit zones in this regard.<sup>185</sup> The HHC requested Rule 39 in five cases and the ECtHR ordered the Hungarian Government to provide food for the applicants. After these successful Rule 39 cases, this clearly inhuman treatment and absurd legal situation stopped.<sup>186</sup> The

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<sup>176</sup> Section 53(3) Asylum Act.

<sup>177</sup> Section 80/K Asylum Act.

<sup>178</sup> Section 53(4) Asylum Act.

<sup>179</sup> Section 53(4) Asylum Act.

<sup>180</sup> Opinion of advocate general Bobek (CJEU), Case C-564/18, *LH v. Bevándorlási és Menekültügyi Hivatal*, 5 December 2019.

<sup>181</sup> Section 53(6) Asylum Act.

<sup>182</sup> Based on Section 52 Code on Administrative Litigation.

<sup>183</sup> Article 46(5) recast Asylum Procedures Directive.

<sup>184</sup> HHC, *Asylum-seekers with Inadmissible Claims are Denied Food in Transit Zones at Border*, 17 August 2018, available at: <https://bit.ly/2Egsz7B>.

<sup>185</sup> Section 135 TCN Decree.

<sup>186</sup> HHC, 'All asylum seekers finally get food in the transit zones at the border', 23 August 2018, available at: <https://bit.ly/2S87D6U>.

Government in its response to the Rule 39 interim measures stated that it had “misinterpreted” the law. After that rejected applicants that appealed their inadmissibility decision did get food in the transit zone. The alien policing procedure was still started, but it was immediately suspended because of the appeal.

However, foreigners in the alien policing procedure, whose asylum cases were no longer pending still did not receive food in 2020 (see [Conditions in Detention Facilities](#)). The HHC obtained 12 interim measures based on Rule 39 in 2019 and seven interim measures in 2020, ordering the Government to provide food to the applicants.

The court may not alter the decision of the determining authority; it shall annul any administrative decision found to be against the law, with the exception of the breach of a procedural rule not affecting the merits of the case, and it shall oblige the refugee authority to conduct a new procedure.<sup>187</sup>

### 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 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 are no longer applicable, since the procedure in the transit zones became a regular procedure and all asylum seekers have to remain in the transit zone until the end of the procedure. In 2019 and 2020, the use of border procedure was still suspended.<sup>188</sup> However, Hungary had a *de facto* border procedure: whilst qualified by the Hungarian authorities as a regular procedure, the European Commission in the infringement procedure against Hungary noted that it indeed constitutes a border procedure, which is not in compliance with the EU law. The CJEU confirmed that Hungary has failed to fulfil its obligations under EU law by unlawfully detaining applicants of international protection in transit zones.<sup>189</sup> In practice, *de facto* border procedure is no longer applied, as following the CJEU judgement transit zones were closed on 21 May 2020.

## 5. Accelerated procedure

The Asylum Act lays down an accelerated procedure, where the NDGAP is expected to pass a decision within the short timeframe of 15 days.<sup>190</sup> In 2019 and in 2020, the accelerated procedure was not used. The HHC is aware of one case in 2021. As for 2021, the NDGAP did not provide the requested data on accelerated procedures.<sup>191</sup>

The law provides 10 different grounds for referring an admissible asylum claim into an accelerated procedure,<sup>192</sup> where the applicant:

- (a) Discloses only information irrelevant for recognition as both a refugee and a beneficiary of subsidiary protection;

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<sup>187</sup> Section 53(5) Asylum Act.

<sup>188</sup> For more details, see AIDA, Country Report Hungary, 2017 Update, February 2018, 41 et seq.

<sup>189</sup> CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, European Commission v Hungary, C-808/18, 17 December 2020, ECLI:EU:C:2020:1029.

<sup>190</sup> Section 47(2) Asylum Act.

<sup>191</sup> Information not provided by the NDGAP on 7 February 2022.

<sup>192</sup> Section 51(7) Asylum Act.

- (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.<sup>193</sup>

In accelerated proceedings, the NDGAP, with the exception of the case when the applicant originates from a safe country of origin, shall assess the merits of the application for recognition in order to establish whether the criteria for recognition as a refugee or beneficiary of subsidiary protection exist.<sup>194</sup>

In the event of applying an accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe country of origin.<sup>195</sup> Where the safe country of origin fails to take over the applicant, the determining authority shall withdraw its decision and continue the procedure.<sup>196</sup>

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

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<sup>193</sup> Section 51(8) Asylum Act.

<sup>194</sup> Section 51(9) Asylum Act.

<sup>195</sup> Section 51(11) Asylum Act.

<sup>196</sup> Section 51A Asylum Act.

to be submitted are not found in the Asylum Act itself, but they emanate from general rules concerning civil court procedures.

As of 1 January 2021, a Gov. decree 570/2020. (XII. 9.) is in force and its Section 5 removes the possibility to ask for interim measures in order to prevent expulsion in case of violation of epidemic rules or when expulsion is ordered based on the risk to national security or public order. This has serious consequence for people, who have been expelled prior to submitting their asylum application, as in case their asylum application is rejected in an accelerated procedure, the appeal does not have a suspensive effect and even if it is requested, it does not suspend the expulsion that was ordered prior to the asylum procedure. The HHC submitted a complaint to the European Commission, which is still pending as of March 2022. However, the Commission already indicated that based on initial analysis, it appears that the problem raised in the complaint may indicate a possible infringement of the Return Directive. The HHC is aware of one such case, where an asylum applicant was rejected in an accelerated asylum procedure and was deported prior his appeal even reached the court. The rejection decision was communicated to the lawyer in an email when the applicant was already on the plane. The application of this decree was challenged by the HHC in several cases, unfortunately unsuccessfully so far. Even the Supreme Court of Hungary (Kúria) did not find the deprivation of a right to ask for suspensive effect problematic.<sup>197</sup>

15 days for processing a first-time asylum application is – as a general rule – an insufficient time period for ensuring the indispensable requirements of such a procedure, including finding the right interpreter, conducting a proper asylum interview, obtaining individualised and high-quality country information, obtaining – if necessary – medical or other specific evidence, and an eventual follow-up interview allowing the asylum seeker to react on adverse credibility findings or legal conclusions.<sup>198</sup> 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.<sup>199</sup>

Also, in contradiction to the relevant EU rule, Hungarian law does not provide any specific safeguard that would prevent the undue application of accelerated procedures to asylum seekers in need of special procedural guarantees.<sup>200</sup>

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

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  
☐ Yes    ☐ For certain categories    ☒ No  
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children?  
☐ Yes    ☒ No

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

<sup>197</sup> Kpkf.VI.39.459/2021/2.

<sup>198</sup> The latter being mandatory under EU law as interpreted by the CJEU. See Case C-277/11 *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, Judgment of 22 November 2012 and Case C-349/07 *Sopropé – Organizações de Calçado Lda v Fazenda Pública*, Judgment of 18 December 2008.

<sup>199</sup> Recital 20, Article 31(2) and (9) recast Asylum Procedures Directive.

<sup>200</sup> Recital 30 recast Asylum Procedures Directive.



individual situation”.<sup>201</sup> Hungarian law does not explicitly include victims of human trafficking, persons suffering of serious illnesses and persons with mental disorders in the definition of vulnerable asylum seekers.

### 1.1. Screening of vulnerability

Although both the Asylum Act and the Asylum Decree provide that the special needs of certain asylum seekers should be addressed,<sup>202</sup> 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.<sup>203</sup> Hungarian law also fails to provide a timeframe within which the determining authority shall carry out this assessment, nor does it clarify in which phase of the proceedings this shall take place. The Mapping Report of IOM<sup>204</sup> on the available assistance to migrant victims of sexual and gender-based violence states: “Currently there are no standard operating procedures (SOPs) on sexual and gender-based violence available and used in migration facilities in Hungary. The lack of clear guidance on prevention and referral mechanisms makes the identification of victims and potential victims of SGBV among asylum-seekers and refugees difficult and thus the provision of appropriate support to those who are in need of assistance is not ensured.”

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

A medical or psychological expert may be involved to determine the need for special treatment. The applicant should be informed in simple and understandable language about the examination and its consequences. The applicant has to consent to the examination, however, if no consent is given, the provisions applicable to persons with special needs will not apply to the case.<sup>205</sup> 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.<sup>206</sup> 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 was normally carried out before a guardian could be appointed to the children in question. The child was therefore on his or her own in this process with no adult representing his or her best interest.

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<sup>201</sup> Section 2(k) Asylum Act.

<sup>202</sup> Section 4(3) Asylum Act.

<sup>203</sup> Section 3(1) Asylum Decree.

<sup>204</sup> IOM, *Mapping Report on Legal Frameworks and Assistance Available to Migrant Victims of Sexual and Gender-based Violence (SGBV)*, 2019, available at: <http://bit.ly/39l28KM>.

<sup>205</sup> Section 3 Asylum Decree.

<sup>206</sup> Section 44(1) Asylum Act.



The asylum application cannot be refused on the ground that the person did not consent to the age assessment.<sup>207</sup> However, as a consequence most of the provisions relating to children may not be applied in the case.<sup>208</sup>

The age assessment was conducted by the military doctor in the transit zone. Since the closure of the transit zones in 2020, the HHC is aware of only one age assessment procedure carried out in 2021. The information provided by the NDGAP confirms that there was only one asylum seeker subjected to age assessment in 2021 where the examination concluded that the asylum seeker was indeed a minor.<sup>209</sup> The main method employed was a dental examination and the observation of the child's physical appearance, e.g. weight, height etc., and the child's sexual maturity. The primary and secondary sexual characteristics were also examined, which the HHC consider to be a violation of the child's human dignity. In the context of age assessment, the NDGAP does *not* use a psychosocial assessment.

Since the entry into force of the new legal regime in March 2017, age assessment practices became even more important since the law differentiates between unaccompanied children below and above the age of 14. The consequences were severe: erroneous assessment of the applicant's age could result on his or her confinement in the transit zone, which the HHC as well as CJEU considered 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.<sup>210</sup> 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,<sup>211</sup> 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 was highly problematic.

Age assessment was carried out in the transit zones, which were not physically equipped for such purposes, and had serious shortcomings. Based on interviews with unaccompanied minors, the HHC lawyers found that in reality the "age assessment" took mere minutes, during which the military doctor simply measured the applicants' height, looked at their teeth, measured the size of their hips and examined 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 was highly unprofessional and is in breach of the fundamental rights of children.<sup>212</sup>

Up to the time of writing, no protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the NDGAP. On several occasions (conferences, roundtables etc.), the former IAO denied its responsibility to adopt such a protocol, stating that age assessment is a medical question, which is beyond its professional scope or competence. The police elaborated a non-binding protocol for the purpose of police-ordered age assessment examinations that provide a checklist to be followed by doctors who are commissioned to carry out the examination.<sup>213</sup> 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*).

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<sup>207</sup> Section 44(2) Asylum Act.

<sup>208</sup> Section 44(3) Asylum Act.

<sup>209</sup> Information provided by NDGAP on 7 February 2022.

<sup>210</sup> 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>.

<sup>211</sup> 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>.

<sup>212</sup> 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>.

<sup>213</sup> The protocol is available in Hungarian at: <http://bit.ly/1X53QT6>.

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

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

According to the NDGAP, there was one age assessment procedure conducted in 2019 by which the adulthood of the applicant was established.<sup>214</sup> No age assessment procedure was carried out in 2020, while in 2021 only one procedure took place, as previously explained.<sup>215</sup>

GRETA in its second evaluation round recommended to the Hungarian authorities to review the age assessment procedures applied in the transit zones, with a view to ensuring that the best interests of the child are effectively protected and that the benefit of the doubt is given in cases of doubt, in accordance with Article 10, paragraph 3, of the Convention, and taking into account the requirements of the UN Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child and the European Asylum Support Office (EASO) practical guide on age assessment. The Alien Policing Authority should be given sufficient time to involve expertise such as forensic medicine experts, psychologist and psychiatrists to carry out age assessment before having to assert a young person's age.<sup>216</sup>

On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it recommended that age assessment has to be in line with international standards.<sup>217</sup>

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☒ Yes ☐ For certain categories ☐ No

❖ If for certain categories, specify which: Unaccompanied minors

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

According to the response of the former IAO in 2017, training to this unit is provided every 6 months by asylum officials working at the Litigation Unit of the Refugee Directorate of the former IAO. The training touches upon vulnerability aspects as well. The training is based on the EASO training modules and contains two levels: asylum case officers have to pass an online exam, and later there is a training with a trainer where the tasks of the online exam are also spoken about. According to the NDGAP,<sup>218</sup> in 2020 and 2021 there were two modules of the EASO Training Curriculum available in Hungarian at the authority, titled as "*Personal interview of vulnerable persons*" and "*Personal interview of children*". In the autumn of 2020, one staff member of the NDGAP participated in the online training "*Reception of Vulnerable Persons Block A: identification of vulnerability and provision of initial support (Part A)*" and another staff member attended the training titled as "*Reception of vulnerable persons: needs assessment*".

<sup>214</sup> Information provided by NDGAP on 3 February 2020.

<sup>215</sup> Information provided by NDGAP on 2 March 2021 and on 7 February 2022.

<sup>216</sup> GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, Second evaluation round, Adopted 10 July 2019, Published on 27 September 2019, <http://bit.ly/364g3D2>.

<sup>217</sup> Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, 10 February 2020, available at: <https://bit.ly/3op1QK0>.

<sup>218</sup> Information provided by NDGAP on 2 March 2021 and on 7 February 2022.

*and design of interventions (Part B)*", both organized by EASO. Furthermore, one employee of the Asylum Department attended an online conference organized by EASO on the topic of "*Exclusion*".

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.

## 2.1. Adequate support during the interview

The NDGAP is obliged to conduct an individual examination of the asylum claim by examining "[t]he social standing, personal circumstances, gender and age of the person [...] to establish whether the acts which have been or could be committed against the person applying for recognition qualify as persecution or serious harm."<sup>219</sup> 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,<sup>220</sup> and this right is respected in practice. Since 2018, the law also explicitly provides this for persons with claims based on gender identity.<sup>221</sup> There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the NDGAP.<sup>222</sup> If the asylum seeker is not able to write, this fact and his or her statement shall be included in the minutes.<sup>223</sup>

In case the applicant cannot be interviewed due to being unfit to be heard, the NDGAP may decide not to carry out a personal interview. If in doubt about the asylum seeker's fitness, the determining authority will seek the opinion of a doctor or psychologist. If the doctor confirms this, the asylum applicant can be given an opportunity to make a written statement or the applicant's family members can be interviewed.<sup>224</sup>

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

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

There was one occasion in April 2017 when upon request by the legal representative, the former IAO conducted the interview in the Fót Children's Home of two highly vulnerable unaccompanied minor brothers who had been victims of sexual abuse. The former IAO, in cooperation with the Children's Home guaranteed that the necessary technological equipment would be available in a private room facing a calm park where the children would feel safe and could therefore open up about their experiences. This was, according to the HHC, a great example of child-friendly administration. However, no similar example of good practice happened since then. Due to Covid-19, the asylum authority found it easier to avoid

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<sup>219</sup> Section 90 Asylum Decree.

<sup>220</sup> Section 66(3) Asylum Decree.

<sup>221</sup> Section 66(3a) Asylum Decree.

<sup>222</sup> Section 36(7) Asylum Act.

<sup>223</sup> Section 62(2) Asylum Decree.

<sup>224</sup> Section 43(2) Asylum Act and Sections 77(1) and (2) Asylum Decree.

conducting interviews with unaccompanied minors in 2020, who all requested to be transferred to another Member State, based on the Dublin Regulation.

Amendments that entered into force on 1 January 2018 describe detailed procedural safeguards for interviewing children. These include the requirement for the asylum authority to conduct the asylum interview in an understandable manner and by taking into account the age, maturity, and the cultural and gender particularities of the child. This includes a child-friendly interview room for children below the age of 14. Any subsequent interview needs to be conducted by the same case officer in case the child needs to be heard. Finally, case officers interviewing children must possess the necessary knowledge on interviewing children.<sup>225</sup>

## 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.<sup>226</sup> In practice, only asylum seekers with physically visible special needs (pregnant women, families) were exempted from the border procedure.<sup>227</sup> Since March 2017, border procedures are no longer applied, due to the state of crisis due to mass migration. Until 21 May 2020, when the transit zones were closed, the procedure in the transit zones was a regular procedure and all asylum seekers had to remain in the transit zone until the end of the procedure. The only exception were unaccompanied children below the age of 14.

For unaccompanied children, the asylum authorities as a general rule have to trace the person responsible for the minor, except if it is presumed that there is a conflict or if the tracing is not justified in light of the minor's best interests.<sup>228</sup> The determining authority may ask assistance in the family tracing from other member states, third countries, UNHCR, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and other international organisations engaged in supporting refugees. Practice shows, however, that this tracing is not carried out in practice by the former IAO, and now the NDGAP.

## 2.3. Appointment of guardian

In certain cases of vulnerable asylum seekers who lack full legal capacity (primarily children or due to mental health reasons), the NDGAP has to either involve their statutory representative or appoint a guardian. In case of children, the guardian should be appointed without delay, within 8 days.<sup>229</sup>

Since the closure of the transit zones, unaccompanied minors also fall under the Embassy procedure, which entails submitting their asylum application through the Kyiv/Belgrade Embassy. Once in Hungary they should have a guardian appointed within 8 days. However, in 2020, there have been significant, weeklong delays in appointing guardians and delivering other administrative decisions enabling the cases of unaccompanied minors to be processed in an effective manner. This was due to a change in the jurisdiction of the competent guardianship authority.<sup>230</sup> Professionals working with unaccompanied minors have signalled these shortcomings to the guardianship authority. In 2021, such delays were not noted anymore.

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<sup>225</sup> Section 74 Asylum Decree.

<sup>226</sup> Sections 71/A(7) and 72(6) Asylum Act.

<sup>227</sup> ECRE, *Crossing Boundaries*, October 2015, 17.

<sup>228</sup> Section 4 Asylum Decree.

<sup>229</sup> Section 80/J(6) Asylum Act.

<sup>230</sup> The management of the guardians of unaccompanied minors used to belong to the competence of the fifth district of the Budapest Governmental Office, however, in 2020 as a result of legal changes the task was taken over by the third district of the Budapest Governmental Office. The Menedék Association evaluated the change as unfavourable because the latter did not seem to be well-prepared.

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

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

A medical expert opinion could be required to determine whether the asylum seeker has specific needs.<sup>231</sup> Section 78/A of the amendments to the Asylum decree that entered into force on 21 December 2021 states the following:

(1) The determining authority shall inform the applicant that he or she may undergo a medical examination on his or her own initiative and at his or her own expense in order to investigate any signs of previous persecution or serious ill-treatment.

(2) The medical examination referred to in paragraph (1) may be carried out by a qualified specialist with a licence issued by the Hungarian authority and the results of the examination shall be forwarded to the determining authority without delay.

(3) The result of the medical examination pursuant to paragraph (1) shall be assessed by the determining authority together with the other elements of the application. Where appropriate, in addition to the medical service provider chosen and used by the applicant, the determining authority may call upon a State medical service provider or an expert to verify the results of the medical examinations submitted by the applicant. Failure by the applicant to attend a medical examination shall not prevent the determining authority from taking a decision on the application for recognition.

However, no criteria are set out in law or established by administrative practice indicating when a medical examination for the purpose of drafting a medical report should be carried out *ex officio* by the Asylum authority. According to the Asylum Act, the credibility of the asylum-seeker should not be doubted if according to an expert of forensic medicine, the inconsistent and contradictory representations made by the applicant are attributable to his/her health or mental condition.<sup>232</sup>

The only NGO that deals with psychosocial rehabilitation of torture victims is the Cordelia Foundation, which prepares medical reports on applicants' conditions in line with the requirements set out in the Istanbul Protocol. The psychiatrists of this NGO, however, are not forensic experts and in some cases their opinion was not recognised by the former IAO or courts, since according to the Act CXL of 2004 on the General Rules of Public Administration Procedures (in effect at the material time), the expert opinion may only be delivered by a forensic expert registered by the competent ministry. For the reasons above (the lack of an official forensic expert standing in proceedings), sometimes both the former IAO and the courts disregarded the medical opinion issued by the Cordelia Foundation.

In January 2018, the CJEU ruled that asylum seekers may not be subjected to a psychological test, a practice the former IAO had had, in order to determine their sexual orientation as this would mount to disproportionate interference in their private life.<sup>233</sup>

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

<sup>231</sup> Section 3(2) Asylum Decree.

<sup>232</sup> Section 59 Asylum Act.

<sup>233</sup> 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>.



#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

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

The law provides for the appointment of a guardian (who is the legal representative) upon identification of an unaccompanied child. When realising that the asylum seeker is an unaccompanied minor, regardless of the phase of the asylum procedure, the NDGAP has to contact the Guardianship Authority, which will appoint within 8 days a guardian to represent the unaccompanied child.<sup>234</sup> 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.

There have been significant delays in appointing guardians to unaccompanied minors.

For unaccompanied children above the age of 14 and thus held in the transit zones until 21 May 2020, *ad-hoc* guardians were appointed whose mandate is, by definition, a temporary one. They did not have to be trained to care for children the same way legal guardians need to be. They were also not trained in asylum law and could 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 met twice: at the interview and when the decision was communicated. Based on personal interviews with unaccompanied children, the HHC lawyers found out that most of the time there was no direct communication between the *ad-hoc* guardians and the unaccompanied children they were responsible for.<sup>235</sup>

The legal guardians are employed by the Department of Child Protection Services (TEGYESZ). Obstacles with regard to children's effective access to their legal guardians remained to be a problem in 2020. Under the Child Protection Act, a guardian may be responsible for 30 children at the same time.<sup>236</sup> 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 previously had participated in trainings held by the HHC, the Cordelia Foundation and other actors such as IOM. The HHC and other NGOs continue to enjoy a good working relationship with legal guardians.

The regular roundtable discussions initiated by the HHC in 2016 continued throughout 2021 as well. With the exception of the NDGAP, all relevant stakeholders – the legal guardians, the Károlyi István Children's Home, Menedék Association for Migrants, UNHCR Hungary, the Jesuit Refugee Service, HHC and sometimes the Cordelia Foundation for the Rehabilitation of Torture Victims – took part in these meetings most of the time.

The discussions aim to serve as a substitution for the non-existent best interest determination procedure by providing for a multidisciplinary case assessment in the case of those children staying in the Károlyi István Children's Home while also discussing broader, systematic issues such as the children's access to education or health care during the [Embassy procedure](#) (regarding the latter see [Health Care](#)).

<sup>234</sup> Section 80/J(6) Asylum Act.

<sup>235</sup> 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>.

<sup>236</sup> Section 84(6) Act XXXI of 1997 on the Protection of Children.

Currently this is the only forum where State actors and the NGO sector together discuss how to further the case of unaccompanied children.<sup>237</sup>

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.<sup>238</sup> In order to fulfil his or her duties, the child protection guardian has a mandate to generally substitute the absent parents. He or she:

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

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

The child protection guardian 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.

## E. Subsequent applications

### Indicators: Subsequent Applications

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

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.<sup>239</sup> Persons who withdraw their application in writing or tacitly cannot request the continuation of their asylum procedure upon return to Hungary; therefore, they will have to submit a subsequent application and present new facts or circumstances (see section [Dublin: Situation of Dublin Returnees](#)).

In 2020 there were 25 subsequent applicants. Out of the 25 asylum seekers, 11 were children (5 boys and 6 girls). The breakdown by sex of the overall number of applicants was 12 men and 13 women. After the introduction of the Embassy Procedure, only one Iranian man applied for asylum subsequently (in September). Apart from one Algerian man, the other applicants were either Iraqi (13 applicants) or Afghan

<sup>237</sup> EuroChild and SOS Children's Villages International, *Let Children Be Children*, November 2017, available at: <http://bit.ly/2HjyOKn>, 75.

<sup>238</sup> Section 86 Child Protection Act.

<sup>239</sup> Section 51(2)(d) Asylum Act.



(10 applicants) nationals.<sup>240</sup> In 2021, there was only one subsequent application submitted in May by a minor girl whose nationality was unknown.<sup>241</sup>

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;<sup>242</sup>
- (b) Admissible subsequent applications are examined in an accelerated procedure (see section on the [Accelerated Procedure](#));<sup>243</sup>
- (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;<sup>244</sup>
- (d) The NDGAP hearing can be dispensed if a person failed to state facts or to provide proofs that would allow the recognition as a refugee or beneficiary of subsidiary protection in the subsequent application;<sup>245</sup>
- (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).<sup>246</sup> Until 21 May 2020, all asylum seekers except unaccompanied minors below age of 14 were kept in the transit zone (without the right to enter Hungary) for the whole duration of asylum procedure, the fact that the subsequent applicants do not have a right to remain on the territory did not actually mean that they were returned to **Serbia** before getting a decision in their asylum procedure. They were allowed to stay in the transit zone. However, they did not receive any food or any other material conditions. They only got 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.<sup>247</sup> 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.<sup>248</sup> The ECtHR found that deprivation of food amounted to violation of Article 3.
- (f) Judicial review of rejected subsequent applications does not have a suspensive effect (see [Accelerated Procedure](#));<sup>249</sup>
- (g) Amendments entered into force on 1 January 2018 provided that subsequent procedures are no longer free of charge. As a general rule, applicants in repeat procedures are granted exemption from paying for any costs incurred during the procedure (e.g. related to expert opinions) but applicants having adequate financial resources may be required to pay such fees. This is decided on a case-by-case basis by the NDGAP based on the personal circumstances of the applicants, and a standalone legal remedy is available against the interim decision of the NDGAP.<sup>250</sup>
- (h) Under the rules applied in case of state crisis due to mass migration,<sup>251</sup> 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.<sup>252</sup>

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

Not much guidance is provided by the Asylum Act as to what can be considered as new elements. Section 86 of the Asylum Decree only stipulates that the refugee authority shall primarily assess whether the

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<sup>240</sup> Information provided by NDGAP, 2 March 2021.

<sup>241</sup> Information provided by NDGAP, 7 February 2022.

<sup>242</sup> Section 51(2)(d) Asylum Act.

<sup>243</sup> Section 51(7)(f) Asylum Act.

<sup>244</sup> Section 68(4)(c) Asylum Act.

<sup>245</sup> Section 43(2)(b) Asylum Act.

<sup>246</sup> Section 80/K(11) Asylum Act. This is due to the mass migration crisis measures.

<sup>247</sup> ECtHR, *R.R. v. Hungary*, Application No 36037/17, 2 March 2021.

<sup>248</sup> Politico, 'Hungary ignoring court orders to improve border camp conditions: watchdog', 29 July 2017, available at <http://politi.co/2FZsPpR>.

<sup>249</sup> Section 53(2) Asylum Act.

<sup>250</sup> Section 34 Asylum Act.

<sup>251</sup> Section 80/K(11) Asylum Act.

<sup>252</sup> As it is set out in Section 5(a)– (c) Asylum Act.

person seeking recognition was able to substantiate any new facts or circumstances as grounds for the recognition of the applicant as a refugee or as a beneficiary of subsidiary protection. The existence or not of new facts or circumstances is determined in the admissibility procedure.

Given the lack of clear and publicly available guidelines, the NDGAP may interpret the concept of “new facts or circumstances” in a restrictive and arbitrary way. Examples of such arbitrary interpretation occurred in 2019. For example, an Afghan family received an inadmissible decision, based on Serbia being a “safe transit country” and the court confirmed the decision. However, Serbia then explicitly refused to take back the applicants. The NDGAP refused to continue examining their application on the merits, but instead changed their expulsion order from Serbia to Afghanistan. The applicants submitted another request for asylum, but the NDGAP rejected it as inadmissible subsequent application, since according to the NDGAP no new facts were provided. Refusal of Serbia to admit the applicants was not considered to be a new fact by the NDGAP. The decision was quashed by the Metropolitan Court and the Court explicitly stated that this is inappropriate use of subsequent procedures.<sup>253</sup>

## F. The safe country concepts

### Indicators: Safe Country Concepts

- |  |   |                             |
|--|---|-----------------------------|
| 1. Does national legislation allow for the use of “safe country of origin” concept?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin?                              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice?                            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept?      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice?                                | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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 country of asylum” is a ground for inadmissibility, but has not been applied as such. There is no further legislative guidance on this concept. The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.

### 2. Safe third country

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

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

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

<sup>253</sup> Metropolitan Court, 15.K.31.737/2019/17.

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.<sup>254</sup> 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.<sup>255</sup> The law does not specify in which format and language this information should be communicated to the applicant, if an interpreter should be made available, or if a written record should be prepared. The law does not specify the format or language, the availability of interpreters, and the preparation of a written record pertaining to applicants’ “declaration”. No mandatory, free-of-charge legal assistance is foreseen for this process, however if the applicants request the assistance of HHC attorneys in time, then the HHC attorneys are able to assist their clients with these submissions.

