



Protect children on the move

# Research Report

## Children on the Move in Hungary



This research was carried out in the framework of the project "Mario II: Joint Action to Protect Children on the Move in Europe". This project is implemented with funding from Oak Foundation. The content of this publication does not, by definition, provide the vision of Oak Foundation, nor does this publication imply, that the content is supported by Oak Foundation.

Author: Julia Ivan

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## Table of Contents

<b>Executive Summary</b> .....	<b>5</b>
<b>Introduction</b> .....	<b>6</b>
Research Context and Objectives .....	6
<i>Methodology</i> .....	6
<i>Limitations</i> .....	6
<b>Chapter 1: Overview of the National Asylum and Immigration System</b> .....	<b>7</b>
General Asylum and Immigration Regime .....	7
<i>Legal and Policy Framework</i> .....	7
Changes brought by the 2016 July Reform and compliance with International and European Standards	10
<i>Overview of the changes in the asylum system 2015-2016</i> .....	11
General Asylum and Immigration Institutional Framework .....	17
<i>The role of the Office of Immigration and Nationality, the central immigration authority</i> .....	17
<i>Inter-institutional collaboration</i> .....	17
<i>Child specific institutions</i> .....	18
<i>Infrastructure and Capacities</i> .....	20
<b>Chapter 2: Children and the Current Practice in the Field of Asylum</b> .....	<b>22</b>
General access to the right to seek asylum for children.....	22
<i>Situation at the pre-transit zone in the Serbian-Hungarian border area</i> .....	22
<i>Push back incidents at the Serbian-Hungarian border</i> .....	23
<i>Impact of the legal reform on the right to seek asylum in Hungary for children</i> .....	25
<i>Unaccompanied children and age assessment</i> .....	26
<i>Rights of children in the asylum procedure</i> .....	28
<i>Conditions of reception of children in need of international protection in Hungary</i> .....	30
<b>Conclusions and Recommendations</b> .....	<b>35</b>
<b>Annex I</b> .....	<b>36</b>
Bibliography .....	36
Domestic Legislation .....	36
<i>EU Directives and Regulations</i> .....	36
<b>Annex II</b> .....	<b>37</b>
Transposition of relevant EU laws into Hungarian legislation .....	37
<b>Annex III</b> .....	<b>41</b>
Statistical Data .....	41
Overview of Migrant population .....	41
<i>Statistical data</i> .....	41
<i>Statistics on unaccompanied minors (UAMs)</i> .....	43



## Executive Summary

The present practice of border management in Hungary raises concerns regarding refugees' access to protection. Migrants' testimonies and anecdotal evidence shows that Hungarian authorities escort potential asylum seekers, including migrant families with children to the Serbian border, which prevents them from seeking protection. If so, this may be a violation of the principle of *non-refoulement* of Article 33 of the 1951 Refugee Convention. As regards the statistics for 2016 it is clear that the number of asylum applications significantly dropped since the regime of the "8-kilometre rule" was introduced in July 2016, which allows Hungarian officials to escort irregular migrants back to the border to seek entry into the country through the four transit zones.

There is a growing concern amongst human rights advocates and volunteers that police brutality and ill-treatment became a pattern at the Southern border area of Hungary, which was raised by the United Nations High Commissioner for Refugees (UNHCR) and the Human Rights Watch (HRW) and which was confirmed by a number of Hungarian press and media sources and reports from the summer of 2016. The present report aims to give an overview of these allegations.

Through the analysis of the situation at the border and in the pre-transit zone of Hungary, this report gives evidence on the inappropriate treatment of migrant families with children and urges authorities to address the insupportable situation. The report recommends Hungarian authorities to provide migrant families and UAMs with humane and child friendly reception condition and basic services at the border.

From a child specific point of view, the lack of a best interest determination procedure may be listed as one of the major shortcomings of the Hungarian asylum system. In such a procedure all stakeholders around the given child should be involved. Policy makers are encouraged to take steps forward in establishing such a procedure.

Another critical aspect of the asylum procedures in Hungary regarding minors is the practice of age assessment. At the time of writing the present report age assessment was not regulated through binding protocols that provided for a multidisciplinary examinations where not only medical factors are taken into consideration. It is also problematic that minors are not provided with legal remedies against the result of the age assessment. Hungarian policy and law makers should seek further avenues to remedy the above shortcomings by establishing a multidisciplinary age assessment mechanism.

# Introduction

## Research Context and Objectives

### Methodology

The methodology is based on desk research: analysis of asylum and immigration decisions and relevant legislation; complemented with a literature review; analysis of existing studies/researches in the field of unaccompanied minors. Interviews and written consultations with stakeholders<sup>1</sup> The paper builds also on publicly available statistical data from Hungarian state authorities where possible and accessible. A research questionnaire was elaborated along the research matrix designed by Terre des Hommes.

### Limitations

**Material scope:** This research primarily intends to look at the situation of third country national children that may be negatively impacted by the recent changes brought to the asylum (and immigration) regime in Hungary. These changes are allegedly resulting in practices that do not comply with the obligations of Hungary under the UN 1951 Refugee Convention in general, and the principle of 'non-refoulement' in particular. Though the research will shed light on the accessibility of the asylum procedure in itself, it will not extend to the outcome of the procedure nor to what happens to children seeking international protection once they have been afforded a status or a final negative decision. Therefore, the access to Hungarian territory will be analysed as will be access to the asylum procedure, by looking at whether children can exercise their rights during the procedure (i.e. procedural guarantees within the asylum procedure, which have been included under accessibility considerations). Finally, the conditions of reception will also be analysed, as opposed to integration considerations which have deliberately been excluded from the present research due to limitations to its range and length.

**Geographical scope:** The research intends to look at the situation in Hungary, with a strong emphasis put on the situation at the Serbian-Hungarian border. The geographical scope should, however, not limit itself to the situation at the border and does require analysis of both accessibility of the asylum procedure and conditions of reception and protection of children where the Hungarian government holds jurisdiction.

**Temporal scope:** The temporal scope is mainly defined against the overarching research question. However, the data and information that is collected throughout the research needs to be restricted to a defined period of time. In consultation with the research team, decision

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<sup>1</sup> The researcher, Júlia Iván is grateful for their assistance to the colleagues of the UNHCR Regional Representation for Central Europe, the National Police Headquarters, the Hungarian Helsinki Committee, the Human Rights Watch, SOS Children's Villages, also volunteers and experts who wished to remain anonymous.

was made to limit the collected data between 1 January 2015 and 1 August 2016, with the knowledge that the impact of the legal reform, which entered into force on July 5<sup>th</sup> 2016, is yet difficult to measure, albeit possible through figures and qualitative data shared by those agencies monitoring the situation on the field, particularly at the Serbian-Hungarian border.

## Chapter 1: Overview of the National Asylum and Immigration System

### General Asylum and Immigration Regime

#### Legal and Policy Framework<sup>2</sup>

The Hungarian asylum procedure is one of the fastest and simplest in the EU, with only one instance of administrative decision making, carried out by the Office of Immigration and Nationality (OIN), and one instance of judicial review. Hungarian asylum law incorporates the accelerated and border procedures, also the notion of the “transit zone”, which were all introduced through amendments to the Act LXXX of 2007 on asylum (Asylum Act<sup>3</sup>) in 2015<sup>4</sup>.

The Office of Immigration and Nationality (OIN) is the government agency (under the supervision of the Ministry of Interior) in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The OIN is also in charge of operating open reception centres and closed asylum detention facilities for asylum seekers. The asylum procedure is a single procedure where all claims for international protection are considered, thus the same procedure applies for deciding on both refugee status and subsidiary protection as well. The procedure consists of two instances: the first instance is an administrative procedure carried out by the OIN, while the second instance is a judicial review procedure carried out by regional Administrative and Labour Courts. These courts are not specialised in asylum.

Asylum may be sought at the border or in the country. If a foreigner expresses a wish to seek asylum at the border, the police authorities must contact the OIN accordingly. The asylum procedure starts with the submission of an application for asylum in person before the asylum authority. The asylum procedure commences with the assessment whether a person falls under a Dublin procedure.<sup>5</sup> If this is not the case, the OIN proceeds with the examination of whether the application is inadmissible or whether it should be decided in accelerated procedure. The decision on this shall be made within 15 days. If the application is not inadmissible and it will not be decided in accelerated procedure, the OIN has to make a decision on the merits in a so-called ‘normal’ procedure within 60 days.

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<sup>2</sup> See the list of relevant domestic legislation in Annex I

<sup>3</sup> For a more in-depth description of the Hungarian asylum procedure, please consult the latest AIDA report<sup>3</sup> or the UNHCR’s latest country report on Hungary. Act LXXX of 2007 on Asylum (2015) [Hungary], 1 January 2008, available at: <http://www.refworld.org/docid/4979cc072.html> [accessed 8 June 2016]

<sup>4</sup> UN High Commissioner for Refugees (UNHCR), *Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016*, May 2016, available at: <http://www.refworld.org/docid/57319d514.html> [accessed 9 June 2016]

<sup>5</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>

The asylum procedure recognizes five different procedures: i) border procedure, ii) inadmissibility procedure, iii) fast track procedure, iv) "normal" procedure and v) airport procedure (which will not be presented here as it has never been applied since its introduction in 2011)<sup>6</sup>.

- i) **Border procedure** is launched if the asylum application is lodged before admission to Hungary at the transit zone or at the airport, or in case the 8 km rule was applied and the person is "escorted" to the transit zone.<sup>7</sup> In this case OIN delivers the decision on admissibility or inadmissibility within 8 days. In case the application has been lodged for 4 weeks, the person must be admitted into the Hungarian territory.<sup>8</sup>
- ii) **Inadmissibility procedure** is a short filtering procedure during which the OIN examines a) if the applicant is an EU citizen, or b) he/she was granted protection elsewhere, or c) if the claim is irrelevant, or d) if it is repeated and there are no new circumstances, or e) if there is a safe third country which is obliged to readmit the applicant. The asylum authority has 15 days to deliver the decision.<sup>9</sup>
- iii) **Fast track procedure:** the OIN can decide to use the fast procedure for several reasons. For example, if the applicant a) discloses only information irrelevant for recognition as both a refugee and a beneficiary of subsidiary protection, or b) is from a safe country of origin, or c) misled the authorities by providing false information on his/her identity or nationality, or d) has destroyed or thrown away, presumably in bad faith, his/her identity card or travel document that would have been helpful in establishing his/her identity of nationality, or 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/her application, he/she is not entitled to recognition as a refugee or beneficiary of subsidiary protection, or f) if submitted a subsequent application, or g) submitted an application for the only reason of delaying or frustrating the order of the alien policing expulsion, h) entered into the territory of Hungary unlawfully or extended his/her period of residence unlawfully and failed to submit an application for recognition within a reasonable time and has no reasonable excuse for the delay, i) refuses to comply with an obligation to have his/her fingerprints taken, j) for a serious reason may pose a threat to Hungary's national security or public order or was already expelled for the same reasons.<sup>10</sup>
- iv) **"Normal procedure":** if none of the above procedural rules are applicable, the asylum claim shall be examined within 60 days from lodging the application.<sup>11</sup>

Short overview of the child-specific elements of the legal environment and the asylum procedure

- a. Both minors travelling together with their family and unaccompanied minors are automatically (by law) considered vulnerable applicants with special needs under both the Asylum Act and the Third Country Nationals (TCN) Act;

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<sup>6</sup> Section 72 of the Asylum Act

<sup>7</sup> This new provision enables the Hungarian police to escort irregular migrants found within eight kilometres of the border with Serbia to transit zones at the border (so called "8 km rule"), which raises serious concerns as regards refugees' access to territory and procedure in Hungary.