In the case that the application is declared inadmissible on safe third country grounds, the NDGAP shall issue a certificate in the official language of that third country to the applicant that his or her application for asylum was not assessed on the merits.<sup>256</sup> 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.<sup>257</sup> This provision is not respected in practice. Since 15 September 2015, Serbia was not taking back third-country nationals under the readmission agreement except for those who hold valid travel/identity documents and are exempted from Serbian visa requirements. Therefore, official returns to Serbia were not possible. Despite this fact, the inadmissibility decisions with regard to Serbia would still be issued. What is more, in a case that resulted in a preliminary reference to CJEU,<sup>258</sup> regarding the ‘hybrid’ safe third country ground (see section on ‘Hybrid’ safe third country / first country of asylum) and in which the CJEU ruled that the ‘hybrid’ safe third country ground is against EU law, the NDGAP after the CJEU judgement in a domestic procedure issued another inadmissible decision, this time based on a safe third country grounds with regard to Serbia, despite the fact that Serbia already explicitly refused to readmit the applicants. In 2021, Serbia did accept some third-country nationals back under the readmission agreement, but it seems that this occurred arbitrarily, and only in few cases.<sup>259</sup>

## 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.<sup>260</sup> 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

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<sup>254</sup> Section 51(3) Asylum Act.

<sup>255</sup> Section 51(11) Asylum Act.

<sup>256</sup> Section 51(6) Asylum Act.

<sup>257</sup> Section 51A Asylum Act.

<sup>258</sup> CJEU, joint cases C-924/19 and C-925/19 PPU, 14 May 2020.

<sup>259</sup> HHC’s meeting with Serbian border guards, June 2021.

<sup>260</sup> 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.

- US States that do not have the death penalty
- Switzerland
- Bosnia-Herzegovina
- Kosovo
- Canada
- Australia
- New Zealand

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

- The law requires the applicant to prove that he or she could not present an asylum claim in Serbia.<sup>261</sup> 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 NDGAP has to deliver a decision in maximum 15 days (8 days at the border).<sup>262</sup> 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,<sup>263</sup> but they also led, in practice, to the massive violation of Hungary’s *non-refoulement* and protection obligations enshrined in the 1951 Refugee Convention, Article 3 ECHR, and Articles 18 and 19 of the EU Charter of Fundamental Rights. Since early 2015, the vast majority of asylum seekers have come to Hungary from the worst crises of the world (Afghanistan, Syria and Iraq). Most of them had no opportunity to explain why they had to flee. Instead, they were exposed to the risk of an immediate removal to Serbia, a country where protection is currently not available. This means that they were deprived of the mere possibility to find protection and at the real risk of chain *refoulement*.

The former IAO issued inadmissibility decisions based on Serbia being a safe third country also to vulnerable applicants, for example transgender persons from Cuba, disabled or single women victims of sexual and gender-based violence. In a case of an extremely vulnerable single woman from Cameroon, who was a victim of trafficking in Serbia, held in hostage and raped several times. The HHC obtained an interim measure from the UN Human Rights Committee,<sup>264</sup> and after that her case was finally decided on the merits, UNHRC decided the case to be inadmissible, since the applicant was no longer at risk of being sent back to Serbia. Regrettably, The Human Rights Committee did not take into account the fact that the applicant was able to get protection in Hungary only due to the interim measure issued and, therefore, there clearly was a violation of Article 13 of the International Covenant on Civil and Political Rights – right to an effective domestic remedy.

On 14 March 2017, the European Court of Human Rights issued a judgment in the *Ilias and Ahmed v. Hungary* case and found a violation of Article 3 ECHR in respect of the applicants’ return to Serbia based on safe third country grounds, because of the exposure to the risk of chain *refoulement*. The Court stated that the Hungarian authorities failed to carry out an individual assessment of each applicant’s case, did not take their share of the burden of proof and placed the applicants in a position where they were not able to rebut the presumption of safety, since the Government’s arguments remained confined to the ‘schematic reference’ to the inclusion of Serbia in the national list of safe countries. The Court emphasised

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<sup>261</sup> Section 51(5) Asylum Act.

<sup>262</sup> Section 47(2) Asylum Act.

<sup>263</sup> Recital 46 and Article 38 recast Asylum Procedures Directive; Section 2(i) Asylum Act.

<sup>264</sup> Human Rights Committee, Communication No 2768/2015.

that relying on the Decree is not a sufficient reason to consider a country a safe third country and that the ratification of the 1951 Refugee Convention is not a sufficient condition to qualify a country as safe. The government appealed against the judgment and the Grand Chamber of the ECtHR delivered its judgement on 21 November 2019 and confirmed the violation of Article 3 with regard to the applicants' return to Serbia. The Committee of Ministers of the Council of Europe issued two decisions on the execution of the judgment.<sup>265</sup> The Committee noted with deep regret that no sufficient steps have been taken by the Government, reiterated their recommendations and maintained the case on their agenda for further examination.

In 2017, the former IAO stopped issuing inadmissibility decisions based on safe third country grounds. The reasons for the change in practice are not known. In 2019, the inadmissibility decisions based on safe third country grounds were not issued either, as inadmissibility under the Hybrid ground became the norm. In 2020 the HHC is aware of a case in which the NDGAP again used the safe third country ground in an inadmissible decision. According to HHC's information, no inadmissibility decision based on the safe-third country grounds was issued in 2021. The NDGAP did not provide the requested information for 2021.<sup>266</sup>

### 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.<sup>267</sup> The new provision stems from amendments to the Asylum Act and the Fundamental Law,<sup>268</sup> 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.<sup>269</sup> Since Hungary regards Serbia as a safe third country,<sup>270</sup> the new inadmissibility provision abolished any remaining access to a fair asylum procedure in practice. Since July 2018, once an asylum application was lodged, authorities systematically denied international protection to those who arrived via Serbia, declaring these applications inadmissible under the new rules.<sup>271</sup> The applicant can rebut the NDGAP's presumption of inadmissibility in 3 days, after which the NDGAP will deliver a decision.<sup>272</sup> In case the NDGAP decides the application inadmissible, it will also order the applicant's expulsion, launching an alien policing procedure.

This newly established inadmissibility ground is not compatible with current EU law as it arbitrarily mixes rules pertaining to inadmissibility based on the concept of "safe third country" and that of "first country of asylum". Article 33(2) of the recast Asylum Procedures Directive provides an exhaustive list of inadmissibility grounds, which does not include such a hybrid form. That the new law is in breach of EU law is further attested by the European Commission's decision of 19 July 2018 to launch an infringement procedure concerning the recent amendments. According to the Commission, "the introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the safe third country and the first country of asylum concepts, the new law and the constitutional amendment on asylum curtail the right to asylum in a way which is incompatible with the Asylum Qualification Directive and the EU Charter of Fundamental Rights."<sup>273</sup>

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<sup>265</sup> Council of Europe, H46-17 Ilias and Ahmed v. Hungary (Application No. 47287/15), Supervision of the execution of the European Court's judgments, 1419<sup>th</sup> meeting, 30 November – 2 December 2021 (DH), available at: <https://bit.ly/3Gnxm4e>.

<sup>266</sup> Information not provided by NDGAP on 7 February 2022.

<sup>267</sup> Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.

<sup>268</sup> Article XIV Fundamental Law.

<sup>269</sup> Section 80/J(1) Asylum Act.

<sup>270</sup> Section 2 Decree 191/2015.

<sup>271</sup> FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: <https://bit.ly/2To4QI2>.

<sup>272</sup> Section 51(12) Asylum Act.

<sup>273</sup> 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>.



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

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*.<sup>274</sup> 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 section on [Regular procedure: Appeal](#)), the cases were transferred to the Szeged Court. In several cases, the Szeged Court did not maintain the suspension, but quashed the former IAO's inadmissibility decisions and at the same time annulled the placement of the applicants in the transit zones.<sup>275</sup> The Szeged Court directly applied Articles 33 and 35 of the recast Asylum Procedures Directive and stated that the new inadmissibility ground is not in compliance with Article 33, therefore, it did not apply the domestic provision. Nonetheless, the Court examined the first country of asylum principle and the required sufficient protection criteria regarding Serbia. The Court emphasised that the pure existence of international conventions ratified by countries is not sufficient but their applicability has to be examined, as well. Having analysed the available country of origin information, the Court declared that the sufficient protection could not be assessed in the case of Serbia. Furthermore, the Court stated that the former IAO did not take any measure towards the Serbian authorities on the readmission of the applicants. In one case however, the Court did not find any problems with the application of such inadmissibility ground that was, according to the Court, in line with the Directive, and rejected the appeal.<sup>276</sup> As of February 2019, the jurisdiction was transferred to the Metropolitan Court and there the practice also differed and certain inadmissible decisions based on this ground were found lawful.

The Advocate General opinion in the above case was delivered on 5 December 2019 and stated that the new inadmissibility ground is against EU law, reiterating the stance of the HHC on this matter. The CJEU issued a judgement on 19 March 2020 and confirmed the above position.<sup>277</sup>

The NDGAP did not examine whether Serbia would be willing to readmit the applicant before issuing an inadmissibility decision based on this hybrid ground, despite this being a condition for a country to be considered a first country of asylum, according to Article 35 of the recast Asylum Procedures Directive. In all final inadmissibility cases based on the hybrid of the concepts of safe third country and first country of asylum, the NDGAP would not withdraw its inadmissibility decision despite the fact that Serbia officially refused to admit the applicants back. Instead, the former IAO's and now the NDGAP's alien policing department began an arbitrary practice of modifying internally the expulsion order issued by the former IAO's or now the NDGAP's asylum department by changing the destination country from Serbia to the country of origin of the applicants. Against such internal modification no effective legal remedy is available under domestic legislation. This means that Hungary not just automatically rejected all asylum claims, but it also expelled asylum seekers to their countries of origin (such as Afghanistan) without ever assessing their protection claim in substance.<sup>278</sup> UNHCR itself also regards this practice to be in breach of the principle of *non-refoulement* and consequently "*advised the European Border and Coast Guard Agency, Frontex, to refrain from supporting Hungary in the enforcement of return decisions which are not in line with international and EU law.*"<sup>279</sup> According to the TCN Act, such modification of expulsion order cannot be challenged at the court, the HHC however submitted an appeal and the Szeged Administrative and Labour court accepted it and referred a preliminary reference to the CJEU.<sup>280</sup> Questions asked addressed several issues, such as for example whether non-initiation of the asylum procedure in Hungary after explicit rejection from Serbia is in line with the Asylum Procedures Directive, whether the modification of the expulsion decision and lack of judicial remedy is in line with Return Directive and whether the

<sup>274</sup> CJEU, Case C-564/18 *LH*, Reference of 7 September 2018.

<sup>275</sup> 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.

<sup>276</sup> Administrative and Labour Court of Szeged, Decision No 42.K.32.906/2018/12, 5 September 2018.

<sup>277</sup> CJEU, C- 564/18 *LH*, 19 March 2020.

<sup>278</sup> Filippo Grandi, UN High Commissioner for Refugees: Hungary's coerced removal of Afghan families deeply shocking, 8 May 2019, <http://bit.ly/2sKyRcW>.

<sup>279</sup> HHC, One year after. How legal changes resulted in blanket rejections, refoulement and systemic starvation in detention, 1 July 2019, <http://bit.ly/35V44Yn>.

<sup>280</sup> C-924/19 and 925/19, referred on 18 December 2019.

placement in the transit zone amounts to deprivation of liberty during asylum procedure and during an alien policing procedure. On 14 May 2020, the CJEU issued a judgement in which it ruled among other that this inadmissibility ground is unlawful, that asylum-seekers have a right to continue their asylum procedures once a third country refuses to take them back and that the lack of judicial oversight over the immigration authority's arbitrary decisions on changing the destination of expulsion breaches the right to an effective remedy.<sup>281</sup>

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

According to HHC's information, no inadmissibility decision based on this ground was issued in 2021.

#### 4. Safe country of origin

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

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

If the applicant's country of origin is regarded as "safe", the application will be rejected in the accelerated procedure (see [Accelerated Procedure](#)).<sup>282</sup> 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.<sup>283</sup> Where the safe country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.<sup>284</sup>

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Countries of Origin,<sup>285</sup> 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

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<sup>281</sup> CJEU, joint cases C-924/19 and C-925/19 PPU, 14 May 2020.

<sup>282</sup> Section 59(1) Asylum Act.

<sup>283</sup> Section 51(11) Asylum Act.

<sup>284</sup> Section 51A Asylum Act.

<sup>285</sup> Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries.



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.<sup>286</sup> The decision was met with heavy criticism by the HHC.<sup>287</sup>

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

### 1. Provision on information on the procedure

#### Indicators: Information on the Procedure

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

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

The NDGAP is obliged to provide written information to the asylum seeker upon submission of the application. The information concerns the applicant's rights and obligations in the procedure and the consequences of violating these obligations.<sup>288</sup> As people submitting a statement of intent at the Embassy are not yet considered as asylum seekers, there is no specific obligation to provide them with information. The only information available can be accessed on the NDGAP website, and even that information is only available in Hungarian.<sup>289</sup> The website in English is outdated and does not even mention the Embassy procedure.

The same level and sources of information are used in all stages of the asylum procedure. Asylum seekers also receive information about the Dublin III Regulation. The level of understanding of the information varies a lot amongst asylum seekers, while in some instances the functioning of the Dublin III system is too complicated to comprehend. Leaflets created by the Commission are often used in practice.

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

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.<sup>290</sup> 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.

<sup>286</sup> 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>.

<sup>287</sup> HHC, 'Mi a helyzet a volt macedón kormányfő itteni menedéjogi eljárásával?', 13 November 2018, available in Hungarian at: <https://bit.ly/2lkGyxr>; 'Egyre több a kérdőjel Gruevszki menedékkérése körül', 15 November 2018, available in Hungarian at: <https://bit.ly/2NfPYZG>.

<sup>288</sup> Section 37 Asylum Act.

<sup>289</sup> See: <https://bit.ly/3pl7he4>.

<sup>290</sup> See also the highly technical language used in NDGAP's website on the asylum procedure, available at: <http://bit.ly/1e5AtBi>, and Dublin, available at: <http://bit.ly/1L3fA7b>.

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

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

Following the closure of the transit zones and the introduction of the Embassy procedure, asylum seekers are no longer located at the border. Before the closure they had access to UNHCR, but not to NGOs.

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

In summer 2017, the authorities terminated cooperation agreements with the HHC and denied access to police detention, prisons and immigration detention after two decades of cooperation and over 2,000 visits. The HHC can no longer monitor human rights in closed institutions, even though NGOs' access to police, prison and immigration detention reduces the risk of torture and ill-treatment and contributes to improving detention conditions.<sup>291</sup> Regarding the access of HHC lawyers for the purpose to provide legal aid, see [Regular Procedure: Legal Assistance](#).

On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it found worrying that NGOs are excluded from consultation and cannot conduct activities in a free environment, including NGOs working on asylum and detention.<sup>292</sup>

The case of *European Commission v. Hungary* (C-78/18) on the so called “Lex NGO”<sup>293</sup> is important because the restrictions imposed by Hungary on the financing of civil society organisations has an impact on national organisations working in the field of asylum. CJEU held that Hungary had introduced discriminatory and unjustified restrictions on civil society organisations and on individuals providing them support by imposing obligations of registration and declarations and by publishing information on civil society organisations which directly or indirectly receive support from abroad. Hungary also provided for the possibility to issue penalties to the organisations that did not comply with the obligations. The measures do not comply with the free movement of capital laid down in the TFEU, Article 63 and the EU Charter, Article 7 (the right to private and family life), Article 8 (protection of personal data) and Article 12 (right to freedom of association).<sup>294</sup>

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

<sup>291</sup> HHC, *National authorities terminated cooperation agreements with the Hungarian Helsinki Committee*, available at: <http://bit.ly/2sMyU7o>.

<sup>292</sup> Committee on the Rights of the Child, *Concluding observations on the sixth periodic report of Hungary*, 10 February 2020, available at: <https://bit.ly/3op1QK0>.

<sup>293</sup> Law No LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad.

<sup>294</sup> EASO, *EASO Asylum Report 2021*, available at: <https://bit.ly/3oBAuUg>, 58.

regular basis).<sup>295</sup> On 25 July 2019, the European Commission decided to refer Hungary to the CJEU concerning legislation that criminalises activities in support of asylum applications and further restricts the right to request asylum.<sup>296</sup> On 16 November 2021, the CJEU issued a judgment in case C-821/19.<sup>297</sup> It ruled that the 2018 ‘Stop Soros’ law breaches EU law. Threatening people with imprisonment who assist asylum-seekers to claim asylum violates EU norms.

## 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?<sup>298</sup> ☒ 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](#)).

Following the Taliban take-over in Afghanistan in August 2021, almost 500 former NATO co-workers and their families were flown to Hungary in the rescue operation. The rescued Afghan citizens were not subject to the asylum procedure, but were instead channelled in the alien policing procedure (residence permit for other purposes, i.e. humanitarian purposes).

<sup>295</sup> 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>.

<sup>296</sup> European Commission, press release: Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones, 25 July 2019, available at: <http://bit.ly/360DIEg>.

<sup>297</sup> Court of Justice of the European Union, Judgment in Case C-821/19 Commission v Hungary (Criminalisation of assistance to asylum seekers), PRESS RELEASE No 203/21, 16 November 2021, available at: <https://bit.ly/3rn8bKH>.

<sup>298</sup> Whether under the “safe country of origin” concept or otherwise.

## Reception Conditions

### Short description of the reception system

From March 2017 until 21 May 2020 the main form of reception had been detention, carried out in the transit zones. Following the *FMS and Others* judgment,<sup>299</sup> open reception centres gained back their role for a short period of time, when all the 280 asylum seekers detained in transit zones were transferred to one of the open reception facilities. However, by the end of July the number of residents in **Vámosszabadi** and **Balassagyarmat** had significantly decreased. After the entry into force of the new “[Embassy procedure](#)”, only 4 new applicants (one family) entered Hungary in 2020, and were subsequently placed in **Vámosszabadi**. According to the NDGAP, on 31 December 2021 there were no asylum seekers in **Vámosszabadi** and only 5 asylum seekers in **Balassagyarmat**.

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

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

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Pursuant to Section 26(1) of the Asylum Act, “*reception conditions include material reception conditions, and all entitlements and measures defined in an act of parliament or government decree relating to the freedom of movement of persons seeking asylum, as well as health care, social welfare and the education provided to asylum seekers.*”

According to the Asylum Act, asylum seekers who are first-time applicants are entitled to material reception conditions and other aid to ensure an adequate standard of living as regards the health of asylum-seekers until the end of the asylum procedure.<sup>300</sup> Beneficiaries of subsidiary protection, family members of refugees or subsidiary protection beneficiaries and those subject to forced measures or punishment affecting personal liberty, who are allowed to lodge their asylum application from within the country in accordance with the rules laid down by the Transitional Act (see the section on [Embassy procedure](#)), are subject to material conditions provided by the Asylum Act (in case of the third category of

<sup>299</sup> CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, 14 May 2020.

<sup>300</sup> Section 27 Asylum Act.

applicants it is reduced as the applicant is held in a detention facility). Asylum seekers who arrive to Hungary via the Embassy procedure are also eligible for reception conditions.

Until 21 May 2020 though, first-time asylum seekers without lawful Hungarian residence or visa had been accommodated exclusively in one of the transit zones immediately after claiming asylum, where they were entitled only to reduced material conditions (see [Conditions in Detention Facilities](#)). Asylum seekers who entered the transit zones could no longer request to stay in private accommodation at their own cost on account of the existent state of crisis due to mass migration.<sup>301</sup>

Until 21 May 2020, asylum seekers who had been residing lawfully in the country at the time of submitting their asylum application and did not ask to be placed in a reception centre, had the right to request private accommodation as their designated place to stay during the asylum procedure. However, similarly to the previous years, the majority of applicants (42 out of 48 persons in January and February 2020) submitted their asylum application in one of the transit zones until March 2020.<sup>302</sup> Between March and 21 May 2020, no one was let in due to the COVID-19 pandemic. There were only a small number of asylum seekers who had been already provided with a visa (or came from a country having no visa requirements) or residence permit at the time of their asylum application. In this case, asylum seekers were not provided with any material reception condition since their subsistence is deemed to be ensured. Otherwise, deriving from the wording of the Asylum Act those who were residing lawfully in Hungary but wanted to be placed in a reception facility could have submitted their asylum application only in the transit zones.<sup>303</sup> The HHC is not aware of such an example.

Only those asylum seekers who are deemed destitute are entitled to material reception conditions free of charge.<sup>304</sup> According to the Asylum Decree, upon the submission of the asylum application, the asylum seeker also declares his/her assets and income.<sup>305</sup> An asylum seeker is deemed destitute if, taking into account the financial situation of their spouse and direct relative, he or she does not have an asset in Hungary providing for their living, and their total income does not surpass the minimum amount of old-age pension.<sup>306</sup> If an asylum seeker is not destitute, the determining authority may decide to order that the applicant pays for the full or partial costs of material conditions and health care. The level of resources is however, not established in the Asylum Act and applicants have to make a statement regarding their financial situation. Presently, this condition does not pose any obstacle to access reception conditions.

During the state of crisis due to mass migration the provisions of [Reduction or Withdrawal of Material Reception Conditions](#) set out in Sections 30 and 31 of the Asylum Act are not applicable.<sup>307</sup>

According to the Asylum Act,<sup>308</sup> subsequent applicants shall not be entitled to exercise the right to assistance, support and accommodation.<sup>309</sup> In practice before 21 May 2020, since transit zones had been the compulsory places of confinement, accommodation (a bed in a container) was ensured for subsequent asylum seekers. Regarding the provision of food and other material support though, subsequent applicants in the transit zones could only count on the aid of civil organisations and churches having access to the transit zones (see more at [Subsequent Applications](#)).<sup>310</sup> HHC is aware of an asylum-seeker family (father and son) who were transferred to Vámoszabadi after the closure of the transit zones. After the NDGAP had rejected their asylum application in 2019 on the “safe transit country” ground, the applicants requested the asylum authority in the spring of 2020 to continue their asylum procedure by virtue of the CJEU judgment issued in the case of LH (C-564/18). NDGAP considered their application as a “subsequent one” and rejected it stating that they did not provide any new evidence, despite the fact that Serbia explicitly refused to readmit them. The court quashed the decision. Despite the judgment, the

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<sup>301</sup> Section 80/I(d) Asylum Act.

<sup>302</sup> Information provided by the NDGAP on 2 March 2021.

<sup>303</sup> Section 80/J(1)(c) Asylum Act.

<sup>304</sup> Section 26(2) Asylum Act.

<sup>305</sup> Section 17(1) Asylum Decree.

<sup>306</sup> Section 18 Asylum Decree.

<sup>307</sup> Section 80/I(a) Asylum Act.

<sup>308</sup> Section 80/K(11) Asylum Act.

<sup>309</sup> Set out in Section 5(1)(b) Asylum Act.

<sup>310</sup> HHC, *Turbulent 50 days – an update on the Hungarian asylum situation*, 22 May 2017, available at: <http://bit.ly/2EFxDaO>.



NDGAP unlawfully considered them as subsequent applicants and applied the rules of alien policing procedure regarding reception conditions. Apart from temporary accommodation they were not entitled to any sort of reception condition. Since then, the HHC is not aware of any similar instances.

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the weekly financial allowance/vouchers granted to asylum seekers for hygienic items and food allowance in Vámoszabadi 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**,<sup>311</sup> the content of material reception conditions is limited to accommodation and food provided in reception facilities; as well as costs of public funeral of the asylum seeker.<sup>312</sup> The state of crisis rules furthermore to suspend the applicability of Section 15(2)(c) which enabled asylum seekers to apply for travel allowance.

Apart from material reception conditions there are only healthcare services that are provided to asylum seekers in the framework of reception conditions. Other services such as the reimbursement of educational expenses and financial support (the latter contained only the financial aid to facilitate return to the country of origin) are halted by virtue of the state of crisis due to mass migration.<sup>313</sup> Since 1 April 2016, asylum seekers are not entitled to receive pocket money either.

According to the Asylum Decree, asylum seekers residing in reception centres receive:<sup>314</sup>

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

In **Balassagyarmat** over the course of 2020 and 2021 **food and hygienic items were provided in kind**.<sup>315</sup> In 2021, as reported by Menedék Association according to the law, asylum seekers might choose from the forms of food provision, in practice beyond a certain number of applicants, reception facilities leave no choice and provide food exclusively in kind. This inference is supported by the information of the NDGAP regarding food provision in Vámoszabadi.<sup>316</sup> According to the NDGAP, in **Vámoszabadi** asylum seekers had been provided with food allowance since 31 May 2018.<sup>317</sup> With the closure of the transit zones though the number of asylum seekers significantly grew in May 2020. According to the asylum authority between 21 May 2020 and 26 July 2020, asylum seekers received food either in kind or in allowance, whereas since 27 July 2020 **food allowance** has been exclusively provided. In 2021, the NDGAP reported that residents received food allowance or provision based on costs efficiency considerations.<sup>318</sup> As far as the number of residents was low, between January and the end of August as well as from 25 November, food allowance was distributed. In the course of autumn, due to the arrival of Afghan evacuees, food was given in kind. **Hygienic items** were given in **kind** in 2020 as well as in 2021.<sup>319</sup>

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

<sup>311</sup> Section 99/B and 99/C (c)-(d) Asylum Decree

<sup>312</sup> Section 15(2)(a), (d) Asylum Decree

<sup>313</sup> Section 99/C(c) Asylum Decree.

<sup>314</sup> Section 21 Asylum Decree.

<sup>315</sup> Based on the information provided by the NDGAP on 3 March 2021 and on 7 February 2022.

<sup>316</sup> Information provided by the NDGAP on 3 March 2021.

<sup>317</sup> Information provided by former IAO, 12 February 2019 and 2 February 2020.

<sup>318</sup> Information provided by the NDGAP on 7 February 2022.

<sup>319</sup> Information provided by the NDGAP on 3 March 2021 and on 7 February 2022.

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

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

**Sections 30 and 31 of the Asylum Act** regulating the reduction and withdrawal of material reception conditions shall **not be applied** in the current **state of crisis due to mass migration**.<sup>320</sup> Pursuant to the legislative changes, no decision has been issued on the reduction or the withdrawal of the reception conditions since 2017.<sup>321</sup>

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

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

Furthermore, the NDGAP may consider sanctions in designating another place of accommodation if the person seeking recognition grossly violates the rules of conduct in force at the designated place of accommodation or manifests seriously violent behaviour.<sup>322</sup>

A decision of reduction or withdrawal is issued by the NDGAP and is based on a consideration of the individual circumstances of the person. The decision contains the reasoning. The reduction can be in the form of retaining the monthly financial allowance. The reduction or the withdrawal should be proportionate to the violation committed and can be ordered for a definite or for an indefinite period of time with the possibility of judicial review.<sup>323</sup> The Asylum Act furthermore stipulates that emergency health care services must be provided at all times even in the event of the reduction or withdrawal of reception conditions.<sup>324</sup> 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.<sup>325</sup> The applicant has a right to free legal assistance.

According to Section 39(7) of the Asylum Decree, if asylum seekers turn out to have substantial assets or funds, they will be required to reimburse the NDGAP for the costs of reception. If the sum value of the benefits and services is received without entitlement, the NDGAP shall order the collection of the sum repayable – and treated as outstanding public dues enforced as taxes – unless it is repaid voluntarily.<sup>326</sup> Recuperation of financial claims can be ordered by the NDGAP and implemented via the national tax authority.<sup>327</sup> 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 the NDGAP, however it can be challenged before the administrative court.<sup>328</sup> The head of the authority might authorise the instalment payment or the postponement of the payment upon the request of the applicant.<sup>329</sup>

<sup>320</sup> Section 80/I(a) Asylum Act.

<sup>321</sup> Information provided by former IAO, 12 February 2018; 12 February 2019 and by the NDGAP on 2 February 2020, 3 March 2021 and 7 February 2022.

<sup>322</sup> Section 30(2) Asylum Act.

<sup>323</sup> Section 31 Asylum Act.

<sup>324</sup> Section 30(3) Asylum Act

<sup>325</sup> Section 31(1) Asylum Act.

<sup>326</sup> Section 26(5) Asylum Act.

<sup>327</sup> Section 32/Y Asylum Act.

<sup>328</sup> Section 32/Y(1) Asylum Act.

<sup>329</sup> Act CLXXXIII of 2018 on the modification of the Asylum Act.



#### 4. Freedom of movement

##### Indicators: Freedom of Movement

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

There is no mechanism for the dispersal of asylum seekers across the territory of the country. Between March 2017 and 21 May 2020, asylum seekers were primarily held in the transit zones and those who had been exceptionally released from there were placed in open reception centres. At the end of 2020, there were only 6 asylum seekers residing in open facilities<sup>330</sup> (see [Types of Accommodation](#)). In the end of 2021, a total of 5 asylum seekers were accommodated in Balassagyarmat (Vámoszabadi was empty).<sup>331</sup>

The European Union Agency for Asylum (EUAA) reported that Hungary is among the EU Member States that resorted to allocation of asylum applicants according to the procedure they are in. Accordingly '[A]s a general rule, recognized persons and applicants are accommodated in the reception centre, and those under aliens' proceedings are placed in the community shelter. If necessary, this allocation can be changed, and the profile of the applicant is also taken into account.'<sup>332</sup>

Asylum seekers who are not detained can move freely within the country but may only leave the reception centre where they are accommodated for less than 24 hours unless they notify the authorities in writing about their intention to leave the facility for more than that. In this case, the NDGAP upon the request issues the permission for the asylum seekers. HHC is not aware of any relevant complaints from 2021.

Asylum seekers can normally leave the centres freely for 24 hours. In **Vámoszabadi** and, in case of important matters to manage e.g. personal document issues, in Győr asylum seekers have been transported occasionally on weekdays by a minibus driven by a social worker to the city in the past years. In 2021, upon a larger amount of residents buses were used on a daily basis. HHC is aware of an asylum-seeker family (father and son) who were placed in Vámoszabadi after the closure of the transit zones. After the NDGAP had rejected their asylum application in 2019 on the "safe transit country" ground, the applicants requested the asylum authority in the spring of 2020 to continue their asylum procedure by virtue of the CJEU judgment issued in the case of LH (C-564/18). NDGAP considered their application as a "subsequent one" and rejected it stating that they did not provide any new evidence, despite the fact that Serbia explicitly refused to readmit them. The court quashed the decision. But despite the judgment the NDGAP unlawfully considers them as subsequent applicants and applies rules of alien policing procedure regarding reception conditions. Even though accommodation was granted for them, they were subject to strict freedom of movement rules (similarly to those being under an alien policing procedure), meaning that they could leave the centre only for 2 hours per day.

In state of crisis due to mass migration, Section 48(1) of the Asylum Act regulating accommodation *inter alia* at a private address is not applicable, meaning that applicants did not have the right to apply for private accommodation since they were detained in the transit zones prior to 21 May 2020. Yet the former IAO applied the rules on alternatives to detention regarding the few asylum seekers whose request for private accommodation was thus "permitted" disregarding the fact that the applicants were officially not in detention (for details see AIDA report 2019). From 21 May 2020, as a consequence of the termination of the transit regime, all the asylum seekers detained in the transit zones were released and relocated either to Vámoszabadi or Balassagyarmat. Due to the COVID-19 pandemic, the relocated asylum seekers were obliged to stay in quarantine for 2 weeks upon their arrival. After the two weeks the same freedom of movement restrictions applied to the residents as to Hungarian citizens. Under the current rules set out

<sup>330</sup> Information provided by the NDGAP on 3 March 2021.

<sup>331</sup> Information provided by the NDGAP on 7 February 2022.

<sup>332</sup> EASO, Overview of the organisation of reception systems in EU+ countries, Situational Update Issue No 8, 13 January 2022, <https://bit.ly/3IDA3jw>, 14.

in the Transitional Act, the special rules imposed on by a state of crisis due to mass migration are not applicable, i.e. there is no restriction with regard to private accommodation.

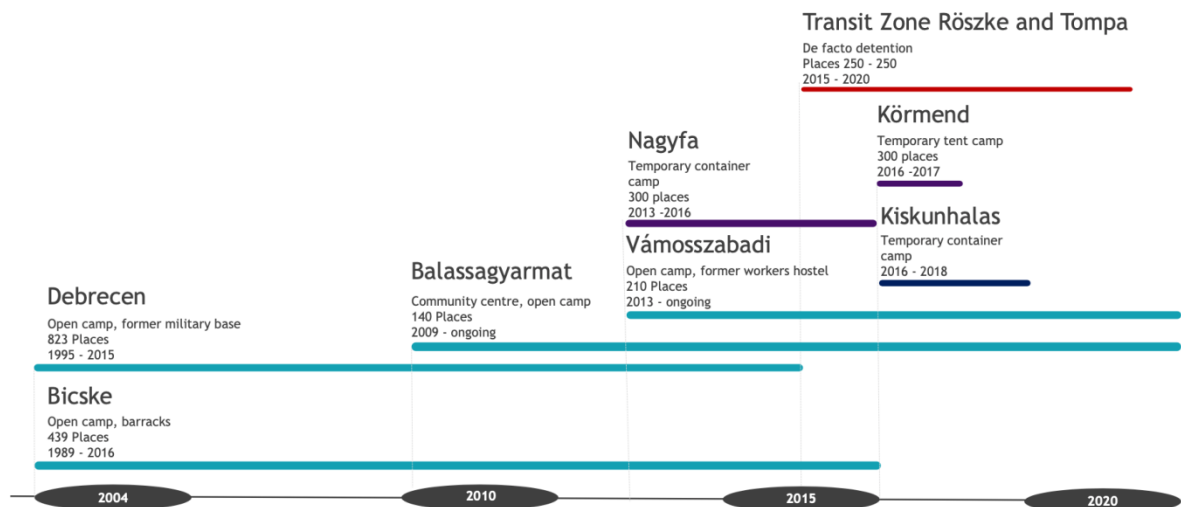
The only family arriving as a result of the “Embassy procedure” to Hungary on 1 December 2020 was placed in Városszabadi and was being quarantined subsequently for 10 days. In April and September 2021, altogether 2 Iranian asylum seeker families (8 persons) arrived to Hungary via the Embassy Procedure. At first, they were being quarantined in the transit zone and subsequently one family was placed in Városszabadi, whereas the other family was accommodated in Balassagyarmat.

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

Due to the COVID-19 pandemic, the general measures restricting freedom of movement (between 8 pm and 5 am, later ordered from 10 pm) introduced by the Government were also applicable to the residents of reception facilities. In addition, in case of relocation of asylum seekers between the reception centres a 10-day-long quarantine has to be observed.<sup>333</sup> Apart from those, no limitation on freedom of movement was imposed.

## B. Housing

### Asylum Seekers Reception in Hungary\*



\* Timeline starts 2004 when HU joined the EU. Facilities for unaccompanied minors (Föt) and facilities that serve exclusively for asylum detention are not listed

Credit: Helena Segarra. There was no change in the reception centres in 2021.

<sup>333</sup> Information provided by the NDGAP on 7 February 2022.

## 1. Types of accommodation

### Indicators: Types of Accommodation

1. Number of reception centres:<sup>334</sup> 3
2. Total number of places in the reception centres: 480
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel ☐ Emergency shelter ☒ Private housing ☐ Transit zone
5. Type of accommodation most frequently used in an accelerated procedure:  
☐ Reception centre ☐ Hotel ☐ Emergency shelter ☒ Private housing ☐ Transit zone

On 31 December 2021, there were 2 open reception centres and 1 home for unaccompanied children in Hungary. The reception centres are:

Reception Centre	Location	Maximum capacity	Occupancy at end 2021 <sup>335</sup>
Balassagyarmat	Near Slovakian border	140	5
Vámoszabadi	Near Slovakian border	210	0
Fót	Near Budapest	130	13 <sup>336</sup>
<b>Total</b>		<b>480</b>	<b>5</b>

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

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

**Balassagyarmat** is a community shelter with a maximum capacity of 140 places for asylum seekers, beneficiaries of international protection, persons tolerated to stay, persons under immigration procedure and foreigners having been held for 12 months in immigration detention. In 2020, there were 22 asylum seekers and 93 persons under alien policing procedure placed in Balassagyarmat.<sup>337</sup> The NDGAP provided only an aggregated number regarding 2021 according to which there was a total of 469 persons placed in Balassagyarmat based on different legal basis.<sup>338</sup> Thus, the exact number of asylum seekers accommodated here was not provided.

**Vámoszabadi** Reception Centre is located outside of Vámoszabadi, 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.<sup>339</sup> Prior to 21 May 2020, the centre hosted primarily beneficiaries of international protection released from the transit zones. According to the information provided by NDGAP,

<sup>334</sup> Both permanent and for first arrivals.

<sup>335</sup> Regarding Balassagyarmat, the total number of residents was 6 as there was one person under alien policing procedure.

<sup>336</sup> Note that according to the answer of the Directorate-General for Social Affairs and Child Protection, there were 3 children present and the other 10 were away without permission on 31 December 2021.

<sup>337</sup> Information provided by the NDGAP on 2 March 2021.

<sup>338</sup> Information provided by the NDGAP on 7 February 2022. For instance, this number includes the 180 Afghan evacuees who were not subject to an asylum procedure.

<sup>339</sup> Cited from the report published by HHC, *Safety Net Torn Apart – Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, available at: <http://bit.ly/2FOjALa>.

people on average had stayed there only 2-3 weeks before they left the country.<sup>340</sup> With the closure of the transit zones the number of people under the effect of the Asylum Act increased as a total of 528 persons were accommodated in Vámoszabadi in 2020. A further 52 persons under alien policing procedure were placed here, as well.<sup>341</sup> The NDGAP provided only an aggregated number regarding 2021 according to which there was a total of 638 persons placed in Vámoszabadi based on different legal basis.<sup>342</sup> Thus, the exact number of asylum seekers accommodated here was not provided.

The centres are managed by the asylum authority.<sup>343</sup> As of 2019, the reception facilities and detention centres fall under the exclusive management and supervision of the central Refugee Affairs Directorate of the NDGAP.<sup>344</sup>

**Unaccompanied children** are accommodated in **Fót**. The **Károlyi István Children's Home** in Fót is a home for unaccompanied children located in the North of Budapest and belongs to the Ministry of Human Resources. Its maximum capacity was 130 children in 2021.<sup>345</sup> Prior to 21 May 2020 children above the age of fourteen were detained in the transit zones (as it is detailed in [Detention of vulnerable applicants](#)).

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

In 2020, **Fót** registered 13 unaccompanied minors out of whom two children applied for asylum. According to the information provided by the Directorate-General for Social Affairs and Child Protection, the NDGAP established the responsibility of Germany for the asylum procedure and transferred the two unaccompanied minors to Germany accordingly.<sup>346</sup>

On 31 December 2020, there were no asylum-seeking children, but 3 minor beneficiaries of subsidiary protection resided in the facility.<sup>347</sup> In 2021, 3 unaccompanied asylum seekers were registered in Fót. On 31 December 2021, there were 13 unaccompanied asylum seekers registered, nevertheless, there were only 3 children present.<sup>348</sup>

## 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 2021, asylum seekers were never left without accommodation due to a shortage of places in reception centres.

<sup>340</sup> *Ibid.*

<sup>341</sup> Information provided by the NDGAP on 2 March 2021.

<sup>342</sup> Information provided by the NDGAP on 7 February 2022. For instance, this number includes the 270 Afghan evacuees who were not subject to an asylum procedure.

<sup>343</sup> Section 12(3) Asylum Decree.

<sup>344</sup> 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.

<sup>345</sup> Information provided by the Directorate-General for Social Affairs and Child Protection on 7 April 2022.

<sup>346</sup> Information provided by the Directorate-General for Social Affairs and Child Protection on 13 April 2021.

<sup>347</sup> Information provided by the Directorate-General for Social Affairs and Child Protection on 13 April 2021.

<sup>348</sup> Information provided by the Directorate-General for Social Affairs and Child Protection on 7 April 2022.

## 2.1. Overall conditions

Unlike detention centres (see section on [Conditions in Detention Facilities](#)), the legal standards regulating open reception premises are defined in separate instruments. There is no regulation on the minimum surface area, the minimum common areas or on the minimum sanitary fittings regarding reception centres.<sup>349</sup> Conditions in reception centres differ. In all centres, residents get 3 meals per day or are provided with financial allowance. As a result of the limited number of asylum seekers and beneficiaries of international protection, people can cook for themselves in every facility (as an exception from this see also the part on Differential treatment of specific nationalities in reception). The Decree 52/2007 stipulates the amount of nutrition value that must be provided at the open reception facilities and states that religious diets are to be respected in all facilities.<sup>350</sup> There were no related complaints reported in the last years.

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

There have been no problems reported regarding religious practices.

After the outbreak of the COVID-19 pandemic, asylum seekers were given disposable masks and gloves, and for certain periods of time the fever control was introduced in the reception facilities. Hand sanitizers were provided at disposal in the reception centres, as well. Asylum seekers were continuously updated by the social workers – with the help of the HHC attorneys and the Menedék Association - about the newly adopted regulations, such as rules of curfew and the time slots based on age introduced in the supermarkets in 2020. In general, asylum seekers were treated in the same way as Hungarian citizens with regard to COVID-19 measures. In case of residents showing COVID-19 symptoms in 2021, reception centres ensured that testing was carried out as soon as possible, and ordered a halt on visits in the reception centre. Nevertheless, there was no one registered with COVID-19 infection in the reception centres in 2021.<sup>351</sup>

## 2.2. Activities in the centres

The variety of activities of the asylum authority's social workers compared to the era prior to 2018 has decreased. Since then, community activities have been mainly **provided by NGOs** in reception facilities. However, the number of these organizations on the field also decreased due to funding limitations. Exceptionally, in 2020, one social worker of the NDGAP provided child-specific development programs and another one offered Hungarian language classes for children in **Vámosszabadi**. According to the HHC's knowledge, the services were provided with less intensity in **Balassagyarmat**. The community room in Vámosszabadi had been closed down, the residents could not use it until early 2020 when upon the Menedék Association's request the room was re-opened, and thus children could again play with the toys stored in there. The internet room became accessible again in both reception facilities. In spring 2021, there an initiative aiming at providing Hungarian classes was proposed, but due to lack of interest on behalf of the residents it was not realized. The activities in Fót also lack frequency and are organized on an *ad hoc* basis.

The **Menedék Association for Migrants** similarly to the previous year, continued its activity in **Vámosszabadi** in 2020, providing regular individual support, information provision, legal counselling (information on the rights and obligations, furthermore on rules of employment, accommodation etc.) and organized community programs for the residents. Their community programmes covered a wide range of

<sup>349</sup> EASO, *Description of the Hungarian asylum system*, May 2015, available at: <https://bit.ly/2GS9E4H>, 10.

<sup>350</sup> Section 3(1a) of Decree 52/2007.

<sup>351</sup> Information provided by NDGAP on 7 February 2022.

activities from children and sport programmes to cultural activities. The organisation was also present in **Balassagyarmat** at the beginning of the year 2020, providing programs aimed at easing the distress of the residents caused by the long detention conditions in the transit zones or in asylum detention centre. The organisation continued its activities online during the lockdown introduced in March 2020. Since then due to the low number of residents in the community shelter, it suspended its activities there. Between January and September 2021, due to the pandemic and the low number of residents, the Menedék Association kept in contact with the families living in Vámoszabadi and Balassagyarmat exclusively online. Once a family left the camps, the organization developed an active relationship with them. From September until November 2021, they were present in the reception facilities on a weekly basis and organized orientation discussions and community activities. The organization has also been present in **Fót**. They offered activities to unaccompanied children, such as art and craft programmes, Hungarian language class, psycho-social support, table tennis, board games or cinema visits. During the lockdown periods the Menedék Association provided the services online three times a week and through other telecommunication means. In 2021, the organization visited the children home twice a week. Their activities aimed at assistance with school integration, information provision, orientation and the establishment of a sense of security for the children.

The **Jesuit Refugee Service** has been also present in **Fót** since autumn 2019. In 2020 and 2021 the organisation offered programs for the children on a weekly basis.

The **Hungarian Red Cross** has been present in **Vámoszabadi**, **Balassagyarmat** and **Fót** on a regular basis. It provided psychosocial services, distributed donations, helped to restore family links and organized group and creative activities.<sup>352</sup> The Lutheran and the Reformed Church visited the asylum seekers regularly and organised outdoor activities for the families. Menedék Association reported that the community shelter in **Balassagyarmat** was visited by a Lutheran pastor in 2020. Reportedly, in 2021 the pastor did not have an entry permission. In 2021, the Hungarian Red Cross distributed donations among the residents of the reception facilities.

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

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?  
☒ Yes, with restrictions ☐ No

Asylum seekers have the right to work after 9 months have passed since the start of their procedure in accordance with the general rules applicable to foreigners.<sup>353</sup> In this case, the employer has to request a work permit – valid for 1 year and renewable – from the local employment office. Asylum seekers can only apply for jobs which are not taken by Hungarians or nationals of the European Economic Area. As per the experience of HHC and the account of the Menedék Association, in practice employers are not willing to offer a job to people under asylum procedure, who only have a humanitarian residence permit with a 2-3-month-long definite time of validity.<sup>354</sup> The HHC is aware of a case in which an asylum-seeker sought employment in 2021, but failed to find one due to the employers' unwillingness to hire him.

<sup>352</sup> See: <https://bit.ly/3rn8bKH>.

<sup>353</sup> Section 5(1)(c) Asylum Act.

<sup>354</sup> i.e. the humanitarian residence permit is prolonged every 2-3 months with further 2-3 months.



According to the Asylum Act,<sup>355</sup> asylum seekers are also able to undertake employment in the premises of the reception centre, without obtaining a work permit. However, HHC is not aware of any such example from the last years. In times of state of crisis due to mass migration, asylum seekers who had stayed in the transit zones prior to 21 May 2020 had no access to the labour market at all.<sup>356</sup>

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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.<sup>357</sup> Consequently, asylum-seeking children above the age of 16 may not be offered the possibility to attend school, until they receive a protection status. In practice, this depends on the availability of places in schools accepting migrant children and the willingness of guardians and the Children's Home staff to ensure the speedy enrolment of children.

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

Unaccompanied children in **Fót** attend elementary and secondary school in Budapest. Children in the Károlyi István Children's Home find it hard to enrol in formal education for a number of reasons, such as the delays in providing them with documents (such as an ID card) and the lack of available capacity in the few schools, which accept unaccompanied minors. Children therefore need the support of NGOs so that they can successfully fulfil the obligations imposed by the school. In the last years the Menedék Association in cooperation with the legal guardians, provided them the necessary help in this regard. The COVID-19 pandemic exposed the older unaccompanied children in Fót with new challenges regarding education. Home schooling proved to be quite burdensome as there were not enough computers and web cameras available for them. In 2021, due to the Embassy procedure, enrolment of unaccompanied children was further delayed by 2-3 months since children are eligible for education only once they are registered as asylum seekers. Even though they are placed in Fót by virtue of a 'temporary placement decision', the statement of intent to lodge an asylum application in Hungary must be submitted in one of

<sup>355</sup> Section 5(1)(c) Asylum Act.

<sup>356</sup> Section 80/J (4) Asylum Act.

<sup>357</sup> Section 45(3) Act CXC of 2011 on public education.



the designated embassies. In practice, this can be done by the legal guardian of the unaccompanied minor; besides the designated embassies, the submission can also be made in Subotica (Szabadka), closer to Hungary than Belgrade.

Upon the closure of the transit zones in May 2020, children who were placed with their families in **Vámosszabadi** enrolled in a local school in Győr, even though education was not integrated. In 2020, education programmes were organised as follows: schoolteacher visited the camp once a week, children attended the local school in Győr twice per week, while on the remaining days the social worker of the NDGAP assisted them with teaching. Due to the outbreak of the COVID-19 pandemic though, 2020 was dominated by home schooling as of March, thus the schoolteacher visited them in the reception centre. According to Menedék Association, in the first half of 2021, a good relationship was established between two local schools and the reception facility. The educational district was cooperative in providing children in Vámosszabadi with community education. Even in the case of a child who did not have permission to stay longer than 3-months and as such, was not officially eligible for formal education-, the school accepted to enrol him in school. In addition, there is an educational institution run by retired teachers in Győr. Children could attend preparatory classes in the mornings and afternoons and had classes together with other children two-three times a week. In the remaining two days of the week, social workers assisted the children with studying in the reception facility, with the aim of preparing them for the school year starting in September. According to Menedék Association, even at times of home schooling due to COVID-19, children were given classes in person. This type of training schedule lasted until refugee children arrived in Vámosszabadi in 2021 (note that refugee children rescued by the Hungarian Defense Forces were not entitled to access education, since they did not fall under asylum procedure during their stay in the reception facilities. For more details, see Chapter on [Differential treatment of specific nationalities in reception](#)).

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

Education opportunities and vocational training for adults is only offered once they have a protection status under the same conditions as Hungarian citizens. In practice, asylum seekers can sometimes attend Hungarian language classes offered by NGOs for free of charge. As opposed to the years of 2019 and 2020, when the Menedék Association with the help of volunteers provided Hungarian language classes to the residents in **Vámosszabadi**, as well as in **Győr**, in 2021 they held programs for different age groups and familiarized them with the Hungarian alphabet and numbers (latter exclusively for children). In **Balassagyarmat** there was no Hungarian language class provided in the last years to asylum seekers.

On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it recommended that all asylum-seeking children should have access to meaningful education.<sup>358</sup>

## 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

<sup>358</sup>

CRC, Concluding observations, 10 February 2020, available at: <https://bit.ly/3op1QK0>.

Access to health care is provided for asylum seekers as part of the reception conditions.<sup>359</sup> It covers essential medical services and corresponds to free medical services provided to legally residing third-country nationals.<sup>360</sup> Asylum seekers have a right to examinations and treatment by general practitioners, but all specialised treatment conducted in polyclinics and hospitals is free only in case of emergency and upon referral by a general practitioner.

According to 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.*”<sup>361</sup>

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**, a Budapest based NGO, is the only organisation with the necessary expertise and experience and being specialized in providing psychological assistance to torture survivors and traumatised asylum seekers. Their capacity is constrained and every year the question arises whether it will continue to provide these much-needed services, as its activities are funded on a project-by-project basis and not under the framework of a regular service provider contracted by the NDGAP. The therapeutic activities of the Foundation include verbal and non-verbal, individual, family and group therapies, and psychological and social counselling.

In contrast to the previous years, in 2020 due to the COVID-19 pandemic the Cordelia Foundation had no access to the reception facilities between mid-March and end of June and in November and December 2020. In the rest of the year, the Foundation similarly to the previous years, would have the capacity for regular visits on fortnightly basis, nonetheless, as a result of the low number of asylum seekers (and beneficiaries of international protection), the regularity of the visits of psychiatrists and psychologists was hectic throughout the year 2020. The Foundation was in contact with the management of the reception facilities in **Vámosszabadi**, **Balassagyarmat** and **Fót**, as well as with UNHCR and upon request arrived to the centres. There was a short period in September and October 2020, when the psychologist of the Foundation was present in Fót once in a fortnight. In 2021, the psychologists and psychiatrists of Cordelia visited Balassagyarmat, Vámosszabadi and Fót on a weekly-fortnightly basis unless the reception facilities were under lockdown due to the COVID-19 pandemic.

The Foundation also plays a key role in the lives of asylum seekers and beneficiaries of international protection (and of those migrants who have a “refugee story”, for instance students from Syria) who are residing in **Budapest**. In 2020, four psychiatrists, two psychologists and one art therapist of Cordelia assisted 46 persons in person. In the same year, due to the COVID-19 pandemic the organization also provided online therapy to 26 people. In 2021, four psychiatrists, two psychologists and two intercultural mediators provided psycho-social assistance to a total of 179 people in the reception centres, asylum detention and Budapest.

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

According to the NDGAP,<sup>362</sup> child asylum seekers have regular access to a paediatrician in **Vámosszabadi**, and since 15 June 2020, there has been one general practitioner available for adults. Depending on the number of residents, medical services were provided twice or once a week or as needed.<sup>363</sup> Previously, in case of medical complaints, asylum seekers had been taken to the doctor outside of the camp. Menedék Association reported that a nurse visited the facility on a daily basis, and there was an Arabic social worker who assisted with the translation. However, as to residents with other mother tongue (Dari, Farsi, Krudish), similar to previous years, the access to effective medical assistance

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<sup>359</sup> Section 26 Asylum Act.

<sup>360</sup> A detailed list is provided under Section 26 Asylum Decree.

<sup>361</sup> Section 34 Asylum Decree.

<sup>362</sup> Information provided by the NDGAP on 2 March 2021 and on 7 February 2022.

<sup>363</sup> Information provided by the NDGAP on 7 February 2022.

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

A nurse visited **Balassagyarmat** on a daily basis and was present four hours a day.<sup>364</sup> However, reportedly, there was no interpreter available. Asylum seekers were provided with specialized and general medical care by the local health care services in town.<sup>365</sup> Menedék Association also reported that in 2021, the ambulance service was occasionally hindered due to the pandemic restrictions. As a solution, residents in need of urgent medical assistance were transferred to nearby hospitals by taxi or private vehicles of the reception centres' staff.

In case of unaccompanied asylum-seeking children, access to health care services is seriously delayed due to the [Embassy procedure](#). Even though the submission of the statement of intent at the Hungarian Embassies in Kyiv or Belgrade can be realised by the legal guardian of the unaccompanied minor, children are often not registered as asylum seekers for months. Although the Health Insurance Act providing for the health care of children temporarily placed in Fót, the health service providers are unaware of the applicable type of billing, due to a legislation gap in the executive decree.<sup>366</sup> Thus, health care is provided only on the condition that the childcare facility reimburses the costs.<sup>367</sup> There are many children who have serious health problems, had an accident (e.g. fell from the Serbian-Hungarian border fence) or were subject to police violence. These children initially received emergency health care. However, their access to subsequent necessary health treatments is hindered by the fact that Fót is reluctant to reimburse the costs.

The 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.<sup>368</sup> 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 former IAO in 2016, asylum seekers can be registered with the number of their humanitarian residency card and have to be treated in accordance with the law, although not all health centres are aware of this information. The Menedék Association and the legal officers of HHC often provide asylum seekers with the necessary written explanation (written in Hungarian) that the patients can take with themselves to the check-ups, thus avoiding any misunderstanding and complications. Eventually, the social workers of Menedék Association even give a call to the doctor and explain the legal eligibility of the asylum-seeker on the phone.

There was no asylum seeker residing in reception facilities infected by the SARS-CoV-2 virus in 2020 and 2021.<sup>369</sup> Initially in 2020, according to the vaccination strategy,<sup>370</sup> Hungarian citizens (above the age of 18) in possession of a valid health insurance card were eligible for the vaccine. There was no publicly available information on the vaccination of asylum seekers. Since the vaccination against COVID-19 is not mandatory, pursuant to the Asylum Decree the asylum authority has no obligation for its provision to asylum seekers. In the absence of publicly available information, the Menedék Association requested information about the vaccination possibility for foreigners not in possession of a health insurance number. For them, vaccination was opened in the second half of June, as reported by the competent state body. Currently, anyone under Hungary's jurisdiction is entitled to access the COVID-19 vaccination.

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<sup>364</sup> Information provided by the NDGAP on 7 February 2022.

<sup>365</sup> Information provided by the NDGAP on 7 February 2022.

<sup>366</sup> Section 22(1)(m) of the Act CXXII of 2019 on Health Insurance.

<sup>367</sup> Note that emergency health care is ensured in all cases.

<sup>368</sup> Section 27(2) Asylum Decree.

<sup>369</sup> Information provided by the NDGAP on 2 March 2021 and on 7 February 2022.

<sup>370</sup> Available only in Hungarian: <https://bit.ly/39xjmHu>.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

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

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

Furthermore, the Asylum Act provides that in case of persons requiring special treatment, due consideration shall be given to their specific needs.<sup>371</sup> 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.<sup>372</sup> As cited by the EUAA in its Asylum Report 2021, the UN Committee on the Rights of the Child (CRC) recommended Hungary to establish mechanisms to identify child soldiers so that they can be provided physical and psychological support.<sup>373</sup>

It is the duty of the NDGAP to ascertain whether the rules applying to vulnerable asylum seekers are applicable to the individual circumstances of the asylum seeker. In case of doubt, the NDGAP might request expert assistance by a doctor or a psychologist.<sup>374</sup> There is no protocol for the identification of vulnerable asylum seekers upon reception therefore, it depends on the personal judgment of the actual asylum officer whether the special needs of a particular asylum seeker are identified at the beginning or in the course of the procedure at all (see [Identification](#)). Until 21 May 2020, in the transit zone regime even obvious and visible vulnerabilities, such as pregnancy, old age, being an unaccompanied minor or disability were absolutely disregarded and only in exceptional cases were the applicants transferred to reception centres from the confinement and dire conditions the transit zones entailed.

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

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

Unaccompanied asylum-seeking children are placed in special homes in **Fót**, designated specifically for unaccompanied children, where social and psychological services are available.<sup>375</sup> However, it is the responsibility of the authorities to conduct an age assessment, and often their level of expertise is dubious at best (see section on [Identification](#)). If the assessment mistakenly establishes that the person is an adult it renders the person incapable to receive all the services that a child would need. In 2017, the HHC

<sup>371</sup> Section 4(3) Asylum Act.

<sup>372</sup> Section 34 Asylum Decree.

<sup>373</sup> EUAA, EASO Asylum Report 2021, Annual Report on the Situation of Asylum in the European Union, <https://bit.ly/3H4FRCr>, 257.

<sup>374</sup> Section 3(1)(2) Asylum Decree.

<sup>375</sup> HHC, *Best Interest Out of Sight - The Treatment of Asylum-Seeking Children in Hungary*, 17 May 2017, available at: <https://bit.ly/2KwW6A4>.

published its report “*Best Interest Out of Sight - The Treatment of Asylum-Seeking Children in Hungary*”, detailing the problems child asylum seekers face in this regard.<sup>376</sup>

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. An exceptional guarantee for transgender asylum seekers set out by the law is that if the gender identity of the asylum seeker is different from their registered gender, this must be considered upon providing them with accommodation at the reception centre.<sup>377</sup>

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

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information

Asylum seekers are informed of their rights and obligations pursuant to Section 17(3) of the Asylum Decree. After the submission of the asylum application, the NDGAP shall inform the person seeking asylum in writing in 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. Since 2019 the written information on reception conditions has been available in Hungarian, English, Arabic and Farsi in **Vámosszabadi**.<sup>378</sup>

On the COVID-19 pandemic, NGOs such as the Menedék Association, HHC and the Next Step Hungary Association made relevant information available for asylum seekers online.<sup>379</sup>

### 2. Access to reception centres by third parties

#### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

☐ Yes

☒ With limitations

☐ No

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

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

<sup>376</sup> *Ibid.*

<sup>377</sup> Section 22 Asylum Decree.