<sup>8</sup> Section 71/A of the Asylum Act

<sup>9</sup> Section 51 (1)-(6) of the Asylum Act

<sup>10</sup> Section 51 (7) of the Asylum Act

<sup>11</sup> Section 47 (3) of the Asylum Act

- b. Under the law, vulnerable applicants are granted certain additional procedural safeguards (however, experience shows that these safeguards may not be entirely observed by authorities in practice);
- c. Vulnerable applicants are exempted from the border procedure in the transit zone;
- d. Unaccompanied minors' cases should be given priority<sup>12</sup>;
- e. UASC are appointed a child protection guardian within 8 days from submitting an asylum application<sup>13</sup>;
- f. It is forbidden to order asylum and immigration detention of an UASC<sup>14</sup>; UASC enjoy a broader *non-refoulement* protection, as they cannot be returned to another country unless they are reunited with their family or an appropriate child protection system is accessible for them<sup>15</sup>;
- g. UASC are accommodated in a designated child protection facility with childcare professionals, in the town of Fót;
- h. UASC have access to citizenship with favourable conditions, they are entitled to request naturalization after 5 years of lawful residence in Hungary<sup>16</sup>.

As a signatory to the 1989 Convention on the Rights of the Child (CRC), Hungarian authorities are obliged to protect children and observe their best interests in all proceedings<sup>17</sup>. Consequently Hungarian authorities are also responsible to identify if a child (under 18 years of age) is left unattended or separated in Hungary. The asylum legislation sets forth that the best interests of the child shall be a primary consideration.<sup>18</sup> As regards the specific vulnerability of children, in its Section 4, the Asylum Act foresees that its provisions shall be applied to persons in need of special treatment with due consideration given to the specific needs arising from their situation, which is in line with Article 22 of the EU recast Reception Conditions Directive foreseeing that Member States shall assess whether the applicant is an applicant with special reception needs.

The Hungarian legal framework on asylum (and immigration), however, does not provide further details on the methodology to be applied in such vulnerability assessments, which in practice, according to several experts from the Hungarian Helsinki Committee resulted in a completely ad hoc and unpredictable application. Asylum seekers do not receive a form or a decision specifying their vulnerabilities, no documentation is provided thereof.

Despite the above discrepancies, unaccompanied minors are registered at the transit zone, albeit not in a consistent manner. According to the OIN's statistical data there were only 103 unaccompanied minors registered at the transit zones between 15 September 2015 and 24 July 2016, while the number of UAMs seeking asylum between 1 January and 31 July 2016 was 994.<sup>19</sup> One may conclude that the registration system in place is dysfunctional in this present state or that UAMs do not arrive in the country through the transit zones.

According to the UNHCR 5870 vulnerable asylum seekers were registered at the transit zones between 15 September 2015 and 10 July 2016, out of which 103 were UAMs, 5250 were

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<sup>12</sup> Section 35 (7) of the Asylum Act;

<sup>13</sup> Section 35 (6) of the Asylum Act

<sup>14</sup>Section 31/B (2) of the Asylum Act and Section 56 (2) of the Act no. II of 2007 (Third Country Nationals Act

<sup>15</sup> Section 45 (2) of the Asylum Act

<sup>16</sup> Section 4 (4) of the Act LV of 1993 on Hungarian Citizenship [Hungary], 1 October 1993, available at: <http://www.refworld.org/docid/3ae6b4e630.html> [accessed 8 June 2016]

<sup>17</sup> Section 2 of the Child Protection Act

<sup>18</sup> Section 4 (1) of the Asylum Act

<sup>19</sup> Information shared by the OIN with the UNHCR RRCE and the Hungarian Helsinki Committee.

families with children, 517 were elderly or persons with disabilities or other. According to the OIN the overall number of asylum applicants registered at the transit zones until 24 July 2016 was 6458, which is far less than the total number of registered asylum claims (24357 in the first 7 months of 2016). This may be interpreted in a way that until the 8 km rule was introduced the majority of the asylum applications were made elsewhere than at the transit zones, while after July 5<sup>th</sup> the situation dramatically changed and the number of registered asylum applications sharply decreased. All interviewed NGO staff, volunteers and other migration experts confirmed that there are more and more persons in Subotica, Serbia who experienced violent push backs from Hungarian law enforcement agencies (police or the army at the border) which is raising great concerns in terms of access to protection and territory.

UAMs are appointed a child protection guardian within 8 days from lodging their asylum claims, who is independent from the facility of Fót. By August 2016, this deadline appears to be respected in practice. However, it should be noted that when the number of new arrivals was higher in 2015 there were significant delays in appointing guardians and it was common that UAMs having transited through Hungary never met their guardian. This constant delay was the reason why the lawmaker decided to establish a binding 8-days deadline to appoint a guardian and ensure that UAMs are not left without a legal representative from the child protection system. This change is one of the very few positive amendments in the asylum reforms of 2015.

Since September 2015, guardians affiliated to the Budapest Child Protection Services (TEGYESZ in Hungarian) became more active and visit the facility every week to meet the children they are responsible for. The guardians are not asylum experts but recent practice shows that they institutionally seek closer cooperation with other NGOs, e.g. the HHC for legal advice and support in individual cases, which is a positive development compared to the previous practice. The creation of the role of an independent child protection guardian caused some frustration within the management of the facility in Fót as they would be more satisfied with guardians appointed from staff members for the ease of communications.

## Changes brought by the 2016 July Reform and compliance with International and European Standards

Efforts to shrink asylum space in Hungary have translated in a wide range of restrictive measures in the country's asylum system during 2015 and 2016. Following the intense legislation and the erection of the fence at Hungary's Southern borders in the summer of 2015 further changes were introduced in the Hungarian asylum system. "Between April and June 2016, Hungary enacted legal amendments with a crucial detrimental impact on asylum seekers and refugees, as the continuation of the politically motivated dismantling of the Hungarian asylum system started in 2015, aiming to deter people in need of international protection from seeking refuge in Hungary" stated the Hungarian Helsinki Committee.<sup>20</sup>

<b>Comparative asylum statistics</b>	<b>2015</b>	<b>1 Jan – 31 July 2016</b>
<b>Number of arrivals</b>	over 400 000	
<b>Number of asylum applications</b>	177135	24153

<sup>20</sup> <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-legal-amendments-Apr-June-2016.pdf>

<b>Protection granted</b>	617	252
<b>Asylum seekers under 18 yrs</b>	8791	6479
<b>Asylum seeker registered as UAM</b>	8791	865
<b>Protection granted to UAMs</b>	11	11
<b>Number of UAMs staying in Fót</b>	2422	1098

## Overview of the changes in the asylum system 2015-2016

### Modifications affecting access to protection

- The Hungarian asylum system has been overhauled through a series of substantial legislative reforms over the summer of 2015 and 2016. Amendments to the Asylum Act entering into force on 1 August 2015 have merged what were previously the preliminary assessment (i.e. admissibility) procedure and in-merit procedure into a single procedure. An accelerated procedure has also been established through this law, which may be applied on 10 grounds. Vulnerable applicants are not exempted from accelerated procedures.
- The new rules have also authorised the government to adopt a list of safe countries of origin and safe third countries. On that basis, Government Decree 191/2015 established such a list, designating countries such as Serbia as safe and leading all applications of asylum seekers coming through Serbia to be declared inadmissible.
- Further amendments entering into force on 15 September 2015 introduced additional restrictions to access to international protection. The amended Asylum Act now provides for a border procedure in transit zones, subject to lower procedural guarantees and in practice lasting as short as one hour in certain cases, whereby asylum claims are summarily rejected as inadmissible. Vulnerable applicants are exempted from the border procedure in the transit zone. As of 18 October 2015 both the Serbian-Hungarian and the Croatian-Hungarian borders have been sealed off by barbed wire.
- The latest modification of the asylum legislation entered into force on 5th July 2016 enabling the Hungarian police to escort irregular migrants found within eight kilometres of the border with Serbia to transit zones at the border (so called "8 km rule").<sup>21</sup> The modification raised serious concerns from the UN High Commissioner for Human Rights<sup>22</sup>, the UNHCR, the HHC<sup>23</sup> and other agencies or organisations. All were worried that the wording of the modified law may allow law enforcement agencies not respecting the human rights of migrants and breaching international law, by forcibly expelling them without any form of legal procedure.

<sup>21</sup> Act XCIV of 2016 on the amendment of acts necessary for ensuring the wider applicability of conducting asylum procedures at the border

<sup>22</sup>

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20236&LangID=E#sthash.x60E1JgU.dpuf>

<sup>23</sup> <http://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf>

- Act LXXXIX of 2007 on the State Border was modified as follows: "The police may apprehend the foreigner unlawfully staying in the territory of Hungary within 8 kilometres of the border sign or border line of the external state border as defined by Article 2 (2) of Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, and may escort him/her through the closest gate of the facility defined in Subsection (1), except for when suspicion of a crime committed emerges." In the justification of the bill, the Hungarian government argued the following: "In case of mass influx of asylum-seekers arriving illegally it was justified to establish special border procedures, which enable the fast processing of asylum applications. The aim of the legal amendments is to guarantee the widespread applicability of border procedures by making it possible to escort those third country nationals that are illegally staying in Hungary, and are apprehended within an area of 8 kilometres of the borderline through the gate of the facility established for the protection of the order of the state border. If no suspicion of a crime committed arises, the police orally warns the third country national in accordance with Section 100/A of Act II of 2012 on minor offences, the procedure in relation to minor offences and the minor offence record system, and escorts him/her through the gate of the facility established for the protection of the order of the state border. The regulation provides the possibility to apply the rules of the border procedure and for submitting asylum applications by those escorted through the gate of the facility established for the protection of the order of the state border."<sup>24</sup>
- With the above modification Hungary officially allowed its law enforcement agencies carrying out border management tasks to automatically push back foreigners to Serbia who may be in need of international protection. This is in clear violation of the principle of non-refoulement enshrined in the 1951 Refugee Convention amongst others. As a result of the new policy these potential asylum seekers have to queue for several days or weeks in order to be admitted to the "transit zones" established as part of the border management procedure. Experience and the latest reports show that during this period, asylum-seekers have very limited access to support or basic services, there are only 10 toilets for hundreds of persons in Rösztke for instance, no laundry and shelter, only tents in a makeshift camp.