<sup>378</sup> Reported by the Menedék Association since 2020.

<sup>379</sup> HHC: <https://bit.ly/3JgpkvP>, <https://bit.ly/3B8LfIS>, <https://bit.ly/34ixXHv>, Next Step Hungary Association: <https://bit.ly/3LgZIWS>; Menedék Association: <https://bit.ly/3guzc8C>, <https://bit.ly/3B7Lr4H>.

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

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

As a result of preventive measures introduced due to the COVID-19 pandemic in 2020, access of private persons (such as family members) is suspended. Since 2020, entrance to reception centres has been possible only in gloves and wearing a mask, having had body temperature controlled, COVID-19 symptom checklist filled out and hands disinfected. Furthermore, social distance was to be maintained. NDGAP further informed that the reception centre premises are regularly disinfected and several disinfectant soaps were distributed among the residents.<sup>380</sup> Between mid-March and end of June, as well as since November 2020 NGOs have been denied access due to pandemic measures. In 2021, according to the Menedék Association, between January and July, as well as since November visits were suspended.

## G. Differential treatment of specific nationalities in reception

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

Following the Taliban take-over of Afghanistan in August 2021, almost 500 former NATO co-workers and their families were flown to Hungary in the rescue operation. The families were first quarantined for 10 days in the former transit zones at Röszke and Tompa, at the Hungarian-Serbia border.<sup>381</sup> The HHC established contacts with several families at both premises during their quarantine, in order to provide legal information and answers to their questions. After the quarantine the families were relocated to the remaining two reception facilities in Vámosszabadi and Balassagyarmat.

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

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

The rescued Afghans received donations from the Hungarian Red Cross and many private individuals, as well as the U.S. Embassy in Budapest, equipping them for basic necessities, primarily with winter clothes. A group of volunteers organized a special winter clothes donation in both premises and paid regular visits

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<sup>380</sup> Information by the NDGAP on 7 February 2022.

<sup>381</sup> Information by the NDGAP on 7 February 2022.



to both Balassagyarmat and Vámosszabadi. In early September, the HHC attorneys noted complaints about the Wi-Fi connection both in Balassagyarmat and in Vámosszabadi (only plug-in cable internet was available), which made it hard for the evacuees to keep contact with family members stuck in Afghanistan.

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

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

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

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

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2021:	2
❖ Asylum detention	2
❖ Transit zones	closed
2. Number of asylum seekers in detention at the end of 2021:	0
❖ Asylum detention	0
❖ Transit zones	(closed)
3. Number of detention centres:	1
❖ Asylum detention centres	1
❖ Transit zones	(closed)
4. Total capacity of detention centres:	
❖ Asylum detention centres	105
❖ Transit zones	700 (closed)

Until 21 May 2020, detention was a frequent practice rather than an exceptional measure in Hungary, although most of asylum seekers were detained in the transit zones and not in officially recognized places of deprivation of liberty – asylum detention centres.<sup>382</sup> 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.<sup>383</sup> In 2019 and 2020, 40 and 22 asylum seekers respectively were placed in asylum detention facilities.<sup>384</sup> According to the NDGAP, in the case of 9 asylum seekers a prioritized procedure was conducted in 2020.<sup>385</sup> In 2021, 2 asylum seekers were detained and prioritized procedure was conducted in their cases.<sup>386</sup> 23 people were detained during the Dublin procedure (Section 31/A(1) Asylum Act),<sup>387</sup> but they were not asylum applicants in Hungary.

Asylum detention of asylum seekers: 2015-2021			
	Asylum applicants detained	Total asylum applicants <sup>388</sup>	Percentage
2015	2,393	177,135	1.35%
2016	2,621	29,432	8.9%
2017	391	3,397	11.5%
2018	7	670	1%
2019	40	468	8.5%
2020	22	117	18.8%
2021	2	39	5.1%

Source: former IAO and NDGAP.

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

In 2019, the vast majority of asylum seekers (433) were detained in the transit zones. Taken together, the number of applicants (together with the number of subsequent applicants) detained in transit zones and asylum detention made up 93.6% of the total number of asylum seekers. With the closure of the transit zone on 21 May 2020, the number of detained asylum seekers has decreased compared to the previous years and only 18.8 % of asylum seekers were deprived of their liberty that year. In 2021 there

<sup>382</sup> HHC, Statistical Brief Series on formal detention orders vs placement in the transit zones, 3 February 2019, available at: <https://bit.ly/2lbFvNw>.

<sup>383</sup> Information provided by former IAO, 12 February 2019.

<sup>384</sup> Information provided by NDGAP on 3 February 2020 and 2 March 2021.

<sup>385</sup> In accordance with Section 35/A of Asylum Act as provided by the NDGAP on 2 March 2021.

<sup>386</sup> Information provided by NDGAP on 7 February 2022.

<sup>387</sup> Information provided by NDGAP on 7 February 2022.

<sup>388</sup> It covers first-time and subsequent applicants together.

were 2 asylum seekers detained out of 39 asylum-seekers, thus detainees only accounted for 5,1% of all applicants.

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

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

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

On 14 March 2017, the ECtHR issued a long-awaited judgment in the HHC-represented *Ilias and Ahmed v. Hungary* case. The Court confirmed its established jurisprudence that confinement in the transit zones in Hungary amounted to unlawful detention and established the violation of Article 5(1), a violation of Article 5(4) and a violation of Article 13 in conjunction with Article 3 of the Convention due to the lack of effective remedy to complain about the conditions of detention in the transit zone. The government appealed against the judgment and the Grand Chamber of the ECtHR<sup>389</sup> did not agree with the Chamber's unanimous decision concerning the nature of the placement in the transit zone and ruled that the applicants were not deprived of their liberty within the meaning of Article 5.

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

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

On 17 December 2020 the CJEU issued a judgement in the infringement procedure case C-808/18 and ruled that Hungary by unlawfully detaining applicants for international protection in transit zones constitute infringements of EU law.<sup>390</sup>

The HHC is of the opinion that the above CJEU judgment, the UN WGAD opinion and all the reports, statements, concluding observations and recommendations of various bodies, institutions, organisations and special procedures of both the Council of Europe and of the United Nations, show the existence of a "broad consensus" on the fact that placement in the transit zones in Hungary constitutes deprivation of liberty,<sup>391</sup> which should be taken into account by the ECtHR when ruling on the pending cases concerning the transit zones.

On 2 March 2021, the ECtHR ruled in its judgment in *R.R. and others v. Hungary* (appl. no. [36037/17](#)) that the confinement of an Iranian-Afghan family, including three minor children, to the Röszke transit zone constituted unlawful detention in violation of Article 5 and inhuman and degrading treatment in violation of Article 3 of the Convention. Moreover, it considered that the applicants did not have avenue

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<sup>389</sup> ECtHR (Grand Chamber), *Ilias and Ahmed v. Hungary*, Application no. 47287/15, 21 November 2019.

<sup>390</sup> CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, *European Commission v Hungary*, C-808/18, 17 December 2020, ECLI:EU:C:2020:1029.

<sup>391</sup> HHC, Placement in transit zones is a form of deprivation of liberty, Development of a broad consensus by international organisations that qualifies placement in the transit zones of Hungary as deprivation of liberty, after the legal amendments of March 2017, Information Update, 6 August 2020, <https://bit.ly/3omV7QW>.

in which the lawfulness of their detention could have been decided promptly by a court, thereby violating Article 5(4) ECHR.

In 2020, a total of 37 asylum seekers were placed and *de facto* detained in the transit zones. The transit zones served as detention places for a further 52 third-country nationals under the alien policing procedure.<sup>392</sup> However, the number of asylum seekers and persons under alien policing procedure *de facto* detained in the transit zones in 2020 far exceeded these numbers since there had already been 433 people placed in Röszke and Tompa in 2019 whose asylum and alien policing procedure still lasted in 2020 (see [AIDA report 2019](#)).<sup>393</sup> At the time of the closure of the transit zones around 300 people were released and placed either to Vámosszabadi or Balassagyarmat (except for 1 person under alien policing procedure who was further detained). In 2021, only rescued Afghans were placed in the transit-zones during the quarantine time due to COVID-19.

The new asylum system introduced on 26 May 2020 (see section on [Embassy procedure](#)) foresees that persons arriving in Hungary with a single-entry permit in order to apply for asylum can be placed in a closed facility for 4 weeks following the registration of their asylum application, without any available legal remedy to challenge the placement.<sup>394</sup> However, so far none of the applicants allowed to enter Hungary after submitting their statement of intent at the Embassy was detained.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |   |                                     |  |
|---|-------------------------------------|--|
| 1. In practice, are most asylum seekers detained                        |                                     |  |
| ❖ on the territory:   | <input type="checkbox"/> Yes        | <input checked="" type="checkbox"/> No     |
| ❖ at the border:  | <input type="checkbox"/> Yes        | <input checked="" type="checkbox"/> No     |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely |
|   |                                     | <input type="checkbox"/> Never             |
| 3. Are asylum seekers detained during a regular procedure in practice?  | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely |
|   |                                     | <input type="checkbox"/> Never             |

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

- (a) To establish his or her identity or nationality;
- (b) Where a procedure is on-going for the expulsion of a person seeking recognition and it can be proven on the basis of objective criteria – inclusive of the fact that the applicant has had the opportunity beforehand to submit an application of asylum – or there is a well-founded reason to presume that the person seeking recognition is applying for asylum exclusively to delay or frustrate the performance of the expulsion;
- (c) In order to establish the required data for conducting the procedure and where these facts or circumstances cannot be established in the absence of detention, in particular when there is a risk of absconding by the applicant;
- (d) To protect national security or public order;
- (e) Where the application has been submitted in an airport procedure;
- (f) Where it is necessary to carry out a Dublin transfer and there is a serious risk of absconding; or
- (g) In order to decide on the applicant's right to enter the country.<sup>395</sup>

<sup>392</sup> According to the information provided by the NDGAP on 2 March 2021, there were 38 people detained in Röszke and 14 in Tompa based on Section 62(3a) of TCN Act.

<sup>393</sup> p. 84.

<sup>394</sup> Section 270(5) of the Transitional Act.

<sup>395</sup> The new ground entered into force on 14 May 2021.

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

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

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

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

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

## 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;<sup>396</sup>
- (b) Designated place of stay;<sup>397</sup> and
- (c) Periodic reporting obligations.<sup>398</sup>

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.<sup>399</sup> 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.

<sup>396</sup> Sections 2(lc) 31/H Asylum Act.

<sup>397</sup> Section 2(lb) Asylum Act.

<sup>398</sup> Section 2(la) Asylum Act.

<sup>399</sup> HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 6-7.

Alternatives were applied as follows between 2016 and 2020 (the NDGAP did not provide the requested data for 2021 claiming that it has no relevant statistics<sup>400</sup>):

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

Source: former IAO and NDGAP.

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

- 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
- 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.<sup>401</sup> While asylum detention was still widely used, despite that clear ban, unaccompanied children had been detained due to incorrect age assessment,<sup>402</sup> as the age assessment methods employed by the police and NDGAP are considerably problematic (see section on [Identification](#) above). For example, CPT found during its visit one unaccompanied minor who was detained for 4 days.<sup>403</sup>

From 28 March 2017 until 21 May 2020, all unaccompanied children above age of 14 were *de facto* detained in the transit zones for the whole duration of asylum procedure. According to the statistics of the former IAO there were 91 unaccompanied children detained in the transit zones in 2017.<sup>404</sup> On 31 December 2018, there was only one unaccompanied asylum-seeking child who was placed in **Tompa**. In November and December 2018, no unaccompanied asylum-seeking child applied for asylum, according to the authorities.<sup>405</sup> At the end of December 2019, there was only one unaccompanied asylum-seeking child staying in Röszke. Throughout the year, there were a total of 10 unaccompanied minors seeking asylum in Hungary in 2019. Out of the 10 children, 2 were between 16-17 years old placed in the transit zones, the others were less than 14 years old, therefore they were placed out of the transit zones, in Fót. The HHC is aware of 6 unaccompanied minors who applied for asylum in 2019 and were placed in the transit zone, however, some of them have other asylum seekers for guardians and therefore do not figure as UAMs in the official statistics, although their cases are run separately from their guardians. In 2020, there were no unaccompanied minors detained in the transit zones (there were only two unaccompanied minor asylum seekers who submitted their applications in March 2020 but were under the age of 14,

<sup>400</sup> Information provided by the NDGAP on 7 February 2022.

<sup>401</sup> Section 56 TCN Act; Section 31/B(2) Asylum Act.

<sup>402</sup> HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 12.

<sup>403</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 60.

<sup>404</sup> Information provided by former IAO, 12 February 2018.

<sup>405</sup> Information provided by former IAO, 12 February 2019.



therefore they were placed in Fót).<sup>406</sup> In 2021, due to the closure of the transit zones, no asylum seeker was detained in such locations.

Moreover, no other categories of vulnerable asylum seekers are excluded from detention. The detention of families has been criticised as discriminating between children based on their family status contrary to Article 2(2) of the UN Convention on the Rights of the Child, and according to the Hungarian Parliamentary Commissioner for Fundamental Rights.<sup>407</sup> No families were detained in 2021. Conversely, there was one person with vulnerability in asylum detention that year.<sup>408</sup>

However, asylum detention must be terminated if the asylum seeker requires extended hospitalisation for health reasons.<sup>409</sup> However, this is not always respected in practice and the HHC represented an asylum seeker who was detained despite a serious health condition.

In 2016, there were 54 families detained for an average time of 24 days.<sup>410</sup> There were 36 families including children kept in asylum detention for an average time of 22 days. According to the statistics of the former IAO, in 2017, 24 children with their families were kept in detention for an average time of 22 days.<sup>411</sup> In 2018, 2019, 2020 and 2021 there was no child in asylum detention.<sup>412</sup>

From 28 March 2017 until 21 May 2020, most of asylum-seeking families were *de facto* detained in the transit zones.

### 3.2. Vulnerable applicants in transit zones

Detention of vulnerable applicants in the transit zone was strongly criticized by the UN bodies, European Commission, ECRI, Lanzarote Committee, GRETA and Council of Europe (see previous AIDA reports).<sup>413</sup>

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.<sup>414</sup> 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

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<sup>406</sup> Information provided by NDGAP on 2 March 2021.

<sup>407</sup> Commissioner for Fundamental Rights, *Report in Case No. AJB 4019/2012*, June 2012, available at: <http://bit.ly/1JKiBZN>.

<sup>408</sup> Information provided by NDGAP on 7 February 2022.

<sup>409</sup> Section 31/A(8)(d) Asylum Act.

<sup>410</sup> Information provided by former IAO, 20 January 2017.

<sup>411</sup> Information provided by former IAO, 12 February 2018.

<sup>412</sup> Information provided by former IAO, 12 February 2019, as well as by NDGAP on 3 February 2020, 2 March 2021 and 7 February 2022.

<sup>413</sup> See among others: Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, available at: <https://bit.ly/2TWDzWu>; ECRI, *Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up*, CRI(2018)24, 15 May 2018, available at: <https://bit.ly/2lp1bsp>; HHC, *Safety Net Torn Apart – Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, available at: <https://bit.ly/3LV87sU>; CPT, *Report on the visit to Hungary from 20 to 26 October 2017*, CPT/Inf(2018) 42, 18 September 2018, available at: <https://bit.ly/2TTgsTq>; UN Office of the High Commissioner for Human Rights, Press briefing notes on Iran and Hungary, 3 May 2019, available at: <http://bit.ly/38h8pXr>; OHCHR, End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, 17 July 2019, <http://bit.ly/2tqOHcX>, the report can be found here: <https://bit.ly/3abY15V>; European Commission, Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones, 25 July 2019, <http://bit.ly/360DIeg>.

<sup>414</sup> HHC, *Government's new asylum bill on collective pushbacks and automatic detention*, 15 February 2017, available at: <http://bit.ly/2FhFYLg>.

respected.<sup>415</sup> In 2019 the HHC obtained 6 interim measures from the ECtHR, ordering Hungary to ensure adequate living conditions in the transit zones, compatible with the prohibition of torture and inhuman treatment for families with children. Unfortunately, the government refused to make the necessary substantial changes. The asylum authority finally released one family out of 6. In 2021 a case of unaccompanied Afghan minors detained in the transit zone was communicated by the ECtHR.<sup>416</sup> On 2 March 2021, the ECtHR issued a judgment in one of the 2017 interim measures cases mentioned above. The Court ruled that the confinement of an Iranian-Afghan family, including three minor children, to the Röszke transit zone constituted unlawful detention in violation of Article 5 and inhuman and degrading treatment in violation of Article 3 of the Convention. Moreover, it considered that the applicants did not have avenue in which the lawfulness of their detention could have been decided promptly by a court, thereby violating Article 5(4) ECHR.

The transit zones were closed on 21 May 2020.

#### 4. Duration of detention

##### Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):
 

❖ Asylum detention	8 months
❖ Transit zones	None (closed)
2. In practice, how long in average are asylum seekers detained?
 

❖ Asylum detention	43 days
❖ Transit zones	N/A (closed)

The maximum period of asylum detention is of 8 months. 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 2021, the average period of asylum detention was 43 days. According to the statistics of the NDGAP, there were no families with children placed in asylum detention.<sup>417</sup>

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

### C. Detention conditions

#### 1. Place of detention

##### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Since 2013, asylum seekers have been detained in asylum detention facilities.<sup>418</sup> As of March 2022, the only functioning asylum detention facility is **Nyírbátor**, with a capacity of 105 places.

<sup>415</sup> HHC, *The Immigration and asylum office continues to ignore court decisions and interim measures*, 14 December 2018, available at: <https://bit.ly/2BHVmP>.

<sup>416</sup> F.S. and A.S. v Hungary, Appl. no. 50872/18.

<sup>417</sup> Information provided by NDGAP on 2 March 2021 and on 7 February 2022.

<sup>418</sup> Section 31/F(1) Asylum Act and Sections 36/A-36/F Asylum Decree.

According to the law, asylum detention can be carried out in places designated for this purpose, or in a healthcare institution on an exceptional and duly justified basis, with the assistance of the body established for carrying out official police business.<sup>419</sup>

The two transit zones in **Röszke** and **Tompá** can accommodate 450 and 250 persons respectively. Due to the closure of the transit zones in May 2020, at the end of 2021 there were no asylum seekers detained there.<sup>420</sup>

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> 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.<sup>421</sup> 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<sup>3</sup> of air space and 5m<sup>2</sup> 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<sup>2</sup>, taking the number of family members into account.<sup>422</sup> In practice, asylum seekers' time outdoors is not restricted during the day. They are able to make telephone calls every day, but only if they can afford to purchase a phone card, as their mobile phones are taken away by the authorities on arrival.

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

Men must be detained separately from women, with the exception of spouses, and families with children are also to be separated from other detainees.<sup>423</sup>

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

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

"A considerable number of foreign nationals claimed that they had been subjected to physical ill treatment by police officers at the moment of apprehension, during transfer to a police establishment and/or during subsequent police questioning. It is of particular concern that some of these allegations were made by foreign nationals who claimed to be unaccompanied minors. In addition, a few allegations were received of physical ill-treatment by police officers and/or armed guards working in immigration or asylum detention facilities."<sup>424</sup>

<sup>419</sup> Section 32/1(1) Asylum Act.

<sup>420</sup> Information provided by the NDGAP on 2 March 2021.

<sup>421</sup> Section 31/F(2) Asylum Act.

<sup>422</sup> Section 36/D Asylum Decree.

<sup>423</sup> Section 31/F(2) Asylum Act.

<sup>424</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 16.

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.”<sup>425</sup>

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

### **Transit zones (prior to their closure in May 2020)**

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

The entire transit zone was surrounded by a razor-wire fence, and was patrolled by police officers and armed security guards; additionally, cameras were omnipresent, not allowing privacy to the residents. The prison nature of the transit zones was confirmed by reports published by, for instance, ECRI and CPT, which concluded that such an environment could not be considered adequate for the accommodation of asylum seekers, even less so where families and children were among them.<sup>426</sup>

Until September 2017, there were no proper educational activities organised for children while, according to the Government, school activities started in the community rooms of the sectors on 4 September 2017. In the Tompa transit zone institute teachers were provided by the Kiskőrös Educational District, whereas in the Röszke transit zone institute teachers were provide by the Szeged Educational District. For children between the age of 6 and 16 years, school attendance was obligatory (see [Access to Education](#)).

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

Meals were provided three times a day for adults and five times a day for children under fourteen. Catering was provided by the Szeged Strict- and Medium-Regime Prison. The food provided in a day must contain

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<sup>425</sup> *Ibid*, para 48.

<sup>426</sup> 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.

at least 10900 Kjoules of energy. However, asylum seekers whose claims were dismissed under the new inadmissibility ground entering into force in July 2018 were denied food in the transit zones. The former IAO only provided food after the ECtHR issued interim measures under Rule 39 of the Rules of the Court (see [Admissibility Procedure: Appeal](#)). The NDGAP did not provide food to adults in alien policing procedure held in the transit zone. The HHC obtained 12 interim measures under Rule 39 in such cases in 2019 and seven in 2020.

Asylum seekers could buy certain items via the social workers. A “shopping list” was compiled from which asylum-seekers could choose items to buy. Asylum seekers selected the items from the list, handed over the money, and when the items were bought, the social workers settled the accounts in writing.

Each sector had a TV. In the transit zones, free Wi-Fi was available and asylum-seekers could keep their mobile phones with them, but no public phones or computers were available. The asylum seekers reported of a very poor Wi-Fi connection, which only enabled them to send messages, not participate in calls. Those without personal mobile phone remained disconnected from the outside world.<sup>427</sup>

Summer 2017 was extremely hot (over 30 degrees during the day) and at that time, there were no ventilators in the containers.<sup>428</sup> Since August 2017, each room was equipped with a ventilator, and some shades and parasols were made available. Residents of the transit zones – who were often families with young children – still complained about the excessive heat over the summer, not enough parasols and also of bugs coming into the containers and biting them. Asylum seekers also reported that when they wanted to use bathroom facilities during winter, they had to walk from their containers to the bathroom containers through the very cold courtyard.<sup>429</sup>

Asylum seekers were escorted by several police officers anytime they wanted 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 were nevertheless escorted to a hospital by armed policemen as if they were criminals.

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

Due to the COVID-19 pandemic, as a preventive measure in the asylum detention centre of Nyírbátor, as well as in the transit zones the visitor rooms and offices for the purpose of personal interviews had been installed with a plexiglass wall.<sup>430</sup> In addition, the same preventive health safety measures on account of the COVID-19 pandemic are observed in asylum detention as in reception facilities (see above under [Access to reception centres by third parties](#)).<sup>431</sup>

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<sup>427</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017*, 18 September 2018.

<sup>428</sup> Reuters, ‘Hungary’s tough asylum policy keeps thousands stranded in Serbia’, 14 June 2017.

<sup>429</sup> As it can be seen in a video recording shot by asylum seekers staying in the transit zone besides children asking for release: <https://bit.ly/37fHm3U>.

<sup>430</sup> Information provided by the NDGAP on 2 March 2021 and by the HHC attorneys regarding the information concerning the transit zones.

<sup>431</sup> Information provided by NDGAP on 7 February 2022.



## 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 are 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.<sup>432</sup> 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 regular psychosocial support available in any of the detention centres. However, on a case by case basis, visits from Cordelia Foundation could be arranged. In 2021, the Foundation had 3 such visits. During consultation hours, interpretation is not provided in **Nyírbátor**. In the absence of regular, state-funded psychological counselling and regular mental healthcare, the tension deriving from the closed circumstances, lack of information and forced close contact of persons from different national, cultural and social backgrounds is not mitigated. Instances of self-harm, suicidal attempts or thoughts, as well as aggressive outbursts towards fellow detainees or guards were witnessed as regular during all monitoring visits in 2015. No updated information can be provided due to the fact that HHC is no longer allowed to monitor the situation in detention centres, but that does not mean that the conditions have necessarily improved.

### Transit zones (prior to their closure in May 2020)

Each transit zone had a medical unit capable of accommodating 10 persons. A general practitioner was available for 4 hours on workdays, whereas a children's doctor was available twice a week; in addition, a field surgeon was available in the transit zone every day, 24 hours a day. Where specialist care was needed, the person in need of such care was 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 had to be taken for a medical examination, 2 or 3 policemen escorted them to a nearby hospital. A pregnant woman reported that the policemen had stayed in the examining room during her pre-natal medical check.

No interpretation was provided during the medical examination, which made communication and building confidence between doctor and patient extremely difficult. In one of the pending ECtHR cases,<sup>433</sup> the Court's interim measure granted explicitly requested the Hungarian government to provide interpretation at the medical check-ups of the applicant. Despite this interim measure being granted, the Hungarian government responded that according to the regulation they are only obliged to guarantee the translation during the administrative procedures and not during the medical examinations. Lack of interpretation during consultations with doctors remained an issue in the transit zones in Hungary, as the UN Special Rapporteur on the human rights of migrants reiterated during his visit in July 2019 to the Hungarian transit zones at the southern border with Serbia. According to the UN Special Rapporteur, some asylum applicants reported cases where the doctor simply failed to provide a diagnosis due to communication barriers.<sup>434</sup>

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<sup>432</sup> Cordelia Foundation et al., *From Torture to Detention: Access of Torture Survivor and Traumatized Asylum-Seekers to Rights and Care in Detention, Hungary and Bulgaria*, January 2016, available at: <https://bit.ly/2wnwOgs>.

<sup>433</sup> ECtHR, *R.R. v. Hungary*, Application No 36037/17.

<sup>434</sup> FRA, *Migration: Key fundamental rights concerns*, Quarterly bulletin 4, 2019, <http://bit.ly/30NBDe9>.



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

Since mid-November 2017, the former IAO and now NDGAP employed a clinical psychologist who spoke English and when an asylum seeker did not, a psychologist could request a translator. The psychologist visited both zones once a week. There were, however, reports of issues of interpretation and access.<sup>435</sup> The psychiatrist started to visit the transit zones on 24 January 2018. The visit took place once a week. However, people complained that psychosocial care was not adequate, in particular there was no specific psychological care provided for children, often the psychologist would only talk to the parents and not to the child. Due to organisational shortcomings, there were periods when no psychologist or psychiatrist were present for a month or two, until their contracts were renewed.

There were no asylum seekers in detention infected by the SARS-CoV-2 virus in 2020 and 2021.<sup>436</sup>

### 2.3. Conditions for vulnerable asylum seekers

#### Asylum detention

Under Section 31/F of the Asylum Act, detention must take into account special needs of the person concerned.<sup>437</sup>

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. An asylum seeker in 2021 was detained despite being in need of special medical treatment that was not available in detention.

There is no systematic training for those who order, uphold or carry out the detention of asylum seekers regarding the needs of victims of torture, rape or other serious acts of violence. It is therefore questionable to what extent the authority is capable to carry out the assessment of vulnerabilities and special needs in the framework of detention, given that no expert psychologists and doctors are employed to this end. The NDGAP may decide to use the assistance of external medical or psychological specialists. However, this is not a common or frequent practice.<sup>438</sup>

#### Transit zones (prior to their closure in May 2020)

The transit zones were unfit for accommodating people for a longer period of time and were unfit for accommodating people belonging to vulnerable groups for even a shorter period of time.<sup>439</sup> The conditions in the transit zones were dire and clearly did not meet international and EU law standards. Adequate care for vulnerable individuals was missing, similarly to systematic identification and support mechanisms for people with special needs.

Separate accommodation for vulnerable asylum seekers was missing. For example, single women and unaccompanied girls were usually held together in a sector with families (and therefore men and boys),

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<sup>435</sup> HHC, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, 7-14, in particular 11.

<sup>436</sup> Information provided by the NDGAP on 2 March 2021 and on 7 February 2022.

<sup>437</sup> Section 31/F(1) Asylum Act.

<sup>438</sup> Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016.

<sup>439</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017*, 18 September 2018.

and in general there were no private women-only places.<sup>440</sup> There was no adequate support provided for victims of domestic violence, victims of torture and traumatised asylum seekers. Special needs of LGBTI people were not taken into account. The transit zones were 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 was unable to use her limbs and was confined to a wheelchair. She was 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 submitted 15 requests for interim measures under Rule 39 of the Rules of Court of the European Court of Human Rights in order to obtain the release of vulnerable asylum seekers from the transit zones (14 families and one unaccompanied minor). All 15 interim measures were granted by the Court, and the Court requested the Hungarian government to place the applicants, as soon as possible, in conditions respecting Article 3 ECHR (see [Detention of Vulnerable Applicants](#)). In 2019, the HHC obtained 6 such interim measures.

On 2 March 2021, the ECtHR ruled in its judgment in *R.R. and others v. Hungary* that no individualised assessment of the special needs of the applicants was carried out by the Hungarian authorities. In view of, *inter alia*, the physical conditions of the containers in which the applicants were accommodated, the unsuitability of the facilities for children, the lack of professional psychological assistance and the duration of the stay in the transit zone, the Court found that the threshold of severity required to engage Article 3 had been reached, and Hungary had therefore violated the provision.

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

##### 1. Is access to detention centres allowed to

❖ Lawyers:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ NGOs:	<input type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input checked="" type="checkbox"/> No
❖ UNHCR:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ Family members:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

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

Politicians have access to asylum detention, but they need to ask for permission in advance. In practice, this rarely happens, since the interest is not very high. Media access is more limited. Media were let in the transit zones only on one occasion, soon after the opening of the transit zones, when a press conference was organised by the Ministry of Interior in **Tompa** transit zone on 6 April 2017, which was virtually emptied of its inhabitants for the time of the press conference.<sup>441</sup> On 8 October 2019, the ECtHR ruled that refusing a journalist access to report on living conditions in a reception centre for asylum seekers is a violation of freedom of expression.<sup>442</sup>

In asylum detention, no NGO is present on a regular basis. In 2020, the Hungarian Red Cross visited the facility two times and provided non-perishable food for the detainees.<sup>443</sup> In transit zones, the Charity Council,<sup>444</sup> which consists of six organisations, was the only organisation which was allowed to enter to

<sup>440</sup> HHC, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, 14.

<sup>441</sup> Hvg, 'Megnéztük a helyet, ahol Németh Szilárd szívesen lakott volna', 6 April 2017, available in Hungarian at: <http://bit.ly/2GwB9xu>; Abcúg, 'Szöges drótok pókhálójá szövi körbe a tranzitónában malmozó menedékkérőket', 7 April 2017, available in Hungarian at: <http://bit.ly/2EU8NA1>; Index.hu, 'Szöges drótok pókhálójá szövi körbe a tranzitónában malmozó menedékkérőket', 7 April 2017, available in Hungarian at: <http://bit.ly/2sPP8wz>.

<sup>442</sup> ECtHR, *Szurovecz v. Hungary*, Appl. no. 15428/16, 8 October 2019.

<sup>443</sup> Information provided by NDGAP on 2 March 2021.

<sup>444</sup> The six members of the national Charity Council are the following: Hungarian Red Cross, Maltese Charity Service, Hungarian Interchurch Aid, Caritas Hungarica, Hungarian Reformed Church, Baptist Aid: <https://bit.ly/3jwdNx8>.

provide certain type of assistance to asylum seekers based on an agreement with the Hungarian authorities: Red Cross distributed donations; The Hungarian Interchurch Aid distributed donations, held children programmes and helped in conflict management; The Hungarian Reformed Charity Service distributed donations, organised community programmes and, in case of need, religious programmes; the personnel of the Migration Medical Health Service of the Hungarian-Maltese Charity Service operated a lung-screening bus for the medical screening of asylum seekers' lungs. In 2018, the Hungarian Interchurch Aid, the Hungarian Reformed Church and Caritas no longer regularly visited the transit zones. According to the NDGAP, in 2019 and 2020 the Hungarian Reformed Church, the Reformed Church of Békésszentandrás and the Hungarian Red Cross were regularly present in the transit zones (except for the months when access was hindered by the preventive restrictive measures introduced due to the COVID-19 pandemic).<sup>445</sup>

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.<sup>446</sup>

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

On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it found worrying that NGOs are excluded from consultation and cannot conduct activities in a free environment, including NGOs working on asylum and detention.<sup>447</sup>

As a result of preventive measures introduced due to the COVID-19 pandemic in 2020, access of private persons (such as family members) is suspended. Entrance for UNHCR or attorneys is possible only with gloves and wearing a mask, having had body temperature controlled, COVID-19 symptom checklist filled out and hands disinfected. Furthermore, social distance should be maintained. Donations are to be delivered at the entrance of the facilities without entrance.<sup>448</sup>

## 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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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.<sup>449</sup> The CPT confirmed this and made an explicit recommendation to the Hungarian government regarding this issue.<sup>450</sup>

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."<sup>451</sup> And that:

<sup>445</sup> Information provided by NDGAP on 3 February 2020 and 2 March 2021.

<sup>446</sup> UNWGAD, 'UN human rights experts suspend Hungary visit after access denied', 15 November 2018, available at: <https://bit.ly/2B7X5Pu>.

<sup>447</sup> CRC, Concluding observation on Hungary, 10 February 2020, available at: <https://bit.ly/3op1QK0>.

<sup>448</sup> Information provided by the NDGAP on 2 March 2021.

<sup>449</sup> Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016.

<sup>450</sup> 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.

<sup>451</sup> *Ibid*, para 59.

“[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.”<sup>452</sup>

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

In recent years, the effectiveness of judicial review has been criticised by the CoE Commissioner for Human Rights expressed concern as to the lack of effective judicial review,<sup>453</sup> UNHCR<sup>454</sup> and the UNWGDAD.<sup>455</sup>

### 1.1. Automatic judicial review

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

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

In January 2021, the HHC's client was placed in asylum detention and despite the request for a hearing and an obligation to hold a hearing in the first prolongation procedure, the Nyírbátor court refused to hear the applicant stating that due to COVID restrictions and the state of health this is not possible. According to the Asylum Act, the hearing during the first prolongation procedure can only be omitted only if a) the person seeking asylum is unfit or unable to be interviewed owing to being hospitalized, or b) the complaint or the motion does not originate with a party entitled to do so.<sup>456</sup> The applicant was not in a hospital and therefore not holding a hearing is clearly unlawful.

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<sup>452</sup> *Ibid*, para 62.

<sup>453</sup> 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>.

<sup>454</sup> UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <https://bit.ly/2Ts4hOs>.

<sup>455</sup> UN Working Group on Arbitrary Detention, *Hungary: UN experts concerned at overuse of detention and lack of effective legal assistance*, 2 October 2013, available at: <https://bit.ly/3akzkCA>.

<sup>456</sup> Asylum Act, Section 31/D (7).

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:<sup>457</sup>

Firstly, the proceeding courts systematically fail to carry out an individualised assessment regarding the necessity and proportionality of detention and rely merely on the statements and facts presented in the former IAO's detention order, despite clear requirements under EU and domestic law to apply detention as a measure of last resort, for the shortest possible time and only as long as the grounds for ordering detention are applicable.<sup>458</sup> 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).<sup>459</sup> The judges are only able to make their decisions on the basis of the unilateral information in the motions submitted by the NDGAP, because the documents supporting those motions are not submitted to the courts. Therefore, it is not really possible to have individualised decisions on each case, resulting in a formulaic nature of the courts' statements of reasons.

Moreover, 4 court decisions contained a date of birth which indicates an age lower than 18 years.<sup>460</sup> Nevertheless, none of the decisions questioned the lawfulness of detention of the persons concerned, nor did they refer to any age assessment process or evidence proving the adult age of the asylum seeker concerned.

According to a survey conducted by the Hungarian Supreme Court, out of some 5,000 decisions made in 2011 and 2012, only 3 discontinued immigration detention, while the rest simply prolonged detention without any specific justification.<sup>461</sup> 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 today.

The 60-day interval for automatic judicial review *per se* excludes the use of detention only for as short a period as possible and only until the grounds for detention are applicable, as it would be required by EU law.<sup>462</sup> 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

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<sup>457</sup> HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014.

<sup>458</sup> Articles 8(2) and 9(1) recast Reception Conditions Directive; Section 31/A(2) Asylum Act.

<sup>459</sup> 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.

<sup>460</sup> 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.

<sup>461</sup> Supreme Court, Advisory Opinion of the Hungarian Supreme Court adopted on 30 May 2013 and approved on 23 September 2013.

<sup>462</sup> Article 9(1) recast Reception Conditions Directive.

are overburdened, insufficiently qualified and not in a position to conduct an individualised assessment, nor able to verify whether or not detention was ordered as a “last resort”.

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

The Committee of Ministers of the Council of Europe did not close any of the Hungarian cases, where the judgment was delivered on the arbitrariness of detention of asylum seekers, as they are aware that Hungary did not implement any systemic changes.<sup>463</sup> In 2019, 7 cases concerning arbitrary detention of asylum seekers were communicated by the ECtHR.<sup>464</sup>

When an asylum seeker is detained based on being considered a risk to national security, the reasons for such classification are classified data to which the detainee or their representative does not have access (not even to the essence of it). The judge reviewing detention could have access to the classified data, but they never ask for it, therefore, such detention is often prolonged automatically, without any chance to effectively challenge it.

## 1.2. Objection

According to Section 31/C(3) of the Asylum Act, an asylum seeker may file an objection against the ordering of asylum detention and the denial of certain rights of detainees during detention e.g. right to use a phone, right to special diets etc. The amendments to the Asylum Act that entered into force in January 2018 prescribe that objections should be submitted within 3 days after the issuance of the detention order.<sup>465</sup> The objection must be decided upon by the local court within 8 days.<sup>466</sup> Based on the decision of the court, the omitted measure shall be carried out or the unlawful situation shall be terminated.<sup>467</sup>

In practice, however, the effectiveness of this remedy is highly questionable for a number of reasons. Firstly, an objection can only be submitted against the ordering of asylum detention (i.e. the decision of the NDGAP, ordering detention for 72 hours). Following the first 72 hours, asylum detention can only be upheld by the local District Court for a maximum period of 60 days. Thus, the legal ground for detention will not be the NDGAP’s decision, but that of the court. This means that only the first type of decision (that of the NDGAP) can be “objected” against. The objection can therefore still not be regarded as a stand-alone judicial remedy against the detention order, as following the 72-hour period asylum detention is subject to regular period review by the court, yet the period is too long (courts can prolong detention for a maximum of 60 days). Accordingly, the asylum seeker is left with no legal means to challenge the detention order at his or her own initiative (not only during the mandatory periodic judicial review).

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

Thirdly, there are also serious general concerns about the effectiveness of information provision upon issuing the detention order. The law provides for an interpreter that the asylum seeker can reasonably be

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<sup>463</sup> The two leading cases are *Nabil and Others v. Hungary*, Appl. No. 6116/12, 22 September 2015 and *Lokpo and Toure v. Hungary*, Appl. No. 10816/10, 20 September 2011.

<sup>464</sup> *Ahmed AYAD v. Hungary* and 4 other applications, Appl. Nos. 7077/15, 26250/15, 26819/15, 32038/15, 48139/16, <http://bit.ly/36bs0a2>; *S.B. v. Hungary*, Appl. No. 15977/17, <http://bit.ly/2uYkyC7> and *Dragon DSHIJRI v. Hungary*, Appl. No. 21325/16, <https://bit.ly/3r2vsl5>.

<sup>465</sup> Section 31/C(3) Asylum Act.

<sup>466</sup> Section 31/C(4) Asylum Act.

<sup>467</sup> Section 31/C(5) Asylum Act.



expected to understand. However, asylum seekers in asylum detention unanimously stated to HHC during its monitoring visits in the past that the information provision was more or less limited to the fact that a person is detained and the explanation about the specific grounds or other details, or appeal possibilities were not understood or not even provided.

### 1.3. No review of placement in transit zones

The NDGAP would issue a ruling (“végzés”) ordering the applicant’s place of residence in the transit zone based on Sections 80/J(5) and 5(2)(c) of the Asylum Act.<sup>468</sup> That would not be qualified as a detention order, as transit zones were not considered places of detention by the government. There was no possibility to seek legal remedy against the ruling, which could only be challenged within the potential judicial review request against the future decision of the NDGAP on the asylum application.

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

The HHC is also aware of cases where this type of remedy proved ineffective even in case of those who had a – successful – judicial review performed in relation to the former IAO’s ruling (as well as the in-merit decision) and who had to stay in the transit zone for the duration of the appeal. Although the Szeged Court found that the former IAO’s ruling on placement in the transit zone was unlawful and therefore annulled the ruling and ordered the former IAO to deliver a new ruling on the placement in the re-opened asylum procedure, the court had not carried out any assessment as to whether the plaintiff’s placement in the transit zone was appropriate and met the legal requirements under the recast Reception Conditions Directive and Article 3 ECHR. More importantly, since the court has no reformatory powers, it cannot issue a ruling that would remedy the asylum seeker’s situation to avoid future violations. Even in case of annulment, the former IAO still avoided compliance with the court’s order. The HHC is aware of several cases where despite the court ruling that placement in the transit zone was unlawful and ordering that asylum seekers should be placed in another open camp, the former IAO ignored the court’s decision and re-appointed the transit zone as a place of stay in the repeated procedure.<sup>469</sup>

In 2018, the Szeged Administrative and Labour Court annulled several transit zone placement decisions,<sup>470</sup> and the former IAO respected the court decisions and placed the applicants in the open community shelter in **Balassagyarmat**. The Szeged Court adopted a position that according to the Article 43(2) of the Asylum Procedures Directive, a placement in a transit zone at the border can last maximum 4 weeks and annulled all the placement orders that were appealed (appeal can only be made together with the appeal against a decision on the asylum case), where asylum seekers were held there for longer. Unfortunately, this practice lasted only until February 2019. From then on, the Metropolitan Court started to have exclusive jurisdiction to adjudicate the cases from the transit and Metropolitan Court did not adopt the same position on the legality of placement in the transit zone. The HHC attorneys were involved in more than 200 asylum cases at the Metropolitan court in 2019 and they are only aware of 5 interim measures ordering the release of asylum seekers from the transit zone, that were granted by three judges

<sup>468</sup> 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.”

<sup>469</sup> HHC, *The Immigration and asylum office continues to ignore court decisions and interim measures*, 14 December 2018.

<sup>470</sup> See e.g. District Court of Szeged, Decisions No 6.K.27.060/2018/8 and 44.K.33.689/2018/11.

all together. Families with small children were detained for extensive period of time in the transit zones and interim measures were categorically refused.

The HHC attorneys brought actions for omission to the Szeged Administrative and Labour Court, claiming that the NDGAP is in omission by not applying necessary detention related procedural safeguards to people detained in the transit zones. The Szeged Court granted an interim measure, ordering a release of a father and his 8 years old son, who have been detained in the transit zone for almost a year. The NDGAP did not execute the interim measure, but instead appealed to the Regional Court. The Upper Court annulled the interim measure, therefore the father and the son remained in the transit zone until its closure, for over a year. In the same case, the Szeged court requested preliminary reference that resulted in FMS judgment, ruling among others that the automatic and indefinite placement of asylum-seekers in the transit zones at the Hungarian-Serbian border qualifies as unlawful detention, which finally brought detention in the transit zones to an end.<sup>471</sup>

## 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 NDGAP (they sign a special form). Once this form is received by the NDGAP, the HHC lawyers can meet the client in a special room/container located outside the living sector of the detention centre/transit zone. This way the legal aid in the asylum detention and transit zones is seriously obstructed, as free legal advice does not reach everyone in the facility, but only those explicitly asking for it.

In autumn 2020, the HHC lawyer was denied access to Nyírbátor asylum detention centre due to COVID-related restrictions. The HHC wrote a letter to the head of the NDGAP's border guards department and after a while the access was granted again. As of February 2020, the HHC lawyer is again denied access to detention centre due to COVID-related restrictions.

In 2021, the HHC lawyers provided legal advice in 208 asylum cases. Most of the applicants had not been detained.

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

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

<sup>471</sup> CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság, 14 May 2020.

“[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.”<sup>472</sup>

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

### **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.

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<sup>472</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 55.

Since June 2016, the Hungarian state has completely withdrawn integration services provided to beneficiaries of international protection, thus leaving recognised refugees and beneficiaries of subsidiary protection to **destitution and homelessness**. Only non-governmental and church-based organisations provide services aimed at integration such as housing, language courses, assistance with finding employment, or with family reunification.<sup>473</sup> However, their capacities are seriously limited and cannot provide for all. Additionally, the COVID-19 pandemic further aggravated the already existing problems and difficulties for beneficiaries of international protection in the absence of integration and support programs.

The Commissioner for Human Rights of the Council of Europe pointed out in her 2019 report that xenophobic rhetoric and attitudes in Hungary have a harmful effect on the integration of recognised refugees.<sup>474</sup> Even though the general migration strategy adopted in 2013 called for the creation of a tolerant Hungarian host society,<sup>475</sup> the strategy has never been materialised.<sup>476</sup> According to a comparative report on refugee integration frameworks in 14 EU Member States from 2019 among east-central European countries Hungary provides the least advantageous integration policy framework. As for the authors, this is due to deliberate policy choices.<sup>477</sup>

In June 2019, the UN Committee on the Elimination of Racial Discrimination recommended that Hungary take all immediate measures to stop racist hate speech and incitement to violence against, among others, asylum seekers, refugees and migrants. The Committee was particularly alarmed by racist and discriminatory statements made by public figures, with more power to promote racial hatred.<sup>478</sup> The Special Rapporteur on the human rights of migrants remarked that journalists from local media helped fuelling xenophobia and anti-migration attitudes in Hungary.<sup>479</sup> The UNHCR raised similar concerns. According to the organization, 'the Government of Hungary has been systematically pursuing an anti-refugee rhetoric over the years. In the context of the coronavirus pandemic, Prime Minister Viktor Orbán and other senior government officials have on several occasions asserted that foreigners and migrants are to blame for the arrival of the pandemic in Hungary. This rhetoric has fuelled xenophobia, ethnic and racial hatred including by associating immigration and refugees with terrorism, by vilifying refugees and migrants as a threat to the country.'<sup>480</sup>

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:

<sup>473</sup> HHC, *Two years after: What's Left of Refugee Protection in Hungary?*, September 2017, available at: <http://bit.ly/2EdCWqm>.

<sup>474</sup> CoE-CommDH – Council of Europe - Commissioner for Human Rights: *Commission for Human Rights of the Council of Europe Dunja Mijatović; Report following her visit to Hungary from 4 to 8 February 2019*, 21 May 2019, available at: <http://bit.ly/2TemwbJ>.

<sup>475</sup> Wolffhardt A., Conte C. and Huddleston T., *The European Benchmark for Refugee Integration: A comparative analysis of the national integration evaluation mechanism in 14 EU countries*, Migration Policy Group and Institute of Public Affairs, 2019, available at: <https://bit.ly/39gJDrc>, 159.

<sup>476</sup> Wolffhardt et al. 2019, 49.

<sup>477</sup> Wolffhardt et al. 2019, 10.

<sup>478</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, CERD/C/HUN/CO/18-25, 6 June 2019, available at: <https://bit.ly/3pAX0gh>.

<sup>479</sup> HRC – UN Human Rights Council: *Compilation on Hungary; Report of the Office of the United Nations High Commissioner for Human Rights [A/HRC/WG.6/39/HUN/2]*, 25 August 2021, available at: <https://bit.ly/3Hf0741>.

<sup>480</sup> UNHCR – UN High Commissioner for Refugees: *Submission by the United Nations High Commissioner for Refugees; For the Office of the High Commissioner for Human Rights' Compilation Report; Universal Periodic Review: 3rd Cycle, 39th Session; Hungary*, February 2021, available at: <https://bit.ly/3AOkMtE>.

## A. Status and residence

### 1. Residence permit

#### Indicators: Residence Permit

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

In Hungary, persons with protection status do not get a residence permit, but a Hungarian ID. Since 1 June 2016, the duration of refugee status and subsidiary protection permits were brought to 3 years. According to the Asylum Act, refugee and subsidiary protection statuses shall be reviewed at least every 3 years.<sup>481</sup>

According to the law the issuance of ID and address cards should take up to 20 days.<sup>482</sup> However, in practice it takes at least 1 month. Persons with international protection status are able to stay in the reception centres only for 30 days after the delivery of the decision on the status.<sup>483</sup>

Between the age of 18 and 65, the ID card is issued for a period of 6 years. Under the age of 18, children are provided with an ID card valid for 3 years. Both refugee and subsidiary protection status have to be examined by the NDGAP *ex officio* after at least 3 years counted from the day the status was granted. If the status is withdrawn as a result of the procedure, the ID card should be also invalidated. However, until the end of the procedure the beneficiary of international protection is still entitled for the ID card. The Lutheran Church reported though in 2019 that the ID cards of beneficiaries of subsidiary protection were not prolonged during their status review procedure, therefore beneficiaries were without ID card for months. The same incident was reported by the Lutheran Church in 2020, when the ID cards of the older children of a family, having a pending procedure before the court on the revocation of their subsidiary protection, was not renewed, while their new-born baby was not provided by an ID card at all. Long waiting time for the issuance of the ID cards was also reported in the case of a woman and her children arriving in Hungary as a result of family reunification procedure. They were granted subsidiary protection status in September 2020. Nonetheless, their ID cards were issued only in November which prevented them from arranging an address and health insurance card. Due to the absence of official documents, they could not receive official mails, obtain family financial aid and kindergarten placement. Similar incidents were not reported in 2021.

In practice, those refugee children or children with subsidiary protection who reside in Hungary only with one of their parents face obstacles upon the obtainment of ID cards. According to the law,<sup>484</sup> in order to issue an ID card to children with no legal capacity (below the age of fourteen) both parents' consent is required. Thus, the parent of the child not staying in Hungary has to give his/her consent in writing (either in a private document providing full evidence or a statement taken before the Hungarian Consulate) and has to deliver the original copy of it to Hungary. In countries of origin such as Syria, Afghanistan or Somalia where public service does not function or it does in a limited way, and Hungarian Consulates do not operate this requirement amounts to difficulties for the parent to comply with. Not to mention the level of public security, which makes compliance with the law for a single mother even more difficult. As per HHC, such a requirement for refugees and beneficiaries of subsidiary protection is unnecessary and disproportionate. Furthermore, the regulation highlights that the law is not tailored to the situation of beneficiaries of international protection.

<sup>481</sup> Sections 7/A(1) and 14(1) Asylum Act.

<sup>482</sup> See more information regarding the requirements and procedures to obtain an ID card in the report issued by the Immigration and Refugee Board of Canada, *Hungary: Identity cards and address cards for nationals and non-nationals, including requirements and procedures to obtain the cards; description of the cards, including information on the cards (2016-July 2018)*, [HUN106146.E], 10 August 2018, available at: <https://bit.ly/2SK8waD>.

<sup>483</sup> Section 32(1) Asylum Act.

<sup>484</sup> Section 20 Government Decree 414/2015 (XII.23.) on the issuance of ID card and on the uniform image and signature recording rules.

Due to the COVID-19 pandemic the government office responsible for the arrangement of official documents required a prior online appointment booking until May 2021.<sup>485</sup> As the website is run exclusively in Hungarian, beneficiaries of international protection faced language barriers and necessarily needed help. Additionally, the offices were overburdened, therefore appointments were only available with quite long waiting time. During the state of danger introduced in March 2020 as a result of the COVID-19 pandemic, the regulation according to which expired ID documents and passports were deemed to be valid was not applicable to non-Hungarian (or EU) citizens amounting to a clear discriminatory situation.<sup>486</sup> This restriction was not introduced again since then. Currently, expired ID documents are still valid until 30 June 2022.<sup>487</sup>

Menedék Association reported that in 2021, beneficiaries of international protection who returned to Hungary from other EU Member States faced difficulties in obtaining Hungarian documents, such as ID and address cards before the government offices.

## 2. Civil registration

### 2.1. Registration of child birth

Pursuant to the Act on Civil Registration Procedure,<sup>488</sup> 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. None of the organisations interviewed reported systemic problems as to birth registration.

Main challenges concern the establishment and registration of a new-born child's citizenship. Hence, those children whose parents are beneficiaries of international protection are registered as unknown citizens given that Hungary does not have the competency to establish the nationality of another country. Provided that parents cannot contact the embassy of their country of origin in order to register their child, the new-born remains unknown citizen.

The aforementioned practice is based on the current Hungarian legislation, according to which children of persons with international protection do not receive Hungarian citizenship *ex lege* at birth. This is a clear violation of Article 1(2)(a)-(b) of the 1961 Convention on the Reduction of Statelessness and Article 6(2)(b) of the 1997 European Convention on Nationality. Furthermore, it is in breach of Articles 3 and 7 of the 1989 Convention on the Rights of the Child.<sup>489</sup> According to the Menedék Association, the struggle of obtaining citizenship for the child leads to frustration and anxiety for parents with international protection. The problem still existed in 2021.

### 2.2. Registration of marriage

As regards marriage in general, the same rules apply to beneficiaries of international protection as to Hungarian nationals. There is only one additional requirement that refugees and persons with subsidiary protection have to fulfil. As it is set out in the Act on Civil Registration Procedure, non-Hungarian citizens have to prove that no obstacle to the marriage exists pursuant to their personal law.<sup>490</sup> The term "personal law" is defined in the Act on International Private Law,<sup>491</sup> meaning the law of any State of which the person is a national. Consequently, in practice beneficiaries of international protection would have the obligation

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<sup>485</sup> See: <https://bit.ly/3AWUQf6>.

<sup>486</sup> This was confirmed by the Interior Ministry upon the inquiry of the Menedék Association.

<sup>487</sup> See: <https://bit.ly/3HmYxxq>.

<sup>488</sup> Act I of 2010 on Civil Registration Procedure.

<sup>489</sup> "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 Gyulai, *Nationality unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*, January 2014 available at: <http://bit.ly/2oelgUC>.

<sup>490</sup> Section 23(1) Act I of 2010 on Civil Registration Procedure.

<sup>491</sup> As of 1 January 2018, Section 15 of Act XXVIII of 2017 on International private law.



to contact their embassy (in order to obtain their approval and eventually, the birth certificate), which on the 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<sup>492</sup> and provides *ex lege* exemption in cases where the country of origin is knowingly unable to issue the required certificate.<sup>493</sup>

As per the experiences of the Menedék Association, requests for exemption are mostly accepted by the Registry Office, nonetheless they are aware of a case when during the asylum procedure the applicant claimed to be married but lost his wife soon afterwards. As a result of the lack of proper Somalian state registration and since the refugee was not able to contact the embassy due to his fear of persecution, there was no way to prove the death of his wife with documents and to certify the change in his marital status. In general, registration of marriage is a long procedure in which couples usually need the help of the Menedék Association to write an application for exemption from the abovementioned rules. As a positive development in 2020 and 2021, the Menedék Association noted that in certain districts of Budapest the officers are more welcoming towards people with international protection background and speak English. In the countryside, due the lack of experience of case officers, beneficiaries of international protection are often requested to provide original documents from their country of origin.

Under the law, the state must provide an interpreter upon submitting the request to get married and during the ceremony in case the parties do not speak Hungarian. In contrast to that, in practice the parties are asked to bring an interpreter (non-professional is also accepted).

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2021: Not available

The TCN Act regulates long-term residence. Long-term residence status can be granted to those refugees or beneficiaries of subsidiary protection who have lawfully resided in the territory of Hungary continuously for at least three preceding years before the application was submitted.<sup>494</sup> Continuity assumes that a person has not stayed outside the territory of Hungary for more than 270 days at all.<sup>495</sup> In practice, the 3-year term of residence is to be counted from the leaving of reception facilities by the beneficiary of international protection status and the subsequent establishment of domicile.

According to the TCN Act and the Asylum Act, there is no possibility to possess two legal residence titles in Hungary at the same time.<sup>496</sup> This means that by receiving a new legal title for residence the person automatically loses his or her international protection status.

Upon the application for a long-term residence permit, the applicant has to submit the documents in proof of means of subsistence in Hungary and the Hungarian existing residence, as well as the full health insurance.<sup>497</sup> The NDGAP has 70 days to examine the case and make a decision.<sup>498</sup> The long-term residence permit is granted for an indefinite term of time, but the issued ID has to be renewed every 5 years. There are no different criteria prescribed for refugees and people with subsidiary protection status.

According to the TCN Act, in case of exceptional circumstances, the third-country national may be given a national permanent residence permit by the decision of the minister in charge of immigration even in the absence of the relevant statutory requirements. The minister in charge of immigration may consider the individual circumstances, family relationships and health conditions of the third-country national as

<sup>492</sup> Section 23(1) Act on Civil Registration Procedure.

<sup>493</sup> Section 23(2) Act on Civil Registration Procedure.

<sup>494</sup> Section 35(1)(a) TCN Act.

<sup>495</sup> Section 35(2) TCN Act.

<sup>496</sup> Section 1(7) TCN Act; Section 1(3) Asylum Act.

<sup>497</sup> Section 94(1) TCN Decree.

<sup>498</sup> Section 35(6) TCN Act.

exceptional circumstances, and may consider the economic, political, scientific, cultural and sports interests of Hungary.<sup>499</sup>

#### 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 2021: | 29      |

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 exam in basic constitutional studies in Hungarian, or provides proof for his or her exemption from such exam.

The minimum period of residence prior to the naturalisation application is shorter for a number of categories of applicants who are treated favourably. Recognised refugees and stateless persons are two of the categories benefitting from preferential treatment and are required to have resided in Hungary for a continuous period of at least three years directly prior to the submission of the application.<sup>500</sup> Although regarding stateless persons the actual waiting time is 6 years, since they are not entitled to establish a domicile right after they were granted stateless status. In practice, this means that stateless persons at first have to apply for a national long-term residence permit and only after obtaining it together with the registered domicile can they apply for Hungarian citizenship. According to the Menedék Association, in practice after 3 years with an established domicile refugees cannot be granted citizenship because they usually have difficulties fulfilling the other criteria due to the lack of proper integration support.