#### Modifications affecting reception conditions

- The modification of the 301/2007 Government Decree entered into force on 1 April 2016 in order to decrease financial support provided for asylum seekers while their cases are pending with Hungarian authorities. This amendment resulted in the termination of the monthly cash allowance of free use for asylum-seekers (monthly HUF 7 125 / EUR 24).<sup>25</sup> Also it led to the termination of school-enrolment benefit previously provided to child asylum-seekers.<sup>26</sup> One may argue that the only aim of these modifications is to make Hungary the least appealing for asylum seekers.

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<sup>24</sup> Information provided by the HHC, based on the unofficial English translation of Act XCIV of 2016 on the amendment of acts necessary for ensuring the wider applicability of conducting asylum procedures at the border, <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-legal-amendments-Apr-June-2016.pdf>

<sup>25</sup> Former Section 22 of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum, repelled by Section 8 (ab) of Government Decree 62/2016 (III. 31.)

<sup>26</sup> Former Section 30 of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum, repelled by Section 8 (e) of Government Decree 62/2016 (III. 31.)

## Modifications of the integration structures

- The Hungarian government decided to cut off all integration support for persons granted international protection (refugee status or subsidiary protection under EU law) by the 1 June 2016. The rationale was that refugees and beneficiaries of subsidiary protection enjoy the same set of rights as Hungarian citizens by law therefore there is no need to uphold a separate, designated integration system for them. The government plans to encourage civil society organisations to apply for EU fund and create a parallel integration system maintained through the EU's Asylum, Migration and Integration Fund (AMIF).
- The modification reduced the maximum period of stay in open reception centres following the recognition of refugee status or subsidiary protection from 60 days to 30 days.<sup>27</sup>
- Refugees' free-of-charge access to basic health services was also limited in time, it is now 6 months instead of 1 year previously until they can benefit from health care without paying the obligatory contribution.<sup>28</sup>
- As of the 1 June 2016 it is only unaccompanied minors under international protection (both refugees and beneficiaries of subsidiary protection) that have a functioning state-provided integration scheme in the framework of after-care measures, which allow young adults with child protection history to benefit from support up to the age of 24.

## Modifications affecting international protection in general

- As of 1 June 2016 the mandatory and automatic revision of refugee status was introduced at a minimum 3-year intervals following the recognition or if an extradition request was issued.<sup>29</sup> It is important to note that previously refugee status was granted for an undetermined period, yet it could be withdrawn any time if legal ground were met as set forth in Section 11 (2) of the Asylum Act.<sup>30</sup>
- As regards the situation of beneficiaries of subsidiary protection, the mandatory periodic review of the subsidiary protection status was reduced from 5 to 3-year intervals following recognition.<sup>31</sup> Based on a short survey within the ELENA network on similar modifications in Germany and Austria it is expected that the caseload of the OIN will significantly increase if protection statuses are to be reviewed every 3 years.<sup>32</sup>

Countries of origin of asylum seekers based on OIN's official statistics as of 30 June 2016<sup>33</sup>:

<b>Citizenship breakdown of applicants 2016</b>		
<b>Afghanistan</b>	8 380	37,26%
<b>Pakistan</b>	3 392	15,08%
<b>Syria</b>	3 389	15,07%

<sup>27</sup> Section 32 (1) of the amended Act LXXX of 2007 on Asylum

<sup>28</sup> Section 32 (1a) of the amended Act LXXX of 2007 on Asylum

<sup>29</sup> Section 7/A of the amended Act LXXX of 2007 on Asylum

<sup>30</sup> <http://www.refworld.org/docid/4979cc072.html>

<sup>31</sup> Section 14 of the amended Act LXXX of 2007 on Asylum

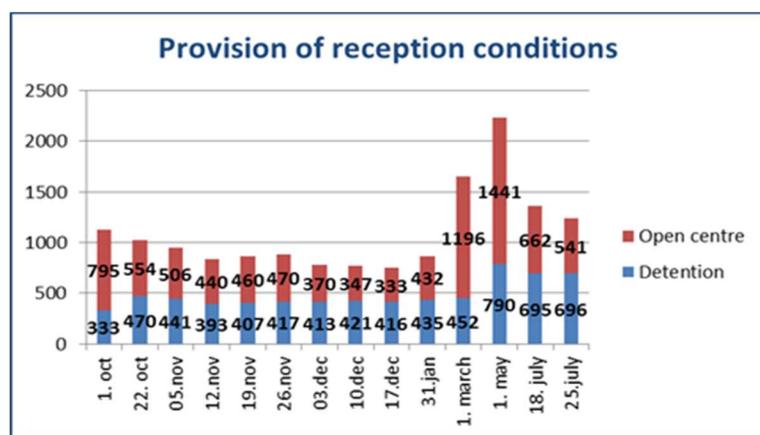
<sup>32</sup> Internal survey within the ELENA Network in June 2016, information provided by Diakonie Austria and ProAsyl Germany. For more information on the ELENA Network please see: <http://www.ecre.org/our-work/elena/>

<sup>33</sup> Based on statistical data of the OIN shared with the Hungarian Helsinki Committee, August 2016

<b>Iraq</b>	2 488	11,06%
<b>Iran</b>	1 084	4,82%
<b>Morocco</b>	864	3,84%
<b>Algeria</b>	510	2,27%
<b>Other</b>	2 384	10,60%
<b>Total</b>	<b>22 491</b>	<b>100,00%</b>

### Changes in detention policy and regime

- Detention has historically been used as a migration management tool to deter migrants from entering Hungary. Although this has not brought the desired effect stricter detention policies are reintroduced in 2-3 years cycles, e.g in 2010 a harsh detention regime was introduced and executed in temporary police jails unsuitable for longer stay, still the number of new arrivals steadily grew until now.<sup>34</sup> With a relatively calm period and humane detention policy in 2013-2014 passing, after November 2015 the trend definitely changed and more asylum seekers have been detained than placed in open reception centres. Detention concerns first-time applicants, as well as those affected by the application of the Dublin III Regulation.<sup>35</sup>



- Hungary is one of the very few European states that systematically detain first-time asylum-seekers even for up to several months. Experience shows that this policy mostly affects single men, families with children are less affected despite the legal possibility to detain them for a maximum period of 30 days. According to the HHC "decisions as to whether asylum-seekers should be detained or allowed to go to open reception centres are often quite arbitrary, and the judicial review of "asylum detention" is ineffective, as confirmed not only by NGOs and the UNHCR, but also the Supreme Court of Hungary. As the massive refugee influx experienced throughout 2015 (over 177 000 asylum claims registered) calmed down by November, the strict detention regime reached its peak, with the majority (52%) of first-time asylum seekers in detention, and only the minority in open reception centres – a practice unprecedented in most of Europe."<sup>36</sup>
- According to the OIN's statistics shared with the Hungarian Helsinki Committee by UNHCR, the facilities of the Office of Immigration and Nationality hosted 1237

<sup>34</sup> For a historical snapshot on Hungarian detention policies please see the HHC's report Stuck in Jail (2010), available at: <http://www.helsinki.hu/en/stuck-in-jail-immigration-detention-in-hungary-in-2010/>

<sup>35</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU)No 604/2013, available at: <http://www.refworld.org/docid/51d298f04.html>

<sup>36</sup> <http://www.helsinki.hu/wp-content/uploads/Hungary-asylum-reception-infrastructure.pdf>

persons on 25 July 2016, the majority of them in detention: 541 were accommodated at open reception centres and 696 in specific „asylum jails”.<sup>37</sup>

- Transit zones made up of containers were set up at border-crossing points on the Serbian border (Röszke, Tompa) in September 2015 and the Croatian border (Letenye, Beremend) in October 2015, when the respective borders were closed. According to the interpretation of Article 5 of the ECHR the confinement of asylum seekers in these zones for the purpose of assessing their claim amounts to deprivation of liberty even if the OIN does not consider this measure as detention. According to the OIN, people held in the transit zone are not deprived of their liberty, given that they may freely leave the zone – along with the Hungarian territory and their asylum procedure – at any time. “However, the *Amuur v France* jurisprudence of the ECtHR establishes that “[t]he mere fact that it is possible for asylum-seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction on liberty”.<sup>38</sup> Accordingly, the confinement of applicants within the transit zone amounts to detention in the sense of Article 5 ECHR.<sup>39</sup>
- The Debrecen asylum detention centre was closed in December 2015, at the time of writing the present analysis in August 2016, three asylum detention facilities operate with a total capacity of **800** overall – in Kiskunhalas 500, Békéscsaba 160, Nyírbátor 105. Expelled foreigners are detained in immigration detention in four facilities: Nyírbátor 160, Kiskunhalas 76, Győr 36, Budapest airport 23 and emergency in prisons 440 overall **740**.
- Children travelling with their families may be detained for a maximum of 30 days in an asylum (or immigration) detention facility. In 2016, as far as the HHC knows, only one family was detained in the Békéscsaba asylum detention centre awaiting a Dublin transfer to Bulgaria. At this moment, the detention of families is not a typical feature of the Hungarian asylum regime. According to the OIN 20 children in families were in detention in 2016.<sup>40</sup>

#### The criminalisation of irregular border crossing and its consequences on children

The irregular crossing of the border fence became a criminal act, with very little room for discretion for the judge as if found guilty the judge must expel the defendant.<sup>41</sup> Between 15 September 2015 and 10 July 2016, 2880 persons faced criminal trial, out of which 2836 were convicted for the “prohibited crossing of the border closure”. The effect of the “8 km rule” after 5 July 2016 can be illustrated by the fact that according to the HHC there has not been a single trial for “prohibited crossing of the border closure” since 10 July 2016.<sup>42</sup>

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<sup>37</sup> <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-figures-1-August-2016.pdf>

<sup>38</sup> ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996, para 48.

<sup>39</sup> ECRE: Crossing Boundaries, October 2015, available here: <http://www.ecre.org/wp-content/uploads/2016/07/ECRE-AIDA-Crossing-Boundaries-The-New-Asylum-Procedure-at-the-Border-and-Restrictions-to-Accessing-Protecting-in-Hungary-Oct-2015.pdf>

<sup>40</sup> Information from the UNHCR RRCE as of 11 August 2016.

<sup>41</sup> For a full analysis of the criminal law provisions related to the border fence, see <http://helsinki.hu/wp-content/uploads/modification-of-criminal-laws-16092015.pdf>

<sup>42</sup> These are the latest available statistics: <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-figures-1-August-2016.pdf>

The criminalization of entering Hungary through the border fence established along the Hungarian-Serbian and Hungarian-Croatian borders took effect on 15 September 2015, in violation of Article 31 of the 1951 Refugee Convention<sup>43</sup> and EU law<sup>44</sup>.

It is important to note that “a substantive decision on the asylum claims is a prerequisite for determining the culpability of asylum seekers. Article 31 of the 1951 Convention relating to the Status of Refugees prohibits the imposition of penalties on refugees who are coming illegally from a territory where their life or freedom was threatened, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. If during the course of the criminal procedure related to illegal entry, the defendant requests international protection, the criminal procedure must be suspended according to a 2007 position of the Prosecutor General of Hungary.”<sup>45</sup>

Although the Criminal Procedure Code requires that all coercive measures must be used with regard to the interests of minors in mind, the special protections and rules pertaining to minors are not met in the criminal procedures relating to the border closure. This means that there is no requirement to appoint a guardian for children under 18, and parents or legal guardians cannot exercise their rights related to the case of a minor even if they reside within Hungary. Neither the favorable rules relating to deferred prosecution, nor the specialized rules of evidence pertaining to juveniles (i.e.: prohibition of the use of lie detectors) apply in these cases. Between 15 September 2015 and 10 July 2016, **2880** persons faced criminal trial, out of which **2836** were convicted for the “prohibited crossing of the border closure”. In **2753** of those cases, the defendants were found guilty and convicted -- in **2709** cases, the punishment was expulsion and an entry ban of 1-2 years.<sup>46</sup> While very few minors were sentenced, to the HHC’s knowledge, those minors received warnings from the court rather than a punishment.<sup>47</sup>

The newly created criminal offences and their prosecution did put extra workload on the Szeged criminal court. In order to end this situation the government came up with the idea that in case the police did not apprehend an irregular migrant while crossing the border there should be a possibility to escort the persons back to the border, in front of the transit zone which would lead to the significant decrease of criminal procedures in Szeged. Since 10 July there were no criminal trials in relation to the border fence.<sup>48</sup>

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<sup>43</sup> In case of asylum-seekers – see also the UNHCR [Summary Conclusions](#) on the interpretation of this provision: <http://www.unhcr.org/419c783f4.pdf>

<sup>44</sup> In case of irregular migrants who do not seek asylum or whose asylum case has already been rejected with a final decision, and thus who fall under the scope of the EU Return Directive. Under EU law (as interpreted by the EU Court of Justice), the mere fact of illegal entry or stay cannot justify a criminal sanction amounting to imprisonment, unless the person has been expelled and the maximum amount of time for immigration detention has been exhausted, without the actual return being carried out, for a reason imputable to the third-country national concerned. Cf. [Hassen El Dridi, alias Karim Soufi](#), C-61/11 PPU, 28 April 2011; [Md Sagor](#), C-430/11, 6 December 2012; [Alexandre Achughbabian v. Préfet du Val-de-Marne](#), C-329/11, 6 December 2011

<sup>45</sup>The HHC analysed the criminal modifications that entered into force on 15 September 2015 and found that “Several elements of these new rules are in direct violation of international legal obligations, and they are practically impossible to implement, the expected case load will produce an enormous pressure on the whole of the Hungarian criminal justice system.” Available in English here: <http://helsinki.hu/wp-content/uploads/modification-of-criminal-laws-16092015.pdf>

<sup>46</sup> <http://szegeditorvenyszek.birosag.hu/hirek/20160606/tajekoztatas-migracios-ugyekrol-2016-majus-30-2016-junius-05>

<sup>47</sup> [Exact figures about criminal procedures against minors are not available in public sources.](#)

<sup>48</sup> Information from the HHC staff.

## General Asylum and Immigration Institutional Framework

The role of the Office of Immigration and Nationality, the central immigration authority

Asylum and immigration falls under the mandate of the Office of Immigration and Nationality (OIN). The structure and organisation of OIN is regulated by the Implementation Decree of the Minister of Justice and Law 52/2007 (XII. 11) on the organisational structure of refugee affairs. OIN has three areas of competence and three directorates thereof: alien policing, asylum and naturalisation (citizenship).

Applications for international protection in Hungary can be submitted to the police (when submitted at the border) or to OIN (when submitted inland). When an application is submitted to another authority, it will be forwarded to OIN. In cases of irregular entry or after an inland check reveals that a person has been staying in Hungary without a legal permission, as well as in the airport procedure, the police is responsible for the identification of the person. OIN is also responsible to conduct Dublin procedures in case legal grounds are met.

Besides the OIN, the police also have immigration (alien policing) tasks in case the irregular migrants are apprehended at the border zone and also when the expulsion order is executed. Forced returns are implemented by the police.

National security checks are carried out by the Counter Terror Office, which conducts random security checks amongst asylum seekers and may present objections to refugee status or subsidiary protection.

OIN is both responsible to carry out the asylum or immigration proceedings and to provide material reception conditions to those lacking the means thereof. Until 2014 the OIN had the duty to provide refugees and beneficiaries of subsidiary protection with integration support as well, but this was modified with the introduction of an tripartite integration contract for refugees between 1 January 2014 and 1 June 2016. This was concluded with the OIN, the refugee in consideration and the local Family Support Service (the social office of the local municipality). As presented above in the Chapter on recent legislative changes in Hungary, refugees have no more integration support directly from the Hungarian government, the roles of OIN in this field ceased to exist.

### Inter-institutional collaboration

State agencies and authorities do have their own administrative coordination within the public administration structure. Usually coordination measures take place between ministers at the State Secretary's level or in case of more operative issues it may be at the department level. It is the Ministry of Interior which is responsible for the field of migration and asylum, all coordination is supposed to go through there. During the migration crisis with the state of emergency first in six counties at the Southern border on 15 September 2015 and then countrywide on 9 March 2016.<sup>49</sup> At the state of emergency a Central Operative Unit has been set up with the participation of the police, OIN, military, rescue services, secret services, and also the railway company MÁV with the task to deal with the extraordinary situation and coordinate. The OIN and the National Police Headquarters have a closer cooperation and they meet regularly to overview joint efforts and overlapping tasks.<sup>50</sup>

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<sup>49</sup> <http://hungarytoday.hu/news/breaking-news-hungary-declares-state-emergency-migrant-crisis-turns-unpredictable-96001>

<sup>50</sup> Information from the National Police Headquarters.

According to all interviewees in the present research, currently there is no institutionalized form of cooperation between state agencies and civil society stakeholders. The OIN used to organise "integration roundtables" back in 2012-2013 but this was discontinued as the 'refugee crisis' first hit Hungary in 2014.

The Ministry of Justice hosts a Human Rights Working Group where a selected group of NGOs may be present. Some NGOs boycotted this forum as according to them this initiative lacks motivation to function in a transparent manner and only serves as a form of legitimisation for the government to demonstrate that they have a dialogue with civil society actors.<sup>51</sup>

The UNHCR used to organise its annual Age, Gender and Diversity Mainstreaming (AGDM), which used to serve as a workshop on asylum and where all stakeholders were present to assess the situation of asylum seekers and refugees in Hungary through field visits and structured interviews with the target group. This was last organised in 2014.

In 2016 the UNHCR was invited to meet the Civic-Military Coordination group which is set up to coordinate tasks at the border and to sensitize police officers and soldiers at the border.

NGOs and international organisations (Hungarian Helsinki Committee, Menedék Association, Cordelia Foundation, Terre des Hommes, Kék Vonal, Refugee Mission of the Reformed Church and the UNHCR) organised a roundtable on the situation of unaccompanied minors with the Ministry of Human Resources in 2013, which had three meetings and suspended its functioning in 2014.

### Child specific institutions

Under Hungarian law all children must be under the custody and care of an adult, typically these are the parents (parental authority) but in cases this is not available it may be another family member appointed by the Guardianship Office, e.g. grandparents.

In case the child cannot stay within his/her own family due to a serious crisis or emergency situation (if it endangers the physical and psychological development of the child) the child may be taken in temporary care and pulled out from the family. A professional child care guardian is appointed when the child is in temporary care. Under the Hungarian legal framework **all UAMs are considered to be in an emergency situation because they lack the care and protection of their own families therefore they are under temporary care by law.**

In addition, the law provides for the appointment of a legal representative upon identification of unaccompanied children. In all phases of the asylum procedure, the OIN has to appoint **without delay a guardian to represent the unaccompanied child**, unless it is likely that the applicant will turn 18 before an in-merit decision is taken on the asylum application.<sup>52</sup> Until 1 January 2014, a temporary guardian was appointed by the competent Guardianship Authority to unaccompanied children, who was not only responsible for their legal

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<sup>51</sup> Interview with staff members of the HHC.

<sup>52</sup> Section 35 (6) of the Asylum Act foresees that "If the person seeking recognition is an unaccompanied minor, the refugee authority shall, without delay, initiate the temporary placement of the child and request the guardianship authority to appoint a child protection guardian, who serves to represent the minor. The child protection guardian shall be appointed within eight days of the arrival of the refugee authority's request. The unaccompanied minor and the refugee authority shall without delay be notified by the guardianship authority of the person of the child protection guardian appointed."

representation in the asylum procedure but also the child's overall care property management.<sup>53</sup>

Before the new legislation was adopted in 2014, for unaccompanied minors asking for asylum, a 'case guardian' was appointed before the first hearing to assist the minor through the asylum procedure. This temporary guardian was previously a staff member of the Karolyi Istvan Children's Center in Fót. This enabled the temporary guardian to have daily contact with minors. However this changed in 2014, when it was decided to appoint independent guardians from outside the children's home in all child protection cases.

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

Due to the above legislative changes, a child protection guardian has to be appointed to unaccompanied children by the Guardianship Authority, who is legally responsible for the overall care, property management and legal representation of the child. The child protection guardian is employed by the Department of Child Protection Services (TEGYESZ) and can ensure the guardianship of a maximum of 30 children. The child protection guardians (*gyermekvédelmi gyám*) (as of 1 January 2014) are public servants, who are professionals, employed by the regional child protection services in full time and cannot undertake other duties related to the accommodation of the child being taken care of.