As per the experiences of the HHC, having no stable accommodation (but living in a homeless shelter) and the lack of adequate Hungarian language skills are striking within the difficulties, persons with international protection face as an obstacle upon the application for Hungarian citizenship. Moreover, the high fees of the Hungarian Office for Translation and Attestation Ltd. might result in further obstacles when it comes to naturalization.

Section 4(2) of the Citizenship Act clarifies the distinction between refugee status and subsidiary protection, by providing preferential treatment only to refugees, while persons with subsidiary protection fall under the general rule of 8-year-long previous residence in Hungary. Moreover, the Asylum Act expressly states that beneficiaries of subsidiary protection shall not be entitled to the conditions for preferential naturalisation made available to refugees in the Citizenship Act.<sup>501</sup>

The naturalisation procedure is conducted by the Government Office of Budapest. The application can be submitted at any local government office, which transfers the case file to the Government Office of Budapest. HHC is aware of the practice at place in the government offices, according to which the officer requires the applicant to write down the whole curriculum vitae again or a summary of it, or to fill in the application form in front of them, thereby controlling the Hungarian language skills of the applicant. There were cases in 2021, when even minors were requested to re-write their CV on the spot. In addition, case officers use a technical language with the applicant during the procedure which makes the communication even more difficult.

<sup>499</sup> Section 36(1) TCN Act.

<sup>500</sup> Section 4(2) Citizenship Act.

<sup>501</sup> Section 17(4) Asylum Act.

According to the law,<sup>502</sup> the constitutional exam can be substituted by a certificate issued by an accredited school proving that the person had attended the program equating to 8 years of elementary school. Nonetheless as per the experience of HHC, in 2020 the government offices did not accept the certificate of one specific school that is considered to provide a lower quality educational program by the authorities. Applicants presenting such certificates were instructed by the officers to take the constitutional exam. In the view of the HHC this practice is unlawful as the mentioned school is accredited in Hungary and there is no legal basis for such a rejection for the certificate. Such practice was not reported in 2021.

Regarding the problem of authentication of foreign documents – the relevant obligation of the authentication is provided by Section 14(5)(a) Citizenship Act – a study on Hungarian nationalisation written by Gábor Gyulai, expert on naturalisation and statelessness procedures in Hungary points out the following:

*“[O]fficial foreign documents must go through diplomatic legalisation (authentication) before submission, unless this would take an unreasonably long time (according to the declaration of the competent consular officer) or if this would result in seriously adverse legal consequences for the applicant. This latter exception could constitute an important safeguard for refugees and other beneficiaries of international protection; nonetheless, there is no information whether it is applied as such in practice.”<sup>503</sup>*

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

There is an *ex lege* eventual practice of the Government Office of Budapest, according to which the authority summons the applicant for a so-called “data checking”. In fact, it is a proper interview held with the applicant about the very detail of his/her professional and private life, including questions regarding his/her family life, past, hobbies and everyday life in Hungary, worldview, income, housing, political opinion, religion and future plans etc. There are only hand-written notes taken by the questioning officer, but there is no copy of it served to the applicant. Since the procedure is not transparent, the interview's role as to the result of the decision is not clear.

During the procedure the applicant might have a legal representative. According to HHC though, the lawyer is not informed about any procedural steps. The Government Office of Budapest communicates exclusively with the applicant. In the HHC's experience in 2021, legal representatives were not allowed to be present upon the submission of an application. The reason given by the authorities was either the existence of specific measures as a consequence of the pandemic, or the need to control the language competency of the applicant in Hungarian. A paper on the wall warns clients that the government office is not able to accept applications of persons accompanied by an assistant or an interpreter. Even in the case of minors this stance led to disputes. Nevertheless, ultimately, neither the legal guardian nor the lawyer were allowed to assist the applicant. Apart from this issue observed by the HHC, case officers were mostly cooperative and supportive throughout the year.

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.<sup>504</sup> In practice, the general procedural time takes at least approximately one year.

As the law states, decisions in connection with petitions for the acquisition of Hungarian citizenship by way of naturalisation or repatriation shall be adopted by the President of the Republic based on the recommendation of the Minister of Interior.<sup>505</sup>

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<sup>502</sup> Section 4/A(2)(b) Citizenship Act

<sup>503</sup> HHC, *The Black Box of Nationality: The naturalisation of refugees and stateless persons in Hungary*, 2016, available at: <https://bit.ly/3LXWrpX>, 18.

<sup>504</sup> Section 17(2) Citizenship Act.

<sup>505</sup> Section 6(1) Citizenship Act.

The President of the Republic shall issue a certificate of naturalisation attesting the acquisition of Hungarian citizenship. Subsequently, the applicant must take a citizenship oath or pledge of allegiance, for which the mayor of the district of his/her residence shall send the invitation.<sup>506</sup> The naturalised person shall acquire Hungarian citizenship on the date of taking the oath or pledge of allegiance.

In practice, the applicant has to wait a long period - normally at least one year - to be issued a decision. Since the decision on granting citizenship is not administrative, it cannot be appealed, nor can judicial review be mounted against the decision. Therefore, the procedure for naturalisation lacks the provision of information and the most basic procedural safeguards of transparency, accountability and fairness.<sup>507</sup> The experience of the Menedék Association confirms the aforementioned. According to the association, besides some positive decisions, several applications from applicants with substantially similar background were rejected in the last years. In January 2020 some rejected applicants submitted complaints to the Ombudsman objecting the lack of reasoning provided by the Government Office. As a result of the procedure, the Office of the Commissioner for Fundamental Rights of Hungary issued a decision pointing out a few reasons why the applicants' petitions were rejected. This positive development did not last for long though. As per information provided by the Menedék Association, in the following months the Ombudsman rejected the complaints, claiming to be unable to review the procedure of the President of the Republic - despite that these complaints concerned the procedure prior to the President's decision. Furthermore, the Ombudsman pointed out that further complaints submitted by the applicant, he will reject them without an in-merit examination.

Refugee children and children having been granted subsidiary protection who were born in Hungary and did not obtain their parents' citizenship by birth might obtain Hungarian citizenship by declaration taken five years after their birth under the Citizenship Act provided that their parents had Hungarian domicile at the time of their birth.<sup>508</sup> As opposed to the naturalisation procedure described above, if the Government Office of Budapest rejects the declaration the applicant has the possibility to request a judicial review.<sup>509</sup> One declaration submitted in 2020 was rejected a year later. The HHC is representing the applicant child in the ongoing judicial review procedure. Two other declarations were rejected in the course of 2021. The pattern seems to show that the government office would consider eligible only the children of recognised stateless parents, even though the Citizenship Act does not mention such criteria. This raises serious problems, since contacting the authorities of the country of origin in order to prove that the child did not obtain citizenship might even result in the loss of refugee status.<sup>510</sup> According to data provided by the Government Office of Budapest, no child was granted citizenship by declaration.<sup>511</sup>

In 2021, 118 beneficiaries of international protection applied for Hungarian citizenship (97 refugees and 21 beneficiaries of subsidiary protection). In the same year, 20 refugees (3 Iraqis, 3 Iranians and 3 Somalian nationals, the remaining 11 of different nationalities) and 9 beneficiaries of subsidiary protection (3 Afghans, 2 Syrians and 4 of unknown nationality) obtained citizenship. Out of the 29 people, 3 former refugees (2 Iraqis and 1 unknown nationals) and 5 former beneficiaries of subsidiary protection (1 Syrian and 4 unknown nationals) were minors. The applications of beneficiaries of international protection were rejected in 113 cases. The applications of 102 refugees (breakdown by the three main nationalities was 32 Afghan, 18 unknown and 11 Syrian) and 11 beneficiaries of subsidiary protection (breakdown by the three main nationalities was 9 Afghans, 1 Somalian and 1 Iraqis).<sup>512</sup> The gap between the percentage of decisions rejecting an application and granting citizenship further grew in 2021, as compared to 2020. Whereas in 2020, 24% of the total decisions granted citizenship to beneficiaries of international protection, in 2021 this number decreased and only reached a 20%. At the same time, the ratio of decisions on rejection grew since while 2020 76% of the total decisions was about rejection, in 2021 it was 80%. The number of applicants showed a 69% increase in 2021, in comparison with the previous year.

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<sup>506</sup> Section 4(2) Citizenship Act.

<sup>507</sup> HHC, *The Black Box of Nationality*, 2016.

<sup>508</sup> Section 5/A (1) (b) Citizenship Act.

<sup>509</sup> Section 5/A (3) Citizenship Act.

<sup>510</sup> Section 11(2) Asylum Act.

<sup>511</sup> Information provided by the Government Office of Budapest, 17 January 2022.

<sup>512</sup> Information provided by the Government Office of Budapest, 17 January 2022.

## 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.<sup>513</sup> 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:<sup>514</sup>

- (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;<sup>515</sup>
- (f) The refugee waives the legal status of refugee in writing;
- (g) The refugee was recognised in spite of the existence of the reasons for exclusion referred to in Section 8(1) of the Asylum Act or such a reason for exclusion is established against him/her;
- (h) The conditions for recognition did not exist at the time of the adoption of the decision on his/her recognition;
- (i) the refugee has misled the authorities during the asylum procedure by presenting false information or documents or by withholding relevant information or documents, provided that it had a decisive impact on the decision for the granting of refugee status.

Furthermore, the status of the refugee shall be withdrawn if the refugee is subject to the grounds for exclusion under Section 8(4)<sup>516</sup> and (5)<sup>517</sup> Asylum Act (see detailed in section on [Withdrawal of protection status](#)).

The conditions for the cessation of subsidiary protection status are basically the same as those concerning refugee status.<sup>518</sup> As of 1 January 2022, the grounds for exclusion from subsidiary protection were complemented by an additional case.<sup>519</sup> Accordingly, a foreigner shall not be granted subsidiary protection if there are reasonable grounds for believing that, prior to his or her admission by Hungary, he or she has committed an offence in his or her country of origin punishable in Hungary by a term of imprisonment of

<sup>513</sup> Sections 11 and 18 Asylum Act.

<sup>514</sup> Section 11(2) Asylum Act.

<sup>515</sup> Section 11(4) Asylum Act.

<sup>516</sup> 'A foreigner whose stay in Hungary endangers national security cannot be recognised as a refugee.'

<sup>517</sup> 'A foreigner who has been recognised as a refugee by a court (a) has been sentenced by a final judgment to imprisonment for a term of five years or more for an intentional offence, (b) has been sentenced to imprisonment by a final judgment for the commission of an offence committed as a repeat offender, multiple repeat offender or violent multiple repeat offender, (c) sentenced to imprisonment for a term of imprisonment of three years or more by a final judgment for an offence against life, limb or health, an offence against health, an offence against human liberty, an offence against sexual freedom or sexual morality, an offence against public order, an offence against public security or an offence against the public administration.'

<sup>518</sup> Section 18(2) (g) Asylum Act.

<sup>519</sup> Section 15(c) Asylum Act (introduced by Act CXX of 2021).

up to three years or more and there are reasonable grounds for believing that the applicant left his or her country of origin only in order to avoid the penalty for the offence. This ground serves as a basis for the withdrawal of subsidiary protection status, as well.<sup>520</sup>

## 5.2. Procedures and guarantees

According to the Asylum Act, the determining authority shall examine the compliance with the conditions for refugee status and subsidiary protection at a minimum three-year interval.<sup>521</sup> NDGAP shall also examine compliance with the conditions for refugee status or subsidiary protection if the extradition of the person concerned was requested.<sup>522</sup>

The review of the international protection status is governed by the general rules of the asylum procedure (set out in Chapter VII of the Asylum Act), and Sections 57-68 of the Asylum Act.<sup>523</sup> The procedure shall be conducted within 60 days.<sup>524</sup>

Proceedings for the withdrawal of refugee status or subsidiary protection are opened *ex officio*.<sup>525</sup> The rules of the general asylum procedure shall be applied during the withdrawal proceedings.<sup>526</sup> The NDGAP shall interview the person holding international protection status and in 60 days decide if the conditions of refugee status or subsidiary protection are still applicable.<sup>527</sup> Nevertheless, the HHC is aware of cases when the NDGAP conducts the procedure in the absence of the person concerned. If there is no ground for the revocation of the status, the proceedings shall be terminated.<sup>528</sup> However, the NDGAP often does not conduct a proper assessment of the situation in the country of origin of the beneficiary of international protection.

The resolution on the withdrawal of recognition of refugee status or subsidiary protection may be subject to judicial review.<sup>529</sup> The petition for judicial review shall be submitted to the refugee authority within 8 days following the date of delivery of the decision.<sup>530</sup> The petition for judicial review shall be decided by the court, within 60 days following the receipt of the petition, in contentious proceedings. The judicial review shall provide for a full and *ex nunc* examination of both facts and points of law.<sup>531</sup> The court may not overturn the decision of the NDGAP, but it shall abolish the decision it finds unlawful and, if necessary, shall order the refugee authority to reopen the case. If the court annuls the decision without ordering the asylum authority to conduct a new procedure, the review procedure is closed and the status of the beneficiary of international protection is maintained. Due to legislative changes, between 1 July 2020 and 14 May 2021, against the court's decision adopted in conclusion of the proceedings a review before the Curia could be requested (as an extra-judicial remedy).<sup>532</sup>

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 because the asylum authority considered their return to **Afghanistan** safe. In these cases, the authority systematically established either the city of Kabul or the province of Balkh as an internal protection alternative for Afghans whose region of origin is struggling with instability, despite of the deteriorating situation of both destinations reported by different sources and the lack of family links or sufficient means of subsistence. The problem regarding Kabul as an internal protection alternative (IPA) persisted in 2020, as well as Damascus as an IPA was applied regarding **Syrians** with subsidiary protection. Until August 2021, there were still cases

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<sup>520</sup> Section 18(2)(g) Asylum Act.

<sup>521</sup> Sections 75/A(1) and (2) and 14(1)(2) Asylum Act.

<sup>522</sup> Section 7/A (2) Asylum Act.

<sup>523</sup> Section 75/A(1) Asylum Act.

<sup>524</sup> Section 75/A(2) Asylum Act.

<sup>525</sup> Section 72/A(1) Asylum Act.

<sup>526</sup> Section 72/A(2) Asylum Act.

<sup>527</sup> Section 72/A (3) Asylum Act.

<sup>528</sup> Section 74 (1) Asylum Act.

<sup>529</sup> Section 75(1) Asylum Act.

<sup>530</sup> Section 75(2) Asylum Act.

<sup>531</sup> Section 75(3) Asylum Act.

<sup>532</sup> Section 75(5) Asylum Act.



when the NDGAP indicated Kabul as an IPA for the person concerned. However, since the seizure of power by the Taliban in August 2021, the HHC is not aware of any decision where the NDGAP would have expelled anyone to Afghanistan as a result of the withdrawal proceeding. On the contrary, even persons who had previously been expelled were granted humanitarian status on account of the general situation in Afghanistan. As to Syrian citizens, Damascus remained to be applied by the NDGAP as an IPA throughout 2021 and such decisions were even confirmed by the court in several cases.

As for re-availing of protection of the refugee's country of origin, a report of EMN published in November 2019<sup>533</sup> states that "any trip to the country of origin could be considered to provide sufficient reason to presume that the individual had re-availed him/herself of the protection of his/her country of origin." The asylum authority furthermore considers any type of contact with authorities of the country of origin as re-availing of protection of the country of origin. According to the report, in case Hungarian authorities became aware of the contact, it would automatically lead to cessation of refugee protection.

## 6. Withdrawal of protection status

The NDGAP initiated the withdrawal of international protection status of 237 persons and issued a decision on withdrawal in the case of 349 persons in 2021, which is a huge increase compared to previous year (see AIDA report 2020 reporting about only 59 initiated withdrawal procedures).<sup>534</sup> The NDGAP did not provide a breakdown of the data based on citizenship and type of international protection status with regard to 2020.<sup>535</sup> In 2021 the withdrawal decisions concerned 218 refugees and 131 beneficiaries of subsidiary protection.<sup>536</sup>

Contrary to 2019, the HHC is aware of one case from 2020 where the status of a refugee granted in 1998 was not revoked on the motion of the NDGAP as a result of the procedure. The authority initiated the revocation in line with the assessment that the circumstances based on which the status was granted have ceased. However, during the procedure the applicant provided sufficient proof to justify his further need for protection. The HHC is aware of a case from 2021 when the NDGAP initiated the withdrawal procedure of a Palestinian beneficiary of international protection because the man obtained a Palestinian passport. Nevertheless, he clarified during the procedure that he requested the passport for administrative purposes and that he contemplates to travel to Palestine. Based on his statements and justification, the NDGAP terminated the procedure and thus, maintained his status.

HHC is also aware of the case of a Pakistani man whose status review procedure initiated for the fourth time in four years. The applicant has been living in Hungary since 2013 as a beneficiary of subsidiary protection. He had a successful status review procedure in 2018 and 2019. In 2020, however, a new one was initiated resulting in status withdrawal with reference to classified data. This decision was successfully challenged before the court and the NDGAP eventually had to leave the applicant's status intact. In 2021, a new - still ongoing - status review procedure was initiated against him. It is worth noting that the applicant won a case against Hungary in front of the ECtHR, regarding his unlawful detention during his asylum procedure.

### 6.1. Withdrawal of the protection status based on national security grounds

In 2020, the matter of status withdrawal based on national security reasons came at the forefront in the HHC's work, as a result of the relatively increased number of such cases concerning not only beneficiaries of international protection but also third-country nationals residing lawfully in Hungary.<sup>537</sup> According to the Asylum Act, the Counter-Terrorism Office (CTO) and the Constitutional Protection Office (CPO) involved

<sup>533</sup> European Migration Network, *Beneficiaries of International Protection Travelling to and Contacting Authorities of their Country of Origin*, November 2019, available at <http://bit.ly/2OIk0Y3>.

<sup>534</sup> Information provided by NDGAP on 7 February 2022.

<sup>535</sup> Information provided by NDGAP on 2 March 2021.

<sup>536</sup> Information provided by NDGAP on 7 February 2022.

<sup>537</sup> See Hungarian Helsinki Committee: *Flagrant Breach of the Right to Defence in National Security Cases and the Systematic Denial of the Right to Family Life within the Hungarian Legal Framework*, Information Note of the Hungarian Helsinki Committee, 15 September 2020, available at <https://bit.ly/3qMoH3L>.

in the asylum procedure<sup>538</sup> might establish that the third-country national poses a threat to the national security without any further reasoning.<sup>539</sup> In these cases, the underlying data substantiating the national security threat is classified by the security agencies with reference to the protection of public interest, i.e. National defence, national security, law enforcement and crime prevention activities.<sup>540</sup> The opinions of the special authorities are binding for the NDGAP, which is subsequently obliged to withdraw international protection status.<sup>541</sup>

The Classified Data Act provides for the possibility for the person concerned to request the cognizance of the concerning classified data from the special authorities.<sup>542</sup> However, as per the experience of the HHC, there has been no cases in which access was granted in 2020 and 2021. Furthermore, even if the access would be granted, the law does not provide clearly for its usage in the procedure. Due to the lack of efficient mechanism by which the person could get access at least to the essence of the reasoning as it is required by the CJEU and the ECtHR set out in its relevant case-law and in the absence of the permission for its usage, the person concerned is not in the position to effectively challenge the decision of the NDGAP before the courts. Consequently, HHC is of the view that in these cases the right of the beneficiary of international protection to adversarial proceedings, the principle of equality of arms, his/her right of access to files, to defence and to be heard, as well as the right to an effective remedy and finally the right to a competent authority deciding on withdrawal are equally violated. Noticing these shortcomings, on 27 January 2021 the Metropolitan Court in Hungary stayed the judicial review procedure of a Syrian refugee whose status had been withdrawn based on national security grounds and referred five questions to the CJEU to be interpreted in a preliminary reference ruling (case C-159/21). In September 2021, the HHC, in cooperation with the Polish Helsinki Foundation for Human Rights (Poland) and Kisa (Cyprus), published a Comparative Report on Access to Classified Data in National Security Immigration Cases in Cyprus, Hungary and Poland.<sup>543</sup> The HHC interviewed in December 2021 one of their clients affected by the unlawful national security invoking practice of the NDGAP on how her life and that of her family was affected by the fact that after 20 years the Hungarian authorities see her stay in the country as a risk to national security.<sup>544</sup>

While the withdrawal on national security grounds per se is permissible under the Qualification Directive, the procedure itself (as mentioned above) constitutes a violation of EU law. The HHC identified five main points where Hungarian asylum legislation and practice regarding exclusion from international protection on national security grounds contradict EU law and jurisprudence, including the clear non-transposition of Art. 14(6) of Qualification Directive (as interpreted by the CJEU in the *M* case<sup>545</sup>).<sup>546</sup> The information update concluded that the Hungarian law does not provide any reasoning as to the national security risk allegedly presented by the person concerned. This is contrary to Art. 47 of the Charter, and violates the provisions of the Procedures Directive ensuring the enforcement of the right to an effective remedy and, in particular, the rights of the defence (Arts. 46(3), 11(2), 45(1), (3) and Preamble (20) of the Procedures Directive). Furthermore, the mere access by the courts to the classified data provided by the Hungarian law does not on its own guarantee the respect of the applicant's rights of the defence and hence, violates the rights of access to information and data underlying the decision on exclusion (Arts. 12(1)(d), 23(1) and 45(4) of the Procedures Directive). A further problematic point is due to the binding nature of the security agencies' opinion over the asylum authority. It results that a decision on exclusion based on national security grounds is ultimately made by the security agencies. This diverges from the requirement that the determining authority is responsible for the examination of the recognition, refusal or withdrawal of international protection (Art. 4 of the Procedures Directive). Further on, the automatic rulings of the Hungarian asylum authority when delivering exclusion decisions on national security grounds violates the

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<sup>538</sup> Section 2/A(a) of the Government Decree no. 301/2007 (XI.9.)

<sup>539</sup> Section 57(6) of Act LXXX of 2007

<sup>540</sup> Section 5(1)(c) of the Act CLV of 2009 on the Protection of Classified Data ("Classified Data Act")

<sup>541</sup> Section 57(3) Asylum Act.

<sup>542</sup> Section 11 Classified Data Act.

<sup>543</sup> See: <https://bit.ly/3IS4RUS>.

<sup>544</sup> The interview is available at the following link: <https://bit.ly/33XxQAV>.

<sup>545</sup> CJEU, joined cases C-391/16, C-77/17 and C-78/17, *M v. Ministerstvo vnitra*, 14 May 2019

<sup>546</sup> See Hungarian Helsinki Committee: National Security Grounds for Exclusion from International Protection as a Carte Blanche: Hungarian asylum provisions not compliant with EU law, Information Update by the Hungarian Helsinki Committee, 20 December 2021, available at <https://bit.ly/3f7n6ls>.

requirement of individual assessment, including the examination of proportionality (Arts. 4, 10(3), 14(4)(a) and Art. 17(1)(d) of the Qualifications Directive; Preamble (20) of the Procedures Directive).

Hungarian law further contains two provisions regarding the withdrawal of protection status that are in breach of EU law, namely the one based on the commission of a serious crime and the other based on the re-availing of the country of origin's protection with regard to persons with subsidiary protection.

## 6.2. Withdrawal of the protection status due to serious crime committed by the beneficiary

Until 31 December 2018, the Asylum Act prescribed, similarly to the exclusion from refugee status, that an applicant is excluded from subsidiary protection if *“he or she has committed a crime that is punishable under Hungarian law by five years of imprisonment or more.”*<sup>547</sup> Regarding this provision, a preliminary ruling was requested by the Metropolitan Administrative and Labour Court on 29 May 2017. The claimant was represented by a contracted attorney of HHC. According to the HHC, this domestic legal interpretation was more restrictive than the parallel EU norm (and thus unlawful), as the latter only allows for exclusion if the applicant committed a serious non-political crime, while the Asylum Act defines seriousness exclusively on the basis of foreseeable years of imprisonment. In the *Ahmed* judgment 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.”*<sup>548</sup>

Due to the aforementioned CJEU judgment, the relevant provisions of the Asylum Act were amended coming into effect on 1 January 2019. However, according to the HHC, the new regulation is still not in line with the Qualification Directive, since it excludes the possibility for the decision maker to carry out a full investigation into all the circumstances of the individual case concerned. The amended relevant provision now declares that a person cannot be recognised as a refugee,<sup>549</sup> or as a beneficiary of subsidiary protection,<sup>550</sup> who has been sentenced by the court:

- (a) for imprisonment of five years or more for the intentional commission of a criminal offense;
- (b) for imprisonment for committing a crime as a recidivist, habitual recidivist or a recidivist with a history of violence who had been already convicted by a final judgment for imprisonment;
- (c) for imprisonment of three years or more commission of a criminal offense against life, physical integrity, health, personal liberty, sexual freedom, public peace, public security, or administrative procedures.

In accordance with the regulations currently in force, both refugee status<sup>551</sup> and subsidiary protection<sup>552</sup> are to be revoked on the basis of Section 8(5) of the Asylum Act. This is in breach of the Qualification Directive since the Asylum Act does not differentiate between the two statuses as EU law does, therefore it applies the same level of seriousness regarding the committed crime<sup>553</sup> and it lacks the cumulative conditions (namely the threat to national security the person has to pose besides the serious crime) as to the refugee status. Furthermore, Art. 14(6) of Qualification Directive is not properly transposed because the rights enshrined therein are not provided to those refugees who are excluded from protection based on Section 8(5) of the Asylum Act. Moreover, despite the *Ahmed* judgment, the lack of individual assessment and discretion of the asylum authority with regard to all the circumstances of the case in

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<sup>547</sup> Section 15(ab) Asylum Act.

<sup>548</sup> CJEU, Case C-369/17 *Ahmed*, Judgment of 13 September 2018.

<sup>549</sup> Section 8(5) Asylum Act.

<sup>550</sup> Section 15(ab) Asylum Act.

<sup>551</sup> Section 11(3) Asylum Act.

<sup>552</sup> Section 18(1)(g) Asylum Act.

<sup>553</sup> The Qualification Directive requires the crime to be “particularly serious” [Article 14(4)(b) read together with Article 14(5)] with regard to refugees, and to be “serious” with regard to beneficiaries of subsidiary protection status (Article 17(1)(b)).

determining the seriousness of a crime as the reason for exclusion from international protection still prevails.<sup>554</sup> The provision on the withdrawal of the refugee status furthermore is in contrast with the Geneva Convention.<sup>555</sup>

### 6.3. Withdrawal of the subsidiary protection status due to re-availment of the protection of the country of origin of the beneficiary

In contrast to the Qualification Directive, the Asylum Act applies the ground for withdrawal of the refugee status based on the re-availment of the protection of the country of origin to persons with subsidiary protection, as well. As per HHC knowledge, the provision is applied by the NDGAP as a basis for status withdrawal which is clearly in violation of the EU law.

For the withdrawal procedure, see above in section on [Cessation: Procedures and guarantees](#).

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

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

Under Hungarian law, family reunification applicants are the family members of the refugees residing in Hungary, not the refugees themselves. Family members have to apply at the Hungarian consulate accredited to their country of origin or of residence. According to the law, family reunification applicants shall lawfully reside in the country where they submit the claim.<sup>556</sup> Refugees' family members are often themselves refugees in countries neighbouring the country of origin. In most cases, the family members stuck in the first country of asylum are unable to obtain a legal status there (and documentary proof thereof) that would be considered as "lawful stay" in the sense of Hungarian law. Therefore, the family members have to first obtain some kind of documents to prove the legality of their stay in the country where they reside. In some cases, consulates helped clarify that person's "lawful stay". In one case of HHC, the NDGAP gave its consent for the sponsor parents to initiate the procedure in Hungary instead of their applicant minor children at the consulate because the accredited Hungarian consulate was closed for indefinite period of time due to the COVID-19 pandemic.

Although family members are required to apply at the competent Hungarian consulate, it is the NDGAP that considers the application and takes the decision. The applicants are required to prove their relationships with the sponsors. The consulate records the biometric data of the applicant when submitting the application. The applicant has to verify his/her subsistence, accommodation, and a comprehensive health insurance (or sufficient savings to fund medical treatment) in Hungary, or the sponsor may do so

<sup>554</sup> See in detail the Hungarian Helsinki Committee: Preserved legal deficiencies post-CJEU Ahmed judgement: Hungarian asylum provisions on exclusion from international protection still not compliant with EU law, Information Update by the Hungarian Helsinki Committee, 7 April 2021, available at: <https://bit.ly/3GdSA5k>.

<sup>555</sup> See UN High Commissioner for Refugees (UNHCR), *UNHCR observations on legislative amendments related to exclusion from and revocation of refugee status and subsidiary protection status*, December 2020, available at: <http://bit.ly/39Z7Js1>.