In general, the procedure to appoint a guardian is very complex. As of 1 August 2015 the guardianship services are obliged to appoint the child protection guardian for the asylum seeking unaccompanied minor within 8 days following the notice of the Office of Immigration and Nationality (asylum authority). **This may be a major improvement in providing these children with access to a responsible adult assisting them and to prevent procedural delays which resulted from the lack of a guardian (interviews were not scheduled, age assessment examinations were postponed).** In practice, even after 1 August unaccompanied children were provided with a guardian after an extensive delay that can amount even to 3 to 6 months; this was, for instance, the case for an unaccompanied child represented by the HHC, who was transferred to a protection shelter in June 2015 and whose guardian was not appointed until October. Delays in the appointment of guardians in the asylum procedure result in lengthy asylum procedures which hinder the efficient implementation of the legal obligation stating that asylum applications of unaccompanied children have to be treated as a matter of priority. **As a result it can occur that a confirmed asylum seeking unaccompanied child becomes 18 before a decision is made on the protection claim. In such cases they will be excluded from after-care arrangements according to existing legislation.**<sup>54</sup> Experience shows that lengthy procedures may also contribute to the child's decision to leave Hungary before a decision is taken on the application.

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<sup>53</sup> Prior to 2011 this guardian used to be a member of the locally competent bar association (an attorney-at-law), which was only then followed by a professional guardian once the child was granted international protection. As abovementioned along with their inclusion under the Child Protection Act, since 2011, UAMs have to be appointed a guardian, who is legally responsible for the care, property management and legal representation of the minor. This may be considered as a big step forward as previously, their legal representation had not been properly ensured in various situations, for example when a medical question had to be decided. Section 136 (1) of Decree no. 149/1997 and Section 98 of the Family Code

<sup>54</sup> [http://ec.europa.eu/dqs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/13a\\_hungary\\_unaccompanied\\_minors\\_en.pdf](http://ec.europa.eu/dqs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/13a_hungary_unaccompanied_minors_en.pdf)

Under the Child Protection Act the guardians are responsible for the full-scale legal representation of the child in consideration, replacing the parents in all proceedings, handling the child's assets and observing his/her best interest, while always seeking the child's opinion.<sup>55</sup>

The role of the child protection guardian in more details consists of supervising the care for the child, following and monitoring his or her physical, mental and emotional development.<sup>56</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.

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

## Infrastructure and Capacities

Provision of reception to applicants for international protection in Hungary is governed by the Act on Asylum and the Governmental Decree 301/2007 (XI.9.). OIN determines whether an applicant will be referred to an open reception centre or transferred to a detention centre or offered alternatives to detention. OIN also directly manages the reception system at a central level. In general, applicants will be sent to the nearest centre with available places. However in practice applicants are often moved between centres to make best use available places. Applicants for international protection can request to stay in private accommodation at their own expense, but no material support will be provided in such cases. Unaccompanied minors (UAMs) are placed in the general childcare system and accommodated in one of two available specialised homes for children in Fót.<sup>57</sup> Until 1 April 2016 another facility was also accommodating unaccompanied minor asylum seekers in Hódmezővásárhely but this institution changed its profile and only receives Hungarian children since.

For children arriving with their families there are currently 4 open reception centres in Hungary in addition to a specific shelter for unaccompanied children. All reception centres are

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<sup>55</sup> Section 11 (2) of Act XXXI of 1997 on Child Protection and Guardianship System

<sup>56</sup> Section 86 of the Child Protection Act

<sup>57</sup> European Asylum Support Office: Description of the Hungarian Asylum System, May 2015, p 7, available at: <https://www.easo.europa.eu/sites/default/files/public/Description-of-the-Hungarian-asylum-system-18-May-final.pdf>

located in smaller towns. The facilities in Bicske, Balassagyarmat and Vámoszabadi include standard buildings, with an overall capacity of around 770 persons. The recently opened facility in Körmed is a tent camp, which is not suitable for longer stay (especially in winter), its approximate capacity is around 200 persons. The temporary reception facility in Nagyfa (with a capacity of 300) was closed down in April 2016, while the largest refugee camp in Debrecen (with a capacity of over 800 persons) was closed down in November 2015.

Infrastructural capacities of the asylum system are limited with less than 1300 places at the moment broken down as follows:

- Bicske (approximately 440 reception places)
- Vámoszabadi (appx. 255 reception places)
- Körmend (appx. 200 places)
- Kiskunhalas (appx. 200 places)
- applicants can also be accommodated in a community shelter in Balassagyarmat (111 places)
- shelter for UAMs in Fót (34+ places – the facility is being refurbished and expanded)

In Hungary, since the creation of the national asylum system it is the Office of Immigration and Nationality (OIN) that manages all reception centres (the Fót shelter for unaccompanied minors is managed by the Ministry of Human Resources). This exclusively state-run system has been long criticised for a number of reasons. It upholds an over-centralised, overwhelmingly bureaucratic and inflexible structure that tries to keep away asylum-seekers as much as possible from the Hungarian society, instead of creating positive opportunities for encounter. It is unreasonably “massive” – refugee camps with several hundreds of asylum-seekers coming from dozens of countries are hotbeds of conflicts and violence, as well as with this size, maintaining order and acceptable hygienic conditions result in exponentially growing costs and difficulties.

Most Hungarian reception facilities have a strong hospitalising effect on asylum-seekers and basically all positive initiatives to counter-balance these problems have been exclusively dependent on EU funding. The location of reception centres is usually inadequate, coupling remoteness with local populations often having a hostile attitude. The Hungarian government has never seriously considered the option to move towards a more diverse and more modern infrastructure, with smaller shelters, involving non-governmental or charity organisations in a more active manner. Free-of-charge legal assistance, professional social work, and psychological-psychiatric care are only ensured by non-governmental organisations (the Hungarian Helsinki Committee, the Menedék Association and the Cordelia Foundation – respectively), for which very limited state funding is made available by co-funding of the Ministry of Interior. These services are therefore almost entirely dependent on project-based funding by the EU, UNHCR and other international donors.<sup>58</sup> The state therefore does not provide exclusive funding and legal aid services are not made available from the Hungarian state budget.

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<sup>58</sup> <http://www.helsinki.hu/wp-content/uploads/Hungary-asylum-reception-infrastructure.pdf>

## Chapter 2: Children and the Current Practice in the Field of Asylum

### General access to the right to seek asylum for children

#### Situation at the pre-transit zone in the Serbian-Hungarian border area

By October 2015, four transit zones were created along the Serbian and Croatian border sections (Röszke, Tompa, Letenye and Beremend), where immigration and asylum procedures are conducted and where buildings required for conducting such procedures and housing migrants and asylum-seekers are located. The two transit zones along the Serbian border are located in Tompa and Röszke, while Beremend and Letenye are the transit zones along the Croatian border.

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 third biggest entry point to Europe.<sup>59</sup> The transit zones along the Croatian border have not been visited by asylum seekers, but in 2016 the significance of the transit zones along the Serbian border has grown as approximately 25% of the asylum applications, 6458 were registered there out of the 24153.

The OIN, which operates the transit zones, decides who can enter the transit zone on a particular day. Since March 2016, an ever-growing number of migrants continue to gather in the 'pre-transit zones', which are areas on Hungarian territory that are sealed off from the actual transit zones by fences in the direction of Serbia. Here, migrants wait in the hope of entering the territory and the asylum procedure of Hungary in a lawful manner. Approximately one-third of those waiting to access the transit zones are children younger than 18 years.<sup>60</sup> Although the pre-transit zones are physically located on Hungarian soil, they are considered to be a no man's land by Hungarian authorities, who provide little to nothing to meet basic human needs or human rights. By August 2016 an unofficial registration system was set up by creating a list with the names of potential asylum seekers waiting in front of the transit zones. There is a separate list for families and UAMs and for single men. For this latter group months may pass until they get admitted to Hungary, which forces many of them to seek the assistance of smugglers again or to try to cross the border fence and risk being caught by Hungarian border forces.<sup>61</sup>

In the Tompa pre-transit area, migrants wait idly in makeshift tents made of the blankets distributed by the UNHCR, which provide some shade from the sun. In Röszke, the authorities allow the use of real tents. There are only 5 toilets and a few water taps. UNHCR, along with Médecins sans Frontiers (MSF) and volunteer groups, provide humanitarian relief to the tired and destitute migrants. MSF's doctors visit every day, while UNHCR distributes blankets, clothes and food packages to those waiting.

The lack of food, absence of shelter and sanitary facilities and the overall inhumane conditions are, however, not the biggest reason for frustration for the hundreds of people trying to seek asylum. It is rather the long wait, in which nobody knows how exactly long they will have to remain under these conditions. The transit zones in Tompa and Röszke have limited capacities, and on average, only 20-30 asylum seekers are allowed to enter per day. The clear factors that determine who is allowed access to the transit zone are time of arrival and extent

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<sup>59</sup> FRONTEX, <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>

<sup>60</sup> Estimation from the UNHCR and other volunteers.

<sup>61</sup> Information from volunteers and HHC staff.

of vulnerability. The other determining factors are not so clear. Usually families with small children enjoy priority over single men, some of whom have been living in this small stretch of land for more than 20 days without being able to take a shower.

The inhuman material conditions, the lack of transparency when it comes to allowing access to the transit zones in addition to the refusal of the authorities to grant access to humanitarian relief organizations and volunteers to all of these areas, make the migrants in the pre-transit zones, among them children, all the more vulnerable.<sup>62</sup>

As the HRW reported in April 2016, the situation is not much better on the other side of the border in Serbia. Police violence and harassment were repeatedly reported by migrants. The situation slightly changed with the opening of the reception facility in Subotica, where migrants can rest for a while before continuing their journey towards Western Europe. Many decided to wait in Subotica instead of staying at the pre-transit zone at the border because conditions are better in Subotica. The Serbian Commissariat for Refugees and Migration (SCRM) accommodated 291 migrants in the Refugee Aid Point (RAP) of Subotica.<sup>63</sup>

### Push back incidents at the Serbian-Hungarian border

In August 2016 almost all interviewed organisations confirmed that the number of alleged push back incidents is constantly increasing, while the number of asylum applicants residing in the country is decreasing. This means that border control measures became stricter and arguably 'successful' in discouraging migrants from transiting Hungary.

The violence reportedly became widespread with main Hungarian media outlets reporting on a daily basis on the hardship and violence suffered by refugees and migrants at the Serbian border, with some reports directly incriminating Hungarian law enforcement agencies or paramilitary groups.<sup>64</sup> Refugees told the HHC, the HRW, MSF, and various Hungarian news portals (index.hu, hvg.hu, atlatzo.hu etc.) that they were beaten by the police, pepper (or gas) spray was used against them and some were even attacked by police dogs.<sup>65</sup>

The above allegations were raised by several organisations in June-July 2016. The UNHCR RRCE raised its concerns in a press release published on the sad occasion of the death of a young Syrian man trying to cross the Serbian-Hungarian border. "UNHCR remains concerned about the increasing number of allegations of abuse in Hungary against asylum-seekers and migrants by border authorities, and the broader restrictive border and legislative measures, including access to asylum procedures."<sup>66</sup>

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<sup>62</sup> For more detailed information on the pre-transit areas, please see the recent reports of HHC and that of UNHCR or the Human Rights Watch at: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border> and <https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers>

UNHCR Update report on Serbia, 23-26 June 2016: <https://data.unhcr.org/mediterranean/download.php?id=1583>

<sup>63</sup> UNHCR Update report on Serbia, 23-26 June 2016:

<https://data.unhcr.org/mediterranean/download.php?id=1583>

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[http://hvg.hu/itthon/20160824\\_roszke\\_horgos\\_tompa\\_szerbia\\_hatar\\_menekultek\\_sor\\_embercsempesz\\_video\\_ero\\_szak](http://hvg.hu/itthon/20160824_roszke_horgos_tompa_szerbia_hatar_menekultek_sor_embercsempesz_video_ero_szak)

<sup>65</sup> <https://atlatzo.hu/2016/08/26/kek-egyenruhas-rendorok-kutyakkal-okollet-es-gazsprevel-verik-vissza-a-menekulteket-a-szerb-magyar-hataron/>

<sup>66</sup> The UNHCR added that "Allegations of a push back from Hungary to Serbia in the early morning of 1 June emerged earlier this week after the Hungarian police rescued an Iraqi mother and her children from the Tisza River. Reports emerged that they had been part of a larger group, among them a 22 year old Syrian man had gone missing during the alleged push back. Yesterday, the Hungarian police (at the border town of Szeged) have reported the recovery of the body of the 22 year old Syrian man.

"The circumstances that led to this tragic death need to be swiftly and thoroughly investigated by the authorities on both sides of the border," said Montserrat Feixas Vihe, UNHCR's Regional Representative for Central Europe.

"Instead of finding safety and sanctuary in Europe, a young man has tragically lost his life.""

Since May, UNHCR and the HHC have collected information on over 100 cases with disturbing allegations of excessive use of force as people try to cross the border, which were all shared officially with the National Police Headquarters. Until 26 August 2016 the police systematically denied the allegations in its previous responses to the above.<sup>67</sup>

In June 2013 the HHC documented that UAMs in the child protection facility of Fót complained that they were brutalised at the border upon interception. One them even showed visible injuries, and claimed that this was caused by police dogs.

The Human Rights Watch published a very detailed report with individuals' testimonies on 13 July 2016 which states that "migrants are being summarily forced back to Serbia, in some cases with cruel and violent treatment, without consideration of their claims for protection."<sup>68</sup> As HRW also noted, most of the issues with access to protection concern single men, whose asylum claims are summarily dismissed without considering their protection needs. The situation is significantly better for some visibly vulnerable groups that are transferred to open reception facilities inside Hungary within a day from their admission to the transit zone. This practice has been confirmed by the Hungarian Helsinki Committee's attorney who provides legal assistance within the transit zone. The HHC is still the only NGO that has continuous access to the persons admitted to the transit, although difficulties in a timely access still often occur.

The researcher of the HRW stated in the framework of the present research that "there is no exceptions made with respect to vulnerable groups under the July 5 law and as a result, families with underage children are routinely pushed back by police and army and end up stranded in the mud outside the Tompa and Roszke transit zones without any substantive aid or shelter provided for by authorities." HRW further claims that "HRW has documented dozens of pushbacks, sometimes violent, that involve minors. We have testimonies from these children that we collect as evidence showing systematic patterns of abuse which we then address with relevant authorities and interlocutors."<sup>69</sup>

The Jesuit Refugee Service (JRS) in Subotica documents the consequences of alleged ill-treatment at the Serbian-Hungarian border in a specific form.<sup>70</sup> They also confirmed that many refugees arrive back to Serbia with injuries and signs of ill-treatment. Grass-root organisations also publish horrifying photos of scars and injuries in the social media to call attention to the systemic violence at Hungary's Southern border.<sup>71</sup>

The HHC reported a case where a 12-year-old Afghan boy was returned from Hungary to Serbia five times between May and July 2016. The UNHCR's local implementing partner, the Humanitarian Centre for Integration and Tolerance (HCIT) was in contact with the boy until he absconded and there is no information on his whereabouts.

On 24 August 2016, a staff member of the Médecins Sans Frontières (MSF) mission to the Western Balkans told the Hungarian news portal hvg.hu that they see more and more migrants with injuries from most probably beating, dog bite or cuts from the barbed wire's

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<http://www.unhcr-centraleurope.org/en/news/2016/unhcr-alarmed-at-refugee-death-on-hungary-serbia-border.html>

<sup>67</sup> [http://helsinkifigyelo.blog.hu/2016/07/13/aljas\\_dolgozok\\_tortennek\\_a\\_magyar\\_hataron](http://helsinkifigyelo.blog.hu/2016/07/13/aljas_dolgozok_tortennek_a_magyar_hataron)

<sup>68</sup> <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>

<sup>69</sup> Interview with L.Gall 24 August 2016.

<sup>70</sup> <https://issuu.com/bodoky/docs/jrs?e=6572205/38206406>

<sup>71</sup> <https://www.facebook.com/refugeesanthem/photos/pcb.1103986323011050/1103985403011142/?type=3&theater>

razorblades. MSF is documenting these incidents and the testimonies of the migrants they assist. Many migrants told them that they were beaten by men wearing green military clothes, which are suspected to be members of paramilitary groups. The existence of unofficial guards is well documented in social media, especially the village of Ásotthalom at the Serbian border, which is led by the extreme-right wing mayor.<sup>72</sup>

According to the head of the National Police Headquarters, Károly Papp, four investigations are ongoing where officials are facing criminal charges on the account of brutality, as confirmed on 24 August 2016.<sup>73</sup> As of early October 2016 there was no information available on the development of these criminal investigations.

### Impact of the legal reform on the right to seek asylum in Hungary for children

Although official statistics are not available that would confirm the routine of push backs to Serbia of children information from interviews and testimonies suggest that the right of children to access territory and to protection is equally violated by the Hungarian authorities as that of adults.

When assessing the impact of the legal reforms on the right of children to seek asylum, it is necessary to understand that the 4396 entries blocked by the police after the 5<sup>th</sup> July 2016 within 8 km from the Serbian border mean that 4396 persons were not allowed to submit their claims for protection in Hungary and were *refouled* to destitution. Despite all the efforts and improvement of the Serbian asylum reception system' capacities, the UNHCR still does not consider Serbia as a safe third country, which means that the return and "escorting" of these migrants to the territory bordering Serbia may amount to *refoulement*.<sup>74</sup> Given the estimation of all humanitarian aid workers at the Serbian-Hungarian border that around one third of the migrants are children, we may conclude that at **even with the most careful estimation, hundreds of children could be pushed back since the 5<sup>th</sup> July 2016.**

When waiting to be admitted to Hungary at the transit zones, experience shows diverging and contradictory practices. Some interviewees stated that UAMs are not prioritized, while others underlined that they are registered on a separate (yet unofficial) list at the border. All interviewees confirmed that there is clearly not enough attention paid to UAMs and these children may also wait for weeks or longer without proper assistance and shelter to enter Hungary.<sup>75</sup>

When asked about alleged push backs, the police did not respond to the research questionnaire therefore official information is unavailable on push back incidents on UAMs, similarly to allegations concerning adults. As the official terminology call this measure "prevention of entry and re-escorting", which is permitted by the law, it is highly unlikely that Hungarian authorities would ever document their actions as push backs or cases of *refoulement*. This is a clear example of domestic regulations violating international human rights obligations (Article 31 and 33 of the 1951 Refugee Convention).

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[http://hvg.hu/itthon/20160824\\_roszke\\_horgos\\_tompa\\_szerbia\\_hatar\\_menekultek\\_sor\\_embercsempesz\\_video\\_ero\\_szak](http://hvg.hu/itthon/20160824_roszke_horgos_tompa_szerbia_hatar_menekultek_sor_embercsempesz_video_ero_szak)

<sup>73</sup> <http://hirtv.hu/ahirtvhirei/a-rendorseg-vizsgalja-az-allitolagos-tulkapasokat-1358455>

<sup>74</sup> UN High Commissioner for Refugees (UNHCR), *Serbia as a country of asylum. Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, August 2012, available at: <http://www.refworld.org/docid/50471f7e2.html>

<sup>75</sup> Interview with migration experts and volunteers who wish to remain anonymous.

The HHC and even EASO in its report on the Hungarian reception system from May 2015<sup>76</sup> - agreed that OIN has no protocol or standard operating procedure for the identification of vulnerable asylum-seekers with special needs.<sup>77</sup> This resulted in a situation where only the most visible vulnerabilities may be taken into consideration at the transit zone (pregnant women in the third trimester, very young children, visibly old persons, persons in wheelchair etc.) while many young migrants are forced to undergo age assessment examination.

The HHC called the National Police for action in the case of three Afghan UAMs who were in Fót on 31 May 2016 because these children stated that they were beaten by the police upon apprehension and one of them was bit on his nose by a police dog.<sup>78</sup> These children were all clearly traumatized after these events and stated that they would not wish to stay in Hungary. All of them absconded within a few days from the HHC's visit to Fót.

### Unaccompanied children and age assessment

The most problematic part of the identification of UAMs is the recognition of their status as a child, namely the age assessment by Hungarian authorities. Most of the asylum seekers arrive in Hungary irregularly without any ID documentation. In the case of UAMs and even older children arriving with their families, the police may order an age assessment examination by the police or military doctor right after interception.

Practice shows that age assessment practices in Hungary are not of a multidisciplinary character and the assessment practices completely disregard the differences between various populations of the world regarding pubescence, the psychological and emotional development of children as well as their cultural background.

In most cases, age assessment examination is rather superficial in Hungary. It consists of a simple physical observation of the foreigner by a police or military doctor who looks at signs of sexual maturity, facial hair, teeth, or of an X-ray examination of the wrist, collar bone or pelvis. The Office of Immigration and Nationality confirmed that if a police doctor at the border issues a medical opinion confirming that the person is an adult, a second and more detailed, forensic expert's opinion can only be obtained by the OIN, but only if it doubts the results of the first medical examination.