<sup>556</sup> Section 47(2) TCN Decree.

by declaring that he/she undertakes the support of the applicant's family member. The requirements regarding the volume of funds verifying the subsistence are not defined in the law. This causes uncertainty on the one hand. On the other hand, usually the income considered as sufficient must be quite high compared to the Hungarian labour market, and to the widespread practice of employment in the grey area, which makes it possible to verify only a part of the actual income. According to the Hungarian law, there is no time limit to initiate the family reunification.

In Hungary, only refugees are entitled to family reunification under preferential conditions within three months following the recognition of their status.<sup>557</sup> They are exempted from fulfilling the usual material criteria: subsistence, accommodation, health insurance. No preferential treatment is applied in case of beneficiaries of subsidiary protection. The reasons for fleeing their countries of origin of beneficiaries of subsidiary protection are often similar to those of refugees. They rarely have the means to fulfil the strict material conditions for family reunification. It demands sacrifice and even luck to find a job or multiple jobs where the beneficiary could earn a salary that is high enough to meet the criteria of the family reunification. Consequently, the lack of any preferential treatment *de facto* excludes many beneficiaries of subsidiary protection from the possibility of family reunification, which often has a harmful impact on their integration prospects as well. In 2021, 1 family of subsidiary protection beneficiaries (and 1 family which missed the 3 months deadline of preferential conditions) could reunite with the assistance of the HHC despite the difficulties detailed above. This trend is promising regarding respect of the rights to family life and to family reunification. However, the uncertainty of the expected financial means and the discretionary right of the NDGAP to decide case-by-case about the sufficiency of these financial means remain.

The authorities are strict regarding necessary documents, which makes family reunification more difficult. They request that all the documents bear an official stamp, proving that they are originals, as well as an official stamp from the Hungarian consulate. All documents have to be translated to English or Hungarian and bear an official stamp, which is very costly. The decisions made by the NDGAP are predominantly based on these documents and there is relatively small space for other ways to prove family links. In 2020, some of the family members could not prove their family link with the sponsor because the submitted certificates turned out to be falsified/not accepted as original by the NDGAP without the family members' knowledge of any falsification. The NDGAP rejected the applications at first and second instance. The HHC represented these families successfully before the court, and the NDGAP had to re-examine the applications. In the new procedures, both families' reunifications were granted. According to Hungarian law, DNA tests could solve the question of family links in several cases when the documents are missing. Since 2017, however, DNA tests cannot be initiated by the applicants. Instead, they have to be ordered by the NDGAP. No DNA tests have been ordered for the purpose of family reunification in 2021.

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.<sup>558</sup> Consequently, certain refugee families are *de facto* excluded from any possibility of family reunification based on their nationality or origin. The NDGAP suggested to one of these families to apply for a 'Schengen visa', as the Schengen Code allows the use of separate sheet for visa stickers. However, in the procedure of Schengen visa application, the family members of refugees could not refer to the preferential conditions of family reunification, and therefore they would be still deprived of their right based on their nationality or origin.

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<sup>557</sup> The favourable rule was amended by Section 29 Decree 113/2016. (V.30).

<sup>558</sup> 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).

127 family reunification applications were submitted to the former IAO in 2016, of which 80 applications were approved and 30 appeal cases were pending at the end of the year.<sup>559</sup> As of 2017, though, no data have been provided by the asylum authority.<sup>560</sup>

## 2. Status and rights of family members

When granted residence permission and a visa, family members of the sponsor have 30 days from entering Hungary to either take the residence permit or to apply for asylum. In the asylum procedure, family members of recognised refugees are automatically granted the same status as the sponsor, as stated in the Asylum Act.<sup>561</sup> However, according to the definition of family members provided by the Asylum Act,<sup>562</sup> only the sponsor's minor children, spouse if married before the sponsor's arrival to Hungary, and parents of a minor sponsor are considered family members. Adult children, siblings and parents of adult sponsors are not automatically granted refugee status. Regardless of the connection, all family members are required to apply and start the procedure.

After a successful family reunification procedure, not all the newly arrived family members have the right to apply for asylum according to the Transitional Act. The asylum application may be submitted only by a spouse or a child who is still a minor at the time of submission. Other family members joining a refugee or beneficiary of subsidiary protection must choose between the uncertain declaration of intent procedure with the costly travel to Belgrade and the uncertainty of residence permits by trying to find every time a purpose and to fulfil the rest of the residence permit application criteria.

Family members with a residence permit have access to education and vocational training however, they are excluded from health care, employment and self-employment, social security and assistance.<sup>563</sup>

Family members of beneficiaries of subsidiary protection are not automatically granted subsidiary protection, they have to apply for asylum and prove their cases.

During the asylum procedure, family members of the sponsor have the same rights as asylum seekers. This practically means that before applying for asylum, the grantees of family reunification actually obtain their residence permits. In case they decide not to apply for asylum but take their residence permit, they will not have the same rights and entitlements of the sponsor but highly reduced ones.

As a result of the COVID-19 pandemic the NDGAP suspended the family reunification procedures in the spring. Moreover, the Hungarian embassies in the countries of origin were closed preventing family members from submitting their applications. There were applicants whose procedure was halted for half a year. Since autumn 2020, family members can again enter Hungary with a visa enabling them to obtain their residence permit for the purposes of family reunification upon their arrival. HHC is not aware of any pandemic-related obstacles from 2021.

## C. Movement and mobility

### 1. Freedom of movement

Refugees and beneficiaries of subsidiary protection have freedom of movement within the territory of the State. There is no related restriction prescribed in law. Most NGOs providing shelter for refugees and persons with subsidiary protection are located in **Budapest**, which means that the placement of beneficiaries is concentrated in the capital of Hungary.

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<sup>559</sup> Information provided by former IAO, 20 January 2017.

<sup>560</sup> See the latest information provided by NDGAP on 7 February 2022.

<sup>561</sup> Section 7(2) Asylum Act.

<sup>562</sup> Section 2(j) Asylum Act.

<sup>563</sup> Wolffhardt et al., 74.



## 2. Travel documents

The duration of validity of travel documents issued to beneficiaries of international protection is of one year, both for persons with refugee status and subsidiary protection. Refugees receive a “refugee passport”, a bilingual travel document specified in the 1951 Refugee Convention, while holders of subsidiary protection receive a special travel document, not a refugee passport.<sup>564</sup>

A refugee is entitled to a bilingual travel document under the Refugee Convention, unless compelling reasons of national security or public order otherwise require.<sup>565</sup> There are no geographical limitations, except for travelling to the country of origin.

The NDGAP can deny the issuance of a travel document for beneficiaries of international protection in case the national security agencies, the National Tax and Customs Administration of Hungary or the Police provides information to the NDGAP according to which the person should not get a travel document for reasons of national security and public order.<sup>566</sup> The resolution rejecting the issuance of a bilingual travel document to the refugee may be subject to judicial review.<sup>567</sup> As it is fixed in the Asylum Act, the petition for judicial review shall be submitted to the asylum authority within 3 days following the date of delivery of the decision.<sup>568</sup> The NDGAP shall, without a delay, forward the petition for judicial review to the competent court together with the documents of the case and any counterclaim attached.<sup>569</sup> The petition for judicial review shall be adjudged by the court within 8 days in non-contentious proceedings, relying on the available documents.<sup>570</sup> The court may overturn the decision of the refugee authority. The court's decision adopted as a result of the proceedings was subject to judicial review by the Curia between 1 July 2020 and 14 May 2021.<sup>571</sup> The same rules are applied to refugees and beneficiaries of subsidiary protection.

In practice, in order to receive the travel document, beneficiaries of international protection have to apply for it in a separate form at the competent office of NDGAP. The fee of the procedure is around €20 and the applicant must have already obtained his/her ID card and the address card. Obtaining the latter could be problematic because of the difficulties beneficiaries face concerning housing (see section on [Housing](#)). The authority issues the travel document within 22 working days.<sup>572</sup>

According to the statistics of NDGAP there were 572 travel documents for refugees and 432 for beneficiaries of subsidiary protection issued in 2021.<sup>573</sup>

## 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 2021: | 0       |

Recognised refugees and beneficiaries of subsidiary protection can stay in the reception centre up to 30 days after receiving the decision on their status.<sup>574</sup> In 2021 there were a total of 638 persons accommodated in **Vámosszabadi**. The information provided by the NDGAP did not specify the basis of their stay.<sup>575</sup> Out of this number, there were 270 Afghan evacuees accommodated there. In

<sup>564</sup> Section 11/A Decree 101/1998. (V. 22.) on the execution of Act XII of 1998 on travelling abroad.

<sup>565</sup> Section 10(3) (a) Asylum Act.

<sup>566</sup> Section 4/A Asylum Decree.

<sup>567</sup> Sections 10(5) and 17(2a) Asylum Act.

<sup>568</sup> Section 10(6) Asylum Act.

<sup>569</sup> Section 10(6) Asylum Act.

<sup>570</sup> Section 10(7) Asylum Act.

<sup>571</sup> Section 10(8) Asylum Act.

<sup>572</sup> NDGAP, *Kétnyelvű úti okmányok kiállítása*, available at: <http://bit.ly/2jrKbou>.

<sup>573</sup> Information provided by NDGAP on 7 February 2022.

<sup>574</sup> Section 41(1) Asylum Decree.

<sup>575</sup> Information provided by the NDGAP on 7 February 2022.

**Balassagyarmat** 469 persons were placed in 2021 of whom 180 were Afghan evacuees. Besides accommodation, people are entitled to receive food during their 30-day stay.

In June 2016 all forms of integration support were eliminated, therefore beneficiaries of international protection are **no** longer eligible to any **state support** such as housing, financial support, additional assistance or others. A policy analysis on housing of beneficiaries of international protection published by the Menedék Association in 2021, confirms that there are no targeted public housing solutions or housing policies for refugees and beneficiaries of international protection in Hungary.<sup>576</sup>

In the last years, NGOs and social workers reported extreme difficulties for beneficiaries of international protection moving out of reception centres and integrating into local communities.<sup>577</sup> **Accommodation** free of charge is provided to a **very limited extent** exclusively by **civil society and church-based organisations**. Moreover, the contacted organisations' activity is limited to the capital of Hungary. The situation was aggravated by the fact that the Ministry of Interior withdrew all the calls for tenders funded by AMIF in the beginning of 2018.<sup>578</sup> 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. However, as the numbers and the general capacities of the provided help shown below, the civil society and church-based organisations cannot meet all the needs of people with international protection. HHC is aware of a case from 2020 when a German lawyer contacted several organisations (also the ones listed below) to know if there was available accommodation for a family with international protection in case of their return. The contacted organisations could provide no solution for the family which clearly shows the limits of the housing capacities. As per Menedék Association, there are a few local governments open to address housing problems concerning beneficiaries of international protection. Nevertheless, in the absence of sufficient resources and support, such initiatives have not been realized so far.

The **Evangelical Lutheran Church in Hungary** arranged short-term crisis placement for 30 persons with international protection (together with the family members, a total of 66 people benefitted from the services, one third less than one year ago) in **Budapest** in 2021. Out of the 66 people, there were also one asylum seeker and one person with tolerated status. Accommodation was provided in a hostel, in the community house of the Church, and in a workers' hostel. According to the Church, since September 2021, they could not support further people in need due to the lack of resources. Already in 2020, they were occasionally forced to reject applicants due to limited resources.

The **Jesuit Refugee Service** provided three flats for families and single persons, as well as a total of four places to students in two dormitories belonging to the Jesuit Order in **Budapest** last year. Those beneficiaries benefitting from accommodation by the Jesuit Refugee Service are also assisted by a social worker (there is one person in the Order providing such help), involving volunteer mentors and two parochial communities. According to the Jesuit Service there is a high demand for these places among people with international protection.

The **Baptist Integration Centre** opened its temporary home for families in June 2020. The centre did not accommodate any families with international protection status last year, however. The home has a capacity of 80 people (Hungarian as well as foreign citizens). According to the Centre, in June 2020, 90 families were on their waiting list.<sup>579</sup> The Baptist Integration Centre provided housing a total of 22 persons with international protection in three temporary homeless shelters and 6 people were hosted in the Exit

<sup>576</sup> Pósfai, Zs., Szabó, L. (2021). Policy Analysis and Proposal for the Improvement of the Housing of Beneficiaries of International Protection in Hungary, Social Integration of Beneficiaries of International Protection in Hungary – NIEM Policy Briefs. Institute of Public Affairs (Poland) and Menedék – Hungarian Association for Migrants. Available at <https://bit.ly/3HbE39U>. p. 5.

<sup>577</sup> EASO, *Description of the Hungarian asylum system*, May 2015, 10.

<sup>578</sup> The withdrawn calls *inter alia* covered the improvement of reception conditions for unaccompanied children, the support of their integration, legal assistance to asylum seekers, housing and integration programmes. Belügyi Alapok, 'Tájékoztatás pályázati kiírások visszavonásáról', 24 January 2018, available in Hungarian at: <http://bit.ly/2CzR1Nv>.

<sup>579</sup> See: <https://bit.ly/3AXSnS0>.

Centre in 2021. As opposed to the yearly decrease in the number of residents in the previous years, the number of 2021 has not changed significantly compared to the year before (in fact two more people were hosted by the Centre in 2021). Last year, the mandatory COVID-19 test was a precondition for the admittance to the homeless shelter that caused significant delays in the registration of newcomers. As reported by the Evangelical Lutheran Church, the homeless shelters provide the most feasible and economic solution for beneficiaries of international protection after receiving protection status (cca. 30 EUR/month).

**Kalunba** has been providing a housing programme for years. However, with the end of the AMIF funding the number of people supported by the organisation and the length of the offered help significantly decreased. In 2020, Kalunba supported around 40 people international protection status for a 3-month time with rented apartments. Due to COVID-19, this time based on the individual situation everyone was given an extension. The number of beneficiaries of the Kalunba's complex housing program decreased in 2021 due to the difficulties and restrictions the pandemic brought about.

As of 2019 the Budapest Methodological Centre of Social Policy and Its Institutions (BMSZKI), the homeless service provider of Budapest Municipality,<sup>580</sup> has no special program targeting beneficiaries of international protection given the non-availability of the AMIF funding. The Institution runs temporary accommodation shelters and night shelters for **homeless people** that are open for beneficiaries of international protection, as well. However, the temporary accommodation shelters are running with full capacities and have long waiting lists to get in, while night shelters are also full and provide 15-20 bedrooms. According to BMSZKI, these conditions are not in line with the needs of refugees who are often severely traumatised, do not know the language – interpreter is not available - and since the institute cannot guarantee the respect of the unity of families.<sup>581</sup> In 2020 there was no one with international protection status present in the shelters of the Institution. According to the BMSZKI at the beginning of the year a few places would have been available for beneficiaries of international protection. However, as a result of the outbreak of the COVID-19 pandemic, the demand surged in line with the growing extent of unemployment. On the other hand, though, BMSZKI had to decrease its capacity in order to provide sufficient health safety measures to the hosted people. Due to the pandemic between 17 March 2020 and mid-June there was a full halt on newcomers in the temporary shelters. In the summer it was open again. As of September, the provision of accommodation in the temporary shelters is conditioned on two prior PCR tests. By the end of the year the temporary shelters were running again with full capacity and the waiting list of the Institute is again extensive. There were four persons with international protection status accommodated by either night shelters or temporary shelters of BMSZKI in 2021. One of the residents though applied soon after his admittance to be placed in the workers' hostel where better accommodation opportunities are available (but also the costs are higher). The Temporary Family Shelter accommodated two refugee families in 2021. In addition, BMSZKI had to separate 136 places for quarantine purposes to the detriment of two night shelters. Here, homeless people from the territory of the metropolitan are placed in case they are infected by COVID-19.

Due to the lack of apartments on the market, the rental fees are too high to be affordable for beneficiaries who have just been granted status. In addition to this struggle, landlords usually prefer to rent out their apartments to Hungarians rather than foreign citizens.

A further problem regarding housing is the difficulty of getting an address card. Landlords usually require prospective tenants to have an address card, which is impossible to obtain, unless someone has a contract and the confirmation statement of the owner of the flat that he/she can use the address as his/her permanent address. On the other hand, landlords in general are not willing to give their approval to tenants and allow them to register the leased property's address as their permanent residence. Moreover, as per the previous experience of BMSZKI, landlords usually prefer tenants with no children, which makes it even more difficult for families to find an adequate accommodation. Keeping contact with the owner might be also difficult due to language barriers and the lack of interpreters.

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<sup>580</sup> BMSZKI, *Leaflet*, available at: <https://bit.ly/2XbnwNu>.

<sup>581</sup> Families and couples (apart from a limited number of places regarding the latter) cannot be placed together.

The Jesuit Refugee Service and the Lutheran Church reported that the pandemic exposed the beneficiaries of international protection with difficulties with regard to housing. The decreasing income made it troublesome to cover all the housing related costs for those living in private apartments. Since the economic backlash affected the landlords equally, beneficiaries of international protection could receive moratorium regarding the payment of the rent only in exceptional cases. In 2021, many moved to smaller flats in order to be able to pay the rent. The Jesuit Refugee Service provided financial and social support to a total of 56 persons (18 families and 8 single persons) last year in order to alleviate the difficulties people faced due to the pandemic. Among other the organization distributed food, medicine and hygienic allowances and in kind contributions too.

The **Hungarian Maltese Charity Service** started a state-AMIF funded project that will run for one year and aims at the integration of the Afghan refugees rescued by the Hungarian Defence Forces from Afghanistan in the end of August 2021.<sup>582</sup> The organization helped them to move out from the reception facilities at the end of October and provided them with a comprehensive assistance including housing in the metropolitan. In addition, a group of civilian volunteers started assisting the families with in kind donations, such as clothes, furniture, kitchen equipment, toys, etc. According to the Director of the NDGAP, the Afghan evacuees will be granted national permanent residence permit via the discretionary powers of the Minister of Interior. Medical assistance is also ensured for them for 18 months.<sup>583</sup>

## 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.<sup>584</sup> This means that no labour market test is applicable regarding their employment. There is only one provision established in the Asylum Act, which makes a difference as to beneficiaries of international protection. Accordingly, beneficiaries may not take up a job or hold an office or position, which is required by law to be fulfilled by a Hungarian citizen.<sup>585</sup> Typically, the positions of public servant and civil servant demand Hungarian citizenship.

There is no statistical data available on the employment of beneficiaries,<sup>586</sup> thus the effectiveness of their access to employment in practice cannot be measured. In practice, the main obstacle beneficiaries of international protection have upon job search is Hungarian language. There is **no state support** targeting specifically people with international protection for obtaining employment. Beneficiaries of international protection are entitled to use the services of the National Labour Office under the same condition as Hungarian citizens, even though it is hard to find an English-speaking case officer.

In practice, having recognised that the absence of social capital, the knowledge of local language and the cultural differences pose major challenges for beneficiaries seeking jobs, such as regarding housing (see [Housing](#)), NGOs provide some assistance in this sector as well. However, their activities are limited to **Budapest**.

Even though the “MentoHRing” programme of the **Menedék Association**<sup>587</sup> was terminated with the end of the AMIF funding in June 2018, the organisation still had certain activities facilitating the job search of beneficiaries of international protection in 2020. In the absence of state information provision on the legislative changes concerning labour law introduced in response to the pandemic, Menedék Association provided information and counselling to beneficiaries of international protection. In addition, Menedék

<sup>582</sup> The project is funded by the Government together with EU funds (AMIF), see the minutes of the meeting of the Human Rights Working Group on Asylum and Migration held on 12 November 2021, available here: <https://bit.ly/3G3bv1z>.

<sup>583</sup> *Ibid.*

<sup>584</sup> See the general right to equal treatment in Section 10(1) Asylum Act.

<sup>585</sup> Section 10(2)(b) Asylum Act.

<sup>586</sup> Information provided by the Employment Department of Budapest Government Office, 14 March 2018.

<sup>587</sup> See the programme at: <https://bit.ly/3AZdqnc>.

Association ran a project, Skills for refugees in 2021 together with IKEA. The initiative aims at helping beneficiaries of international protection gaining new skills and work experience, so that they have a better chance of finding a job, either in IKEA stores and units or in other companies. In this way, they have better opportunities to integrate into their new host communities.<sup>588</sup>

The **Maltese Care Nonprofit Ltd.** provides services such as individual labour market counselling, labour market training and personalized help with job seeking to third-country nationals (see “Jobs for you”). Even though the program does not target specifically beneficiaries of international protection, they can also request the services of the Maltese. In 2021 the organisation could provide support for 17 people with international protection status out of which 6 people could in the end successfully undertake employment. The organisation would again broaden the program’s target group in case a grant from AMIF was again available.

**Kalunba** has a coaching programme which, similarly to previous years, supported approximately 50 persons in 2020. The program entails job market counselling, mediation and mentoring. It ran in 2021.

Reportedly, due to language and cultural barriers access to employment is essentially limited to certain sectors such as physical labour (as working in construction, storage etc.) and hospitality. The average working hours are 12 hours per day (although in many cases people are provided only with a part-time contract) here, which renders integration of people with international protection status more difficult since they have no free time besides work.

Even though there is legislation based on which the recognition of qualifications for beneficiaries of international protection is possible without official paper, the assessment of such qualifications, skills and abilities is decentralized.<sup>589</sup> It means that there is no centre that would conduct an assessment and issue an official certificate about the qualification of the person concerned but that is left for the employers (as well as to schools and vocational educations).<sup>590</sup> There are no criteria laid down in the law as to the assessment of levels of professional education and skills. There are no assessment guidelines for cases where documentary evidence from the country of origin is unavailable either.<sup>591</sup> As per the experiences of the Menedék Association, the lack of proper certification of education or trainings completed by refugees or persons with subsidiary protection in practice often implies that they undertake employment for which they are overqualified.

As per the experience of HHC and as reported by the contacted organisations the economic backlash due to the COVID-19 pandemic affected refugees and subsidiary protection beneficiaries to a great extent. Many worked in hospitality and tourism, therefore lost their jobs or even if they could keep it the working hours were greatly reduced. Reportedly, after many of them started to work again full time, the working hours were not set back officially by the employer which is disadvantageous especially for those who want to get reunified with their families or apply for Hungarian citizenship later as these procedures require the proof of sufficient income where a part-time job does not qualify as such. Those who lost their jobs could hardly find new employment; therefore, many people remained without work for months. It posed difficulties also on those who had just received their status and tried to undertake employment, as well as those receiving aftercare as due to the lockdown they could not work, thus their subsistence was threatened as the aftercare assistance is solely not enough to cover all their expenses. Beneficiaries, similarly to many Hungarians, have no savings. According to the Maltese, the available jobs on the market were shrinking, as the majority of the companies suspended their hiring processes, therefore the applications for the available places surged. For the vacant positions the companies opted for Hungarian applicants speaking properly the language in the detriment of beneficiaries of international protection.

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<sup>588</sup> See Menedék, Skills for Refugees, available at: <https://bit.ly/3HIMEHQ>.

<sup>589</sup> NIEM, Vulnerability and Discrimination in the Employment of Beneficiaries of International Protection in Hungary, 2021, available at: <https://bit.ly/3rbK7KL>, p. 12.

<sup>590</sup> *Ibid.*, pp. 12, 15

<sup>591</sup> Wolffhardt et al. 2019, 104.



In 2021, as per the Maltese Care Nonprofit Ltd., the labour market started to stabilise again, and in the end of the year, the demand for third-country national employees had grown. Menedék Association noted that, especially in the hospitality sector where many Hungarians left their position, the labour force became scarce. Therefore, international protection beneficiaries could more easily find a job.<sup>592</sup> The Lutheran Church also reported that job opportunities were available primarily in the tourism and the hospitality sectors. The Jesuit Refugee Service reported that many people were forced to take up manual jobs even when offering bad contractual conditions, and to accept part-time or periodical employments. This reflects the general experience of the HHC according to which clients reported, e.g. no holidays to compensate for the overtime working hours were included in their contracts.

In 2021, the Menedék Association published a policy brief on 'Vulnerability and Discrimination in the Employment of Beneficiaries of International Protection in Hungary - Social Integration of Beneficiaries of International Protection in Hungary', presenting the development of the employment situation from 2007 by following the analysis of the implementation of the asylum, anti-discrimination and employment rules through individual interviews conducted on the basis of the employment indicators of the National Integration Evaluation Mechanism project.<sup>593</sup> The policy brief highlights that the legislative background of the labour market is unfavourable for beneficiaries of international protection.

## 2. Access to education and vocational training

In the case of **unaccompanied children**, the law provides for the right to education. The reception centre and guardians struggle with actively assisting children to enrol in schools and helping them to attend classes. Unaccompanied children who have been granted international protection are enrolled in the mainstream Hungarian child welfare system and the same rules apply to them as to all other children, which is the right to education.

Education for unaccompanied children is in practice provided by a limited number of public schools in Budapest. Access to effective education remained difficult in the last years. Access had to be guaranteed to younger children in 2020, which would prove to be a difficult task even in a "normal year". Paired with COVID-19 restrictions, it was virtually impossible to access for months. The HHC is aware of one case when a 5-year-old unaccompanied minor was enrolled in a local kindergarten.

While all unaccompanied minors in the Children's Home in **Fót** were enrolled in schools, some complained of the low quality of education in their secondary schools. Schools were not always chosen for students based on their abilities, wishes and potential, but rather on the availability of empty places. There is no official state-funded language learning support for refugee children when entering the school system.<sup>594</sup> Unaccompanied children receiving protection status before they turn 18 are eligible to aftercare services that grant them the right to free education and housing. Depending on their individual circumstances and the level of education they are receiving, they may benefit from aftercare until they turn 30.<sup>595</sup> On 31 December 2021, 24 beneficiaries of international protection received aftercare services from the Károlyi István Children's Home in Fót. There was one child with international protection registered in Fót on 31 December 2021.<sup>596</sup>

In the case of **children with families**, the situation is also difficult. Hardly any school is ready to offer the specialised care and support refugee children need. The growing anti-refugee sentiment may make it even more difficult for schools to admit children receiving international protection for fear of facing a backlash from parents or donors.

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<sup>592</sup> See also the study Budai, B.: Effects of the COVID-19 Pandemic on the Labour Market Situation of Beneficiaries of International Protection in Hungary, Social Integration of Beneficiaries of International Protection in Hungary. Menedék – Hungarian Association for Migrants, 2021. Available at <https://bit.ly/35rlXmW>.

<sup>593</sup> See NIEM, Vulnerability and Discrimination in the Employment of Beneficiaries of International Protection in Hungary, 2021, available at: <https://bit.ly/3rbK7KL>.

<sup>594</sup> Wolffhardt et al. 2019, 141.

<sup>595</sup> Section 77(1)(d), (2) and Section 93 Child Protection Act.

<sup>596</sup> Information provided by the Directorate-General for Social Affairs and Child Protection on 7 April 2022.



Both unaccompanied children and children staying with their families are provided on a weekly basis assistance in their integration to the education system by the **Jesuit Refugee Service** and cooperating volunteers. They are helped with Hungarian language skill development as well as with specific school subjects. The Jesuit Refugee Service assisted 57 unaccompanied minors, children with families and adults with their education in 2021. **Kalunba** also provided an afterschool program for children and young adults in 2020 and 2021 (it runs still 2009) entailing correspondence with the schools and the educational support of the children. Since the outbreak of the COVID-19 pandemic their activities have been provided online during lockdown periods and in person when possible.

As a result of the COVID-19 pandemic the introduced online education system posed further hurdles to refugee children. In the course of home-schooling in the spring of 2020 the problem had mainly two causes. On the one hand there was a lack of electric devices available in the families (Menedék Association, certain districts in Budapest and other NGOs helped the families in need with computer rent), on the other hand parents could not help them efficiently with the studies mainly due to language barriers. Due to the increased workload for teachers, they had reduced time to dedicate to children with special needs, such as beneficiaries of international protection. As the Menedék Association and the Jesuit Refugee Service commented, the existing disadvantages have been amplified by online education. Next Step Hungary Association reported a drop in school performance and Hungarian language skills among children beneficiaries of protection due to online teaching and limited social interaction with local children.

Beneficiaries of international protection have the same rights to access to education as Hungarian nationals.<sup>597</sup> Nevertheless, there are administrative barriers regarding higher education to which beneficiaries are exposed. On the one hand, beneficiaries face problems regarding the obligation to provide proof of their secondary education upon accessing university, since they cannot contact their country of origin in case they do not have the necessary certificates. According to Hungarian law, the head of the university might give exemption from such administrative obligations to refugees.<sup>598</sup> Nevertheless, there is no protocol to follow in this regard. In 2019, Wolffhardt et al. wrote the following:<sup>599</sup> *“Barriers that negatively impact on access to the higher (upper secondary, postsecondary/tertiary) levels of education are more widespread and exist in [...] Hungary, [...]. Mostly, they relate to proving previous stages of educational attainment without authorities regulating the equivalence procedures or proceedings in the absence of proper documentation.”* The HHC is aware of a positive example from 2020. A beneficiary of international protection fleeing the country of origin during his/her academic years had no official proof of secondary school graduation in his/her home. The university accepted an official certificate issued by the NDGAP stating that his/her highest education is secondary school as a replacement for his/her secondary school certificate. Besides the administrative hurdles, the comprehensive study of the Menedék Association on ‘Opportunities for supporting the higher education studies of beneficiaries of international protection’ from 2021, identified further barriers for beneficiaries of international protection regarding access to education, namely the lack of Hungarian language skills and of state financial support programs.<sup>600</sup> Additionally, the absence of ‘catch-up courses’ for beneficiaries of international protection and the low number of secondary education institutions makes it difficult for refugees to access higher education. The results of the study published by the Menedék Association as well as experiences of refugees with regard to access to education was discussed at a panel discussion organized by the She4She and the HHC on 20 June 2021.<sup>601</sup>

The pandemic also affected school registrations adversely. In March 2020, a young adult could not register for a Hungarian language training because the school was closed. The situation was resolved by September 2020. The Lutheran Church reported difficulties with access to education of children in 2021. Accordingly, during the springtime online schooling, schools contacted by the Church did not receive new pupils.