Those minors whose age is wrongly assessed often end up in detention. If authorities do not have a doubt about the age of the detained asylum-seeker, he/she has the right to request a repeated medical examination, but they must pay for its costs (cca. EUR 100). Several asylum experts, including the HHC, believe that this OIN practice is not in line with Hungarian law, which stipulates that, "if the applicant seeking recognition /declares, after the ordering of detention, that he/she is an unaccompanied minor, the asylum authority shall contact the medical service provider who has jurisdiction at the place of detention in order to immediately establish the age of the applicant."<sup>79</sup>

Furthermore, Hungarian law exempts asylum-seekers from bearing any costs related to the asylum proceedings (with respect to the first asylum claim only). The applicant's age is a crucial factor to be considered in the asylum procedure, therefore, the costs of age

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<sup>76</sup> There is no structured national mechanism to identify people with special needs and it is usually performed on an ad hoc basis. It may happen that, for a limited period of time, vulnerable persons (e.g. single mothers) do not have access to special material reception conditions (e.g. when apprehended during the night), in particular at times of high influx. <https://www.easo.europa.eu/sites/default/files/public/Description-of-the-Hungarian-asylum-system-18-May-final.pdf>

<sup>77</sup> <http://www.helsinki.hu/wp-content/uploads/Hungary-asylum-reception-infrastructure.pdf>

<sup>78</sup> <http://helsinki.hu/blog/2016/07/13/aljas-dolgok-tortennek-a-magyar-hataron>

<sup>79</sup> Section 36/B of the 301/2007 Government Decree

assessment examinations should be borne by the state, at least with respect to the first asylum claim. UAMs often end up in detention due to an ill-founded age assessment. Detained children, who lack the financial means to pay for a repeated age assessment, are left without the ability to seek remedies against unlawful detention. This is in violation of Hungary's international and domestic obligations.<sup>80</sup>

The HHC confirmed that their monitors and contracted attorneys identified at least 35-40 unaccompanied minors in immigration and asylum detention in 2016 during their human rights monitoring activities. UNHCR also confirmed that their monitors also met several unaccompanied minors in detention in 2015-2016.

Being the most problematic issue with children at the border, there are still challenges regarding the age assessment procedure that have not been addressed by Hungarian authorities, including:

- a. Due to the lack of clear legal provisions or SOPs, non-transparency and uncertainty regarding when, it is necessary for the authorities to initiate an age assessment examination in case of doubt,
- b. Since age assessment is considered in principle as a medical issue, there is a lack of an interdisciplinary approach
- c. A lack of nationally harmonised application of age assessment procedures,
- d. A lack of an effective legal remedy against the expert opinion on age assessment,
- e. A lack of legal representation by the appointed guardian of UAMs at age assessment procedures initiated during the immigration procedure.

"To this day, no protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the OIN. On several occasions (conferences, roundtables etc.) the OIN denied its responsibility to adopt such a protocol, stating that age assessment is a medical question, which is beyond its professional scope or competence. The police elaborated a non-binding protocol for the purpose of police-ordered age assessment examinations that provide a checklist to be followed by doctors who are commissioned to carry out the examination.<sup>81</sup> This protocol, which was published in 2014, would not take into account the psycho-social or intercultural elements of age assessment either. The protocol only foresees that in case the applicant (the subject of the age assessment) is suspected to be a victim of sexual violence, follow-up assistance from a psychologist may be requested (but this is not an automatism and the HHC never assisted a case where the authorities would refer the applicant to a psychologist ex officio)."<sup>82</sup>

#### Children's separation from family members or responsible adults

In the framework of the present study, both the UNHCR and the HHC reported that they were informed about cases where the family unity of the migrants was not respected and older children were subjected to age assessment. In the cases where the superficial and scientifically ill-founded examination (physical observation by a police doctor) declares the child adult, he may be taken out from the family and put in detention while the rest of the family is transported to an open reception facility for families with children. Several families turned to the HHC with such problem; a part of the family was already in the country, while

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<sup>80</sup> For a more detailed description of the problem of children's deprivation of liberty, please see: [http://helsinki.hu/wp-content/uploads/BHC\\_2014\\_Children\\_Deprived\\_of\\_Liberty\\_EN.pdf](http://helsinki.hu/wp-content/uploads/BHC_2014_Children_Deprived_of_Liberty_EN.pdf)

<sup>81</sup> The protocol is available in Hungarian at: <http://bit.ly/1X53QT6>.

<sup>82</sup> [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hu\\_update.iv\\_0.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_update.iv_0.pdf)

male children around 17-20 years of age were either left at the transit zone waiting or in asylum detention somewhere else in the country.

## Rights of children in the asylum procedure

### Procedural guarantees and individual assessment of protection claims

All asylum seekers have the right to be heard in an individualised procedure under Article 4 (3) of the recast Qualifications Directive and Section 40 of the Asylum Act, which foresees that "The decision relating to the application for recognition shall be based on the individual assessment of the situation of the person seeking recognition".

Most of the procedural guarantees and standards set out in Article 15 (3) of the Recast Asylum Procedures Directive are respected, the applicant may choose to have a same sex caseworker, and interviews are not carried out by official persons wearing uniforms.<sup>83</sup> As regards general procedural guarantees that apply to all asylum seekers it is important to note that the Asylum Act sets forth that "the OIN is obliged to conduct an individual examination of the asylum claim by examining "[t]he social standing, personal circumstances, gender and age of the person [...] to establish whether the acts which have been or could be committed against the person applying for recognition qualify as persecution or serious harm."<sup>84</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>85</sup>, and this right is respected in practice."<sup>86</sup>

As regards the timing and preferential treatment of UAMs the Asylum Act foresees that UAMs' applications should be prioritized, however, the researcher's own experience shows that this provision is often disregarded.<sup>87</sup>

### Lack of a child friendly environment

The obligation to ensure that interviews with minors are conducted in a child appropriate manner remains to be fulfilled. Almost all experts interviewed stated that interviewing children is one of the most problematic part of the asylum procedure in Hungary for two reasons: 1) most often children are not interviewed separately from their parents 2) even if they are interviewed (UAMs for instance), this does not take place in a child friendly and age appropriate setup.

- 1) Those minors that arrive in Hungary with their families are only and occasionally interviewed if they are over 14 and if their testimonies are essential to decide on the protection claim. This means that only a small minority of children or teenagers undergo a personal hearing, which is not in line with the duty to individually assess all applications and to determine the cases when the minor should be given an opportunity of a personal interview.<sup>88</sup> The Asylum Act prescribes that: "A person seeking recognition, who has not yet completed the age of fourteen years, arriving together with a family member with full proceeding capacity, may be heard if his/her personal interview is indispensable in the interest of the clarification of the facts of the

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<sup>83</sup> Recast Qualifications Directive (2011/95/EU Directive), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>

<sup>84</sup> Section 90 Government Decree 301/2007

<sup>85</sup> Section 66 (3) Government Decree 301/2007

<sup>86</sup> [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hu\\_update.iv\\_0.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_update.iv_0.pdf)

<sup>87</sup> Section 35 (7) of the Asylum Act

<sup>88</sup> Article 14 (1) of the recast Asylum Procedures Directive (2013/32/EU Directive), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>

case."<sup>89</sup> Experience shows that this rarely happens and the asylum procedure and the decision usually only takes into account the parents' flight stories and disregards the specific situation of the child.

- 2) In most of the cases assisted by the HHC (and the researcher herself), minors were only offered a personal hearing if they were unaccompanied. In these cases the interviews were conducted in the same rooms where adults have their own interviews with the OIN, based on the same set of questions as for adults. At the time of writing the present report we can conclude that the conditions of an interview with UAMs are not child friendly and the used interview questionnaire is almost exactly identical to the ones used for interviewing adult applicants.

A few caseworkers were specialized in dealing with UAMs' asylum cases within the Asylum Department of the Office of Immigration and Nationality in Budapest. Due to the increased fluctuation within the OIN, most of these trained case workers left the organisation, consequently there is less knowledge on UAMs than before. Before the 'refugee crisis' hit Hungary in 2015 there were a few officers who got trained in dealing with minors through the EAC modules and later with EASO but these staff members left OIN during 2015 partially probably due to the extreme workload and the deteriorating labour conditions.<sup>90</sup>

As there is no separate interview, children in families do not receive a separate decision on their status either, but they are mentioned as the dependant family member of the applicant (usually the mother) to whom the decision has a legal effect and force. If a minor arrives with adult family members, child specific forms of persecution are not taken into account. Children are treated as the "belongings" of their parents, contrary to Article 12 of the Convention on the Rights of the Child whereas the views of the child should be given due weight in accordance with the age and maturity of the child.

Regarding the procedural rights of children, another issue is the complete lack of child friendly information provision. Despite the obligation to provide applicants with procedural information according to their circumstances, the Hungarian authorities do not inform UAMs or minor asylum seekers with their families in a child appropriate manner.<sup>91</sup> Experience shows that applicants receive lengthy information materials from the OIN, which is not written in a user friendly manner. The complexity and the length of the text are often too overwhelming for asylum seekers and they hardly have any information from these sources.

Best Interest Determination (BID) is missing

Despite all international human rights instruments and the EU asylum *acquis* with all provisions on the child's best interest, the Hungarian asylum system still does not have a functioning Best Interest Determination (BID) procedure or protocol. The unavailability of a standard operating procedure for formal BID (not only in the asylum procedure but also in the mainstream child protection procedure) renders it more difficult to identify durable solutions for UAMs in Hungary.

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<sup>89</sup> Section 43 (3) of the Asylum Act

<sup>90</sup> Anonymously former staff members of the OIN confirmed that they had to work overtime and could go on less holidays during 2015.

<sup>91</sup> Preamble 22 of the recast Asylum Procedures Directive foresees that "applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances. The provision of such information should, inter alia, enable the applicants to better understand the procedure, thus helping them to comply with the relevant obligations."

“Both the Act on Asylum and the Children’s Protection Act refer to the obligation of taking into account the best interests of the child during the procedures as a basic principle, yet a formal, individualized BID procedure in Hungary also for Hungarian children, needs to be established in order to determine “durable solutions”. According to a study commissioned by IOM<sup>92</sup> authorities responsible for protecting the child’s best interests have a discretionary power to decide upon the best interests of the child. In anticipation of the new UNHCR-UNICEF BID Guidance to be released in 2015, UNHCR has carried out consultations – in close cooperation with the Government and non-governmental organizations – to establish a BID process in Hungary.”<sup>93</sup>

The situation did not improve since 2014 when the above consultation took place therefore the HHC held a series of consultations with the child protection guardians in the Spring of 2016 based on the UNHCR-UNICEF Safe and Sound report and methodology but the introduction of case resolving roundtables with various stakeholders in order to assess the best interest of the child and to have a formal determination thereof seem challenging at the moment.

## Conditions of reception of children in need of international protection in Hungary

### Conditions in reception facilities for children with their family member or other responsible adults

Asylum seekers during the processing of their first application are entitled to material reception conditions during the entire asylum procedure until the final decision is delivered.<sup>94</sup> They are entitled to the reception conditions immediately after claiming asylum and not only when they receive a document for asylum seekers. First-time applicants are entitled to housing and food allowance (or three meals a day). These general conditions also apply to applicants below the age of 18.

Furthermore, the Asylum Act provides that in case of persons requiring special treatment, due consideration shall be given to their specific needs.<sup>95</sup> More specific details are set forth in Section 33 of the 301/2007 Government Decree, namely that:

“(1) The refugee authority shall ensure separated accommodation at the reception centre for persons seeking recognition who have special needs in cases justified by their specific individual situation.