<sup>597</sup> Section 39(1)(b) of Act CCIV of 2011 on Higher Education.

<sup>598</sup> Section 4(2) of Act C of 2001.

<sup>599</sup> Wolffhardt et al. 2019, 139.

<sup>600</sup> See NIEM, Opportunities for Supporting Higher Education Studies of Beneficiaries of International Protection in Hungary, Policy Brief 8, 2021, available at: <https://bit.ly/3s6NCRJ>.

<sup>601</sup> The recording of the discussion is available at <https://bit.ly/3Hb3f0j>.

**Young adults and adults** have the same access to **vocational trainings** as nationals. However, the access is hindered by the fact that the trainings granted by law are only available in Hungarian, thereby the specific needs of beneficiaries of international protection as a vulnerable group is not taken into account.<sup>602</sup> On the other hand, beneficiaries of international protection face no administrative obstacles when accessing such trainings.<sup>603</sup>

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**Next Step Hungary Association** (formerly **MigHelp**) is an adult education institute. According to their website,<sup>604</sup> the association offers among others Hungarian, German, French, and English classes, computer training, classes in vehicle driving, and provides child day care for migrants and refugees.<sup>605</sup> Their programmes are free of charge although according to the organisation, and spoken English on an intermediate level is a precondition to attend their courses. In 2021, Next Step provided courses on computer skills, preparatory for the driving licence, Hungarian as a foreign language, as well as coding and programming classes for children. According to the organization, the Hungarian courses were attended by 7 refugees, 5 of them received certificates of completion. The European Computer Licence Course was attended and successfully completed by two refugees. The Kids' Coding courses were attended and completed by 4 refugees. 5 refugees enrolled in the Driving License course (ongoing). The organization attributes the low number of enrolled people with international protection status to the restrictive asylum policies implemented by the Hungarian government. Next Step Hungary Association has a practice of prioritizing vulnerable migrants coming from countries of concern whenever possible. On average, approximately 50-60% of the Association's courses and activities are attended by vulnerable migrants. Next Step noted that due to irregular working hours, some of the enrolled people with international protection status were unable to fully commit to starting and/or completing courses that were much needed to improve their employment status.

The **Central European University** relaunched its Open Learning Initiative (OLive) programme<sup>606</sup> specifically targeting asylum seekers and refugees in the autumn semester of 2020 after it was on a pause for two years as a result of the ambiguity of the so-called "Stop Soros" legislation package,<sup>607</sup> that came into force in August 2018 levying a 25% tax on financing or activities "supporting" immigration or "promoting" migration in Hungary. Courses were offered throughout 2021.

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<sup>602</sup> Wolffhardt et al. 2019, 113.

<sup>603</sup> Wolffhardt et al. 2019, 114.

<sup>604</sup> See: Next Step Hungary Association, available at: <https://bit.ly/36b34FM>.

<sup>605</sup> See <https://bit.ly/34DcCbo>.

<sup>606</sup> See <http://bit.ly/2Sz9WSh>.

<sup>607</sup> 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>.

While all unaccompanied minors in the Children's Home in **Fót** were enrolled in schools, some complained of the low quality of education in their secondary schools. Schools were not always chosen for students based on their abilities, wishes and potential, but rather on the availability of empty places. There is no official state-funded language learning support for refugee children when entering the school system.<sup>608</sup> Unaccompanied children receiving protection status before they turn 18 are eligible to aftercare services that grant them the right to free education and housing. Depending on their individual circumstances and the level of education they are receiving, they may benefit from aftercare until they turn 30.<sup>609</sup> On 31 December 2021, 24 beneficiaries of international protection received aftercare services from the Károlyi István Children's Home in Fót. There was one child with international protection registered in Fót on 31 December 2021.<sup>610</sup>

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Beneficiaries of international protection have the same rights to access to education as Hungarian nationals.<sup>611</sup> Nevertheless, there are administrative barriers regarding higher education to which beneficiaries are exposed. On the one hand, beneficiaries face problems regarding the obligation to provide proof of their secondary education upon accessing university, since they cannot contact their country of origin in case they do not have the necessary certificates. According to Hungarian law, the head of the university might give exemption from such administrative obligations to refugees.<sup>612</sup> Nevertheless, there is no protocol to follow in this regard. In 2019, Wolffhardt et al. wrote the following:<sup>613</sup> *"Barriers that negatively impact on access to the higher (upper secondary, postsecondary/tertiary) levels of education are more widespread and exist in [...] Hungary, [...]. Mostly, they relate to proving previous stages of educational attainment without authorities regulating the equivalence procedures or proceedings in the absence of proper documentation."* The HHC is aware of a positive example from 2020. A beneficiary of international protection fleeing the country of origin during his/her academic years had no official proof of secondary school graduation in his/her home. The university accepted an official certificate issued by the NDGAP stating that his/her highest education is secondary school as a

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<sup>615</sup> The recording of the discussion is available at: <https://bit.ly/3Hb3f0j>.

<sup>616</sup> Wolffhardt et al. 2019, 113.

<sup>617</sup> Wolffhardt et al. 2019, 114.

<sup>618</sup> See: Next Step Hungary Association, available at: <https://bit.ly/36b34FM>.

<sup>619</sup> See <https://bit.ly/34DcCbo>.

<sup>620</sup> See <http://bit.ly/2Sz9WSh>.

for two years as a result of the ambiguity of the so-called “Stop Soros” legislation package,<sup>621</sup> that came into force in August 2018 levying a 25% tax on financing or activities “supporting” immigration or “promoting” migration in Hungary. Courses were offered throughout 2021.

## 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.<sup>622</sup> 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.<sup>623</sup> Social welfare is provided to beneficiaries under the same conditions and on the same level as for nationals.

Local governments usually limit housing application and allocation systems to long-term local residents.<sup>624</sup> Such conditions certainly present difficulties for beneficiaries of international protection who have just received protection. Furthermore, the job seeker benefit requires at least 365 days of coverage (being employed or self-employed) in the last three years that is hardly the case for beneficiaries of international protection right after being granted international protection status. Social assistance is provided by either the competent district government office or the local governments.

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

Due to the COVID-19 pandemic, many became unemployed (see section on [Access to the labour market](#)). The unemployment benefit is available for a maximum of 90 days (equals to the amount of 60% of the last payment). The application form for unemployment benefit, available only in Hungarian, is not easy to fill in, therefore people in need must have requested the help of NGOs, such as Kalunba.

## G. Health care

According to the Hungarian Health Act,<sup>625</sup> beneficiaries of international protection fall under the same category as Hungarian nationals. Although for 6 months after refugees and subsidiary protection beneficiaries are granted their status, they are entitled to health services under the same conditions as asylum seekers. Therefore, the asylum authority funds the health care expenses of the beneficiaries for 6 months, if they are in need and cannot establish other health insurance format. However, as per the Menedék Association’s experience, in practice this is not always accepted by the health care service providers. The Evangelical Lutheran Church reported such difficulties in 2020 in case of a mother obtaining international protection and of another person with subsidiary protection. No similar incidents were reported from 2021.

Since 2018 the card (unlike earlier) is delivered by post which makes it longer than receiving it in person thus extends the duration of the procedure and delays the start of the employment. As per the Evangelical Lutheran Church, since the issuance of the health insurance card lasts too long, it is not requested

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<sup>621</sup> 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>.

<sup>622</sup> Ministry of Human Resources, *Tájékoztató a szociális ellátásokról*, 2017, available in Hungarian at: <http://bit.ly/2E11PPm>.

<sup>623</sup> For a summary, see US Social Security Administration, *Social Security Programs Throughout the World; Europe 2018*, September 2018, available at: <https://bit.ly/2GOgliU>.

<sup>624</sup> Pósfai, Zs., Szabó, L. (2021). Policy Analysis and Proposal for the Improvement of the Housing of Beneficiaries of International Protection in Hungary, Social Integration of Beneficiaries of International Protection in Hungary – NIEM Policy Briefs. Institute of Public Affairs (Poland) and Menedék – Hungarian Association for Migrants. Available at <https://bit.ly/3HbE39U>, 6.

<sup>625</sup> Section 3(s) Act CLIV of 1997 on Health Care.



immediately upon the granting of the status in Vámoszabadi, but only after the person establishes their domicile out of the reception facility. The possibility to obtain the health insurance card is further hindered by the difficulties arising with regard to the issuance of the identification and address card (see section above on [Residence permit](#)), as without those the application for the health insurance card cannot be initiated. The Evangelical Lutheran Church is aware of one person with international protection who requested a health insurance card in June 2020, three months after the recognition of his status, and finally received his card only in November 2021.

The recent amendments of the Social Insurance Act have unfavourable effects on those beneficiaries of international protection who left the country and were later returned by another EU Member State. According to the Evangelical Lutheran Church, the health insurance eligibility of these people is terminated upon their departure. Consequently, if they are returned with poor health conditions necessitating immediate medical intervention, the costs of that are later billed to the patient. For instance, in 2020, even though a returned person with subsidiary protection managed to arrange his health insurance in December, the system officially still denied him access to health care services. Thanks to the generosity of the health care staff, he was provided with the necessary chemotherapy treatment. The Evangelical Lutheran Church is aware of a person whose subsidiary protection status had been withdrawn by the time they returned to Hungary in a very poor health condition in 2021. They were granted a temporary residence permit, thereby they were not eligible for health care services. The Evangelical Lutheran Church also reported that the tax authority mailed a check about the debt stemming from the non-payment of health insurance contribution to several beneficiaries who had meanwhile left the country.

In practice, similarly to asylum seekers, beneficiaries of international protection face significant barriers regarding access to health care. Barriers mainly stem from language difficulties, i.e. the lack of interpreters or the lack of basic English spoken by the doctor. NGOs' assistance is the only available solution for that. The obstacles, furthermore, might stem from administrative difficulties or simply from the lack of law awareness. According to a research from 2017, which is based on interviews carried out with 18 refugees and 4 social workers, refugees generally feel marginalised regarding the healthcare system.<sup>626</sup> The research highlights the importance of social workers and volunteers who "act as links between health care system and refugees" helping with interpretation and as an information point for the health care institute's personnel. Based on the information received from the contacted organisations, the findings of the research were still valid in 2021. The overburdening of the Hungarian health care system due to the COVID-19 pandemic resulted in general that access got more burdensome. This certainly posed further obstacles for the already disadvantageous social groups such as beneficiaries of international protection.

According to the Evangelical Lutheran Church and the Menedék Association, health care for people living in one of the homeless shelters of the Baptist Integration Centre was arbitrarily denied by the competent practitioner in 2020. As a consequence, a refugee resident was not provided health care despite of having serious symptoms. Due to his sickness, he could not work which led to the loss of his job. Meanwhile, lacking the medical proof of being sick he could not benefit from the state aid either. The Baptist Integration Centre reported a similar incident from 2021: a homeless person tried to validate his health insurance before the competent authority but his request was rejected by the case officer and was told to go to work.

Not only adult refugees but also unaccompanied children with international protection face the same difficulties explained above. The Menedék Association reported that the competent health care institution was postponing the dental treatment of an unaccompanied child living in Fót in 2020. No similar incident was reported from 2021, nevertheless, in general non-urgent medical treatments were postponed due to the pandemic throughout the year.

The Cordelia Foundation is the only organization that specifically focuses on psycho-social support provision among people with international status (see above under Reception Conditions). Next Step reported in 2021 that people with international protection status and other vulnerable migrants with traumatic experiences might have more significant difficulties concentrating on and fully committing to

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<sup>626</sup> Mangeni Akileo, *Marginalization of refugees and asylum seekers in the healthcare system: A Hungarian case study*, Central European University, 2017.



long-term and more complex courses organized by the NGO. Therefore, as a positive development, Next Step offers mental health assistance to its community members. The organization also reported that the number of applicants for the organization's mental health services grew on account of the challenges the pandemic brought about.

There was no beneficiary of international protection residing in reception facilities infected by the SARS-CoV-2 virus in 2021.<sup>627</sup> At the outset of the vaccination campaign,<sup>628</sup> Hungarian citizens (above the age of 18) in the possession of a valid health insurance card were eligible for the vaccine. Since beneficiaries of international protection fall under the same category as Hungarian nationals regarding health care provisions (as indicated above), the priority order applied to them in the same manner as to Hungarian citizens. It can be noted, however, that the website for the registration to get vaccinated was initially only available in Hungarian and only later was it translated to English.<sup>629</sup>

In 2021, the vaccine was made available for everyone, without a priority order and also for persons without a health insurance. Nevertheless, information provision from the Government's side was poor, therefore many beneficiaries of international protection were not aware of the changes and of their eligibility for the vaccine. Among others, the Lutheran Church and the Menedék Association helped to transmit the official information to refugees and assisted them with interpretation, registration for a vaccination appointment and the delivery of the vaccination certificate.

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<sup>627</sup> Information provided by the NDGAP on 7 February 2022.

<sup>628</sup> Available only in Hungarian: <https://bit.ly/3n8Dsi4>.

<sup>629</sup> See: <https://bit.ly/3JWoVjl>.

## ANNEX I - Transposition of the CEAS in national legislation

The following section contains an overview of incompatibilities in transposition and implementation of the CEAS in national legislation:

Directive	Article	Domestic law provision	Non-transposition or incorrect transposition
<b>Directive 2011/95/EU</b> Recast Qualification Directive	4, 10(3), 14(4)(a) and 17(1)(d)		The withdrawal of refugee status or subsidiary protection or exclusion from such status is based on an unreasoned decision that is based solely on an automatic reference to a binding position of a special authority establishing a threat to national security and which is also without justification and which does not allow for derogations. The automatic rulings of the Hungarian asylum authority when delivering exclusion decisions on national security grounds violates the requirement of individual assessment, including the examination of proportionality.
	14(4)(b), 14(5), 17(1)(b)	8(5)	Persons committing a “(particularly) serious crime” can be excluded from both types of international protection based on the same provision (Section 8(5) of the Asylum Act). This is contrary to the Qualification Directive. The latter requires the crime to be “particularly serious” (Article 14(4)(b) read together with Article 14(5)) with regard to refugees, and to be “serious” with regard to beneficiaries of subsidiary protection status (Article 17(1)(b)).  The condition “to constitute a danger to the community” from Article 14(4)(b) of the Qualification Directive is not transposed as a <i>cumulative condition</i> in Section 8(5) of the Asylum Act.
	14(6)	8(4), 8(5)	The rights enshrined in Article 14(6) of the Qualification Directive are not provided to those refugees who are excluded from protection based on Section 8(4) and 8(5) of the Asylum Act.
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	4		Due to the binding nature of the security agencies' opinion over the asylum authority, a decision on an exclusion is ultimately made by the security agencies. This diverges from the requirement that the determining authority is responsible for the examination of the recognition, refusal or withdrawal of international protection.
	4(3)		According to Article 4(3), Member States shall ensure that the personnel of the determining authority are properly trained and persons interviewing applicants shall also have acquired general knowledge of problems, which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past. No similar provision could be located in the Hungarian transposing measures (paras 1.2.7.2 and 1.2.8.2 of Joint order No. 9/2010 of the Minister of the Interior and the Minister of Public Administration and Justice).
	6(1), 6(2) and 9		EU law obliges Hungary to ensure that every person in need of international protection has effective access to the asylum procedure, including the opportunity to properly

			<p>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.</p> <p>Finally the new asylum system introduced by Transitional Act, by which almost no-one can apply for asylum in Hungary (not even if legally present) is clearly against Article 6 of the Asylum Procedures Directive.</p>
	6(1) second sub-paragraph	Section 35(1)(b) Asylum Act	<p>The provision foresees that registration shall take place “no later than six working days” after the application is made, if the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law. As referred to in Section 35(1)(b) Asylum Act, if an application for international protection was submitted to any other authority, asylum procedure shall commence from the registration of the application by the refugee authority. However, no provision regarding the timeframe of the registration by the refugee authority can be located in the Hungarian implementing measures. Besides, due to the push back legislation and new asylum system introduced in Transitional Act, the applications are not accepted at all.</p>
	7(4)	Section 46(f)(fa) Asylum Act	<p>The Asylum Act provides that in the case of a crisis situation caused by mass migration there is no place for initiating the designation or designating a case guardian to an unaccompanied minor. This is not in line with the Directive provision, which obliges Member States to ensure that the appropriate bodies have the right to lodge an application for international protection on behalf of an unaccompanied minor.</p>
	8(2)		<p>Access of NGOs to detention centres is hindered.</p>
	10(3)(d)	Section 78A Asylum Decree	<p>As no criteria are set out in law or established by administrative practice indicating when a medical examination for the purpose of drafting a medical report should be carried out <i>ex officio</i> by the asylum authority, it seems that the newly introduced amendment on this issue could be interpreted that it is up to the applicant to undergo a medical examination on his or her own initiative and at his or her own expense in order to investigate any signs of previous persecution or serious ill-treatment.</p>
	11(2)		<p>When an applicant is considered to be a threat to national security or public order by a Security agency, who suggests his/her exclusion, such an opinion contains no reasoning and the opinion is binding for the NDGAP.</p>
	12(1)(d) and 12(2)		<p>The applicant neither his/her representatives have access to the information (not even the summary), why the applicant is considered a threat to nat. security or public order.</p>

	23(1)(b)		The applicants who are declared to be a risk to national security or public order do not get access to not even an essence of the data based on which the risk is established, as the data is classified. The national law does not guarantee that their rights of defence are respected.
	24(1)	Section 3 Asylum Decree	The Directive provision requires Member States to assess within a 'reasonable period of time' after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees. The Hungarian law provides that the refugee authority shall assess whether the person seeking international protection is in need of special treatment or not. However, there is no formal identification mechanism in place and the 'reasonable period of time' is not implemented by the Hungarian law. Therefore, it is not exactly clear when the examination process is carried out by the refugee authority and without this time guarantee, an asylum seeker belonging to vulnerable group may lose the ability to benefit from the rights and comply with the obligations provided for an 'applicant in need of special procedural guarantees'. Furthermore, there is a huge concern on how the refugee authority examines the applicant as the employees of the refugee authority are neither doctors nor psychologists (assumed based on Section 3(2) Asylum Decree). Hence, it is not clear how and in what basis they can make judgment on whether an applicant is a victim of torture, rape or suffered from any other grave form of psychological, physical or sexual violence. Based on Section 3(2) of the Asylum Decree, the refugee authority 'may' use the assistance of a medical or psychological expert, therefore it is clear that people working for the refugee authority are not medical or psychological experts.
	24(3), first sub-paragraph	Section 29 Asylum Act; Sections 33(1) and 35(4) Asylum Decree	These provisions conform to Article 24(3), first subparagraph of the Directive. However, it should be mentioned that the Hungarian transposing provision does not determine detailed rules on how and in what form adequate support shall be provided to the persons in need of special treatment. The Hungarian law only ensures separated accommodation in the reception centre for persons seeking international protection in cases justified by their specific individual situation as referred to in Article 33(1) of the Decree.
	24(4)		The transposition of Article 24(4) into Hungarian law could not be located.
	25(1), first sentence	Section 46(f)(fa) Asylum Act	The Directive provision requires Member States to take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in the recast Asylum Procedures Directive. Nevertheless, the Hungarian law provides that in the case of a crisis situation caused by mass immigration there is no place for initiating the designation or designating a guardian ad litem to a 14-18 years old unaccompanied minor. This is not in alignment with the Directive provision.
	25(3)(a)-(b)		The transposition of this provision into Hungarian law could not be located.

	25(5), first sub-paragraph	Section 44(1) Asylum Act; Section 78(1)-(2) Asylum Decree	Based on Section 78(2) of the Asylum Decree, if the person seeking recognition debates the outcome of the expert examination regarding his or her age, he or she may request a new expert to be designated by the refugee authority. In case of contradicting expert opinions, it is up to the refugee authority to decide whether to appoint another expert or to determine which expert opinion shall be used regarding the age of the applicant. This provision is not in alignment to the Directive provision as if Member States still have doubts concerning the applicant's age after the age assessment, they shall assume that the applicant is a minor.
	25(5), second sub-paragraph		The transposition of this provision into Hungarian law could not be located. In practice, the age assessment methods are definitely not adequate.
	25(6)	Sections 51(7) 71/A(7) Asylum Act	Article 51(7) of the Asylum Act incorrectly transposes the provision, as Hungarian law does not exclude unaccompanied minors from the scope of accelerated procedure, while the provision of the Directive permits unaccompanied minors to be channelled into an accelerated procedure only in cases specified in Article 25(6)(a)(i)-(iii).
	28(2)		The Hungarian legislation does not provide for the option of re-opening a discontinued case, as foreseen in Article 28(2) of the recast Asylum Procedures Directive. An asylum seeker is obliged to submit a new application, which is considered a subsequent application as per Article 40 of the recast Asylum Procedures Directive.
	28(3)		See Article 18(2) Dublin III Regulation further below.
	33(2)	Section 51(2)(f) Asylum Act	The inadmissibility ground in Section 51(2)(f) of the 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.
	37-38	Sections 51(2)(e), 51(4)(a)-(b); Sections 1-2 Government Decree 191/2015	<p>These have not been transposed into Hungarian law in a conform manner, due to the following reasons:</p> <ul style="list-style-type: none"> <li>- According to Sections 1-2 Government Decree 191/2015 (entering into force on 1 August 2015), candidate states of the European Union qualify as a safe country of origin and as a safe third country. The Hungarian government adopted a national list of safe third countries, which includes – among others – Serbia (candidate states of the European Union). The automatic reliance on this Decree and inadequate assessment of whether Serbia is a safe third country was found in violation of Article 3 of the Convention in Ilias and Ahmed v. Hungary case.</li> <li>- 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</li> </ul>

			<p>how the Government arrived at the conclusion that each country listed qualifies as safe.</p> <p>The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.</p>
	45(1), 45(3) and 45(5)		When withdrawal is based on the risk to national security or public order, the applicant does not get to know the reasons for such decision.
	46(1)(b)	Section 80/K(4) Asylum Act	The Asylum Act offers no possibility to appeal against the termination of the procedure.
	46(3)	Section 53(4) Asylum Act	<p>The judge has to take a decision in 8 days on a judicial review request against an inadmissibility decision and in an accelerated procedure. The 8-day deadline for the judge to deliver a decision is insufficient for “a full and <i>ex nunc</i> examination of both facts and points of law” as prescribed by EU law. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter. During the judicial review the court is limited to an <i>ex tunc</i> rather than an <i>ex nunc</i> 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.</p> <p>The Hungarian law does not provide any reasoning as to the national security risk allegedly presented by the person concerned. This violates the provisions of the Procedures Directive ensuring the enforcement of the right to an effective remedy and, in particular, the rights of the defence.</p>
	46(5) and (8)	Sections 45(5)-(6) and 53(2) Asylum Act, Section 5 Gov. decree 570/2020. (XII. 9.)	Based on the Directive provision, Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7 of Article 46 of the Directive. Nonetheless, the Hungarian law does not ensure suspensive effect on the enforcement of the refugee authority’s decision as set out in Section 53(2) of the Asylum Act (with the exception of decisions made under Sections 51(2)(e) and 51(7)(h)). Suspensive effect needs to be explicitly requested. Further on, for asylum seekers expelled based on national security grounds the decree provides no right to request a suspensive effect.
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	2(k), 21	Section 2(k) Asylum Act	The definition of “applicant with special reception needs” as referred to in Article 2(k) of the recast Reception Conditions Directive is not correctly transposed into the Hungarian legal system as in the definition of ‘person in need of special treatment’ victims of human trafficking, persons with serious illnesses, and persons with mental disorders are not mentioned.
	8(2)	Section 31/A(2) Asylum Act	The Asylum Act does not provide the factors that need to be taken into account during the individual assessment of the asylum seeker. No clear criteria can be located in the Asylum Act as regards the individual assessment, therefore it is the sole discretionary power of the refugee authority to detain an applicant instead of using other measures



			securing availability. Detention orders lack individualisation and alternatives are not assessed automatically.
	8(4)	Sections 2(I), 31/A(2) and 31/H(1) Asylum Act	According to the Directive provision, Member States shall ensure that the rules concerning alternatives to detention are laid down in national law. The Hungarian national law lists the possible alternative measures, however there is a lack of a detailed regulation on the application of alternative measures. Clear criteria for the application of each alternative measure should be laid down in the Asylum Act for the purpose of legal clarity.
	9(1) and (5)	Sections 31/A(6)-(7) and 31/A(8) Asylum Act	<p>According to the Directive provision, an applicant shall be detained only for as short period as possible. Despite this fact, the Asylum Act foresees an excessively long maximum period for the judicial prolongation of detention (60-day interval), so in practice 60 days shall pass until the judicial review of detention regardless of the situation e.g. mental state of the applicant concerned in the detention centre. This 60-day interval cannot be regarded as “a short period”. Practice so far shows that the asylum authority, for reasons of administrative convenience, automatically requests the court to prolong detention for the maximum period of 60 days. Furthermore, it should be mentioned that asylum detention may last for thirty days in case of a family with minors according to the Hungarian law.</p> <p>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.</p>
	11(1), second sub-paragraph	Section 37/F(2) Asylum Act; Sections 3(4)-(6) and 4 Ministry of Interior Decree 29/2013	The Directive provision requires Member States, if vulnerable persons are detained, to ensure regular monitoring and adequate support taking into account their particular situation, including their health. Article 4 of Decree 29/2013 ensures appropriate specialist treatment of the injuries caused by torture, rape or other violent acts to any detained person seeking recognition based on the opinion of the physician performing the medical examination necessary for admission. Nevertheless, the wording of Article 4 of Decree 29/2013 excludes from the scope of vulnerable persons: minor, elderly or disabled person, pregnant woman, single parent raising a minor child, victims of human trafficking, persons with serious illnesses, and persons with mental disorders. No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.

	11(5), first sub-paragraph	Section 31/F(1) Asylum Act; Section 36/D(3) Asylum Decree; Section 3(8) Decree 29/2013	The Directive provision requires Member States, where female applicants are detained, to ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto. Nevertheless, the Hungarian law does not require all individuals' concerned consent to accommodate family members together in detention centres, it is automatic.
	19(2)		No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
	20(5)		Not providing food to the subsequent asylum applicants detained in the transit zone was not in line with Article 20(5) of recast Reception Conditions Directive, according to which even in case of withdrawal or reduction of material conditions, the authorities shall ensure a dignified standard of living for all applicants.
	22		There is no official protocol and effective identification mechanism in place to systematically identify torture victims and other vulnerable asylum seekers in the framework of the asylum procedure or when ordering or upholding detention, in breach of the Directive.
	25(1)		No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
	25(2)		In breach of Article 25(2) of the recast Reception Conditions Directive, there is no systematic training for those who order, uphold or carry out the detention of asylum seekers regarding the needs of victims of torture, rape or other serious acts of violence.
	28		No appropriate monitoring of reception or detention centres is ensured.
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	18(2)		<p>Persons who withdraw their application tacitly or in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore, they will have to submit a subsequent application and present new facts or circumstances. Although the new asylum system in force does not even foresee the possibility to submit an asylum application for a Dublin returnee. This is not in line with the second paragraph of Article 18(2) of the Dublin III Regulation, as when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of 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.</p> <p>The asylum procedure would also not continue, when the returned foreigner had previously received a negative decision and did not seek judicial review. This is problematic when the NDGAP issued a decision in someone's absence. The asylum</p>

			seeker who is later returned under the Dublin procedure to Hungary will have to submit a subsequent application and present new facts and evidence in support of the application, although according to the new asylum system a Dublin returnee cannot even submit an asylum application in Hungary. According to Article 18(2) of the Dublin III Regulation, the responsible Member State that takes back the applicant whose application has been rejected only at the first instance shall ensure that the applicant has or has had the opportunity to seek an effective remedy against the rejection.
<b>Council Implementing Decision 2022/382</b>	Article 2(2)	Section 2(2) and 2(3) Government Decree 86/2022. (III. 7.)	While the Council Decisions prescribes “adequate protection” in lieu of applying the Council Decision in case of stateless or third country nationals other than Ukrainians who cannot return to their country of origin but possess a valid long-term residence permit in Ukraine, the Govt. Decree prescribes the task of managing the migratory situation of such individuals under the aliens policing authority as opposed to the asylum authority. Since it is not possible to apply for asylum in Hungary, these persons are only issued a 30-day temporary residence permit on humanitarian grounds. The 30-day temporary residence permit cannot be regarded as any form of protection as it merely allows the holder of the permit to remain on the territory.