(2) As far as possible, family unity shall be maintained even when providing separated accommodation to a person in need of special treatment.

(3) When providing reception, the best interests of minors seeking recognition shall be a primary consideration. During the accommodation at the reception centre food, clothing, mental hygiene and health care, attendance and education shall be provided that is advancing the child's physical, mental, emotional and moral development, and is adequate for the child’s age, health condition and other needs.”

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<sup>92</sup> IOM: Overview of guardianship systems for unaccompanied minor asylum-seekers in Central Europe SYNTHESIS REPORT, 2012, available at: [http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&cPath=41\\_7&products\\_id=827](http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=41_7&products_id=827)

<sup>93</sup> EMN POLICIES, PRACTICES AND DATA ON UNACCOMPANIED MINORS IN 2014 HUNGARY, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/13a\\_hungary\\_unaccompanied\\_minors\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/13a_hungary_unaccompanied_minors_en.pdf)

<sup>94</sup> Section 27 of the Asylum Act

<sup>95</sup> Section 4 (3) of the Asylum Act

If needed and with respect to the person's individual situation and based on a medical opinion, persons with special needs 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>96</sup> It is the duty of the OIN to ascertain whether the rules applying to vulnerable asylum seekers are applicable to the individual circumstances of the asylum seeker. With the exception of overcrowding, usually single women are accommodated in the same building as families. The OIN needs to ensure separate accommodation within reception centres for asylum seekers with identified special needs, however this is not always possible when the centre is overcrowded.<sup>97</sup>

The EASO conducted a fact finding mission to Hungary in March 2015 to monitor the situation amidst the unfolding refugee crisis. The mission found that the reception of vulnerable applicants is highly problematic due to the lack of proper identification and care measures, or assistance lacking. The below cited conclusions of the EASO remain actual in August 2016 as well.

"There is no structured national mechanism to identify people with special needs and it is usually performed on an ad hoc basis. It may happen that, for a limited period of time, vulnerable persons (e.g. single mothers) do not have access to special material reception conditions (e.g. when apprehended during the night), in particular at times of high influx. A legal or administrative procedure for detecting special needs has not been developed in Hungarian legislation or practice. Identification of vulnerable groups is in practice limited to obvious cases, e.g. minors or those with clear needs. There is no systematic psychological screening. All applicants are to be medically examined at the beginning of the asylum procedure. There are some administrative guidelines and procedures for the assessment of special needs. Nevertheless these guidelines do not apply and are not implemented in all facilities. For example a questionnaire and observations for early identification of applicants for international protection who have suffered traumatic experiences (developed in the framework of the PROTECT-ABLE project<sup>98</sup>) is only applied in the reception centre in Debrecen. Standard Operating Procedures for victims of gender-based and domestic violence also exist in some centres, but are not being applied in practice. However, plans exist to develop general guidelines and procedures for the assessment of special needs in reception centres."<sup>99</sup>

The AIDA report on Hungary confirms the concerns of the EASO as follows. "Although both the Asylum Act and Decree 301/2007 provide that the special needs of certain asylum seekers should be addressed, there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons. The Decree only foresees the obligation of the authority to consider whether the special rules for vulnerable asylum seekers are applicable in the given individual case, however, no procedural framework was elaborated to implement this provision in practice.<sup>100</sup> According to the HHC, it generally depends on the asylum officer in charge whether the applicant's vulnerability will be examined and taken into account. An automatic screening and identification mechanism is lacking; applicants need to state that they require special treatment, upon which asylum officers consider having recourse to an expert opinion to confirm vulnerability. A medical or psychological expert may be involved to determine the need for special treatment. The applicant should be informed in simple and understandable language about the examination

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<sup>96</sup> Section 34 of the Government Decree 301/2007

<sup>97</sup> Section 33 (1) Government Decree 301/2007.

<sup>98</sup> <http://protect-able.eu/>

<sup>99</sup> EASO: Description of the Hungarian Asylum System, May 2015, page 14, available: <https://www.easo.europa.eu/sites/default/files/public/Description-of-the-Hungarian-asylum-system-18-May-final.pdf>

<sup>100</sup> Section 3(1) of Government Decree 301/2007

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. 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."<sup>101</sup>

It is important to note that the above mentioned psychological expert opinion is only sought in the course of the decision making procedure and has no effect on the reception conditions but may have an impact on the protection status granted.

#### Material reception conditions in the various facilities

As regards the concrete material reception conditions we may conclude that the situation varies between facilities, some are more child-friendly and some are unsuitable for children. Reception centres in Hungary have been providing varying physical and hygienic conditions, from poor to medium-good, largely depending on the size of the facility (smaller facilities usually offer better conditions), occupancy rates, as well as the attitude of the management.

At the time of the present report, the worst conditions for children could be observed in the temporary facility in Körmend and in the contained camp in Kiskunhalas. While in Körmend there are no families with children, which is according to the HHC more than welcome as the conditions are inhuman: dirt, the lack of proper private space (rooms, storage, cupboards) for anyone, or sometimes even food shortages occur.<sup>102</sup> There is no space designated for children therefore it would be completely illogical to accommodate families with children there in the future.

As regards the facility in Kiskunhalas, it is reported to be the latest trend is that Syrian families with young children are transported there. This used to be the asylum detention facility and the barbed wire fences are still all around the facility. This place is not appropriate for children because of the barbed wire which may be frightening for them and due to the lack of adequate playground or garden. The whole facility is an empty square of concrete surrounded by the metallic containers, which are the rooms. The only positive feature of this facility was the handcraft workshop organised by the Hungarian Interchurch Aid (HIA).<sup>103</sup>

In Bicske and in Vámoszabadi the facilities are more or less equipped to accommodate children, with playgrounds, sandboxes, and toys more or less available. In both places families may have the possibility to cook for themselves, although in Vámoszabadi the capacity of the community kitchens is rather limited due to the bad electric installation.

In all facilities children use the same bathrooms as adults, the cleanliness depends on the occupancy or overcrowding, however, OIN usually contracts the cleaning company which offers the cheapest bid therefore the hygienic conditions are not always appropriate for anyone, especially not for children.

Families with young children receive additional hygienic package with napkins and diapers, although often of a poor quality. Also sometimes the hygienic items distributed for asylum seekers are not sufficiently good, e.g. detergents that cannot clean stains etc. As since the 1st June 2016 asylum seekers do not receive the monthly financial allowance (pocket money)

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<sup>101</sup> [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hu\\_update.iv\\_0.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_update.iv_0.pdf)

<sup>102</sup> Interview with the HHC staff providing legal aid in Körmend.

<sup>103</sup> Information from the UNHCR and the HHC. For more information on HIA's activities with migrant families please see: <http://www.segelyszervezet.hu/en/support-migrant-children-hungary>

it may cause difficulties to complement hygienic equipments. Pocket money/financial allowance used to be 14-16€, for children, women and elderly it was 27-28€. <sup>104</sup>

Conditions in the home for UAMs in Fót

### *Capacity of the facility*

Once assessed as children, UAMs are accommodated in a designated facility for them, The Károlyi István Child Centre in Fót. <sup>105</sup> This facility can host up to 34 UAMs officially, still in August 2016 there were approximately 40-50 children accommodated, while more than 90 UAMs were placed here in May 2016. <sup>106</sup> The centre was expanded and a newly refurbished building was opened, which resulted in remarkably good reception conditions in comparison to other reception facilities for asylum seekers in Hungary.

There is a large turnover rate in resident children at the Home, and this can be attributed to several factors. One main factor is the fact that most asylum seekers still consider Hungary to be a transit country. This constant turnover does create some difficulties. For instance, the service providers and the staff working in the home cannot quickly respond to the changes in conditions, and the atmosphere or relationship between the staff and children is temporally constrained. The fluctuation is huge, in May 2016 there were around 100 minors while in August 2016 there were less than 40 minors.

When the number of UAMs increases (throughout 2015 and also witnessed earlier this year in May and June 2016) they are housed in at least two separate buildings, with each building containing two wings. When the largest influx took place in the summer of 2015 more than 200 children were accommodated everywhere, on mattresses on the floor in empty buildings of the facility. That was very far from ideal reception conditions for minors, it could be seen more as an emergency solution.

According to the staff, the minors are organised in the Home based on two indicators: the nationality of the minor and the time he/she had already spent in the facility. New arrivals are accommodated on the ground floor of a building, which is yet to be renovated (building A). The rooms include beds and additional mattresses on the floor. Toilets and showers are in a separate room. There is also a small communal area and a kitchen. Those residing in Fót Children's Home for a longer period (the exact period is not known) are transferred to another newly renovated building located a few hundred metres from building A. Building B has two wings that largely function to separate minors based on ethnicity. The corridors and the rooms of building B are decorated by the children and the entire building is generally much cosier than building A. There is a larger communal space, used for the purposes of dining on the ground floor. When the weather is warmer, the large terrace on the second floor seems to be the popular space to gather. There are two kitchens, one in each wing separated from the dining room on the ground floor.

Wireless internet is available in both buildings, but the HHC was reported complaints about the lack of computers. UAMs mostly use their own cell phones to communicate with their relatives or friends, but there is also a computer room where they can use PCs.

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<sup>104</sup> AIDA report on Hungary, 4th update, p 48, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hu\\_update.iv\\_0.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_update.iv_0.pdf)

<sup>105</sup> <http://www.wp.kigyk.hu/gyermekotthoni-ellatas/kisero-nelkuli-menekult-kiskoruak-gyermekotthona/>

<sup>106</sup> According to the legal officer of the HHC – who visits the facility every week to provide legal information and assistance – the number of accommodated children varies significantly from even more than 100 earlier this spring it dropped to approximately 40 in August. In the summer of 2015 the HHC witnessed almost 200 children in the facility.

### *Services provided*

According to information received from the staff, 15 children were enrolled in formal education at the time of the HHC visit. Difficulties of enrolling children in formal education during the official school year (September-June) can be explained by the lack of language skills of the newly arrived minors. Within the Fót Children's Home, the educators working the facility provide minors with educational monitoring (follow-up on their educational/employment pathway), lifestyle monitoring (assistance for children to gain general knowledge on how to live together) and economic monitoring (how to manage personal finances). Unaccompanied minors who turn 18 before receiving a decision on their asylum claim are ineligible for aftercare services. Unaccompanied minors who reach the age of 18 before having a decision on the protection claim are not eligible for after care.

Several NGOs (SOS Children's Village Hungary and Menedék Hungarian Association for Migrants as well as the Jesuits and Open Doors Hungary) provide non-formal education sessions, Hungarian language classes and community programs for minors on a regular basis.

<b>Access to education<sup>107</sup></b>	<b>on 31 May 2016</b>
<b>UAMS in Fót</b>	93
<b>UAMS in formal education</b>	15
<b>UAMS in non-formal education</b>	26

As of August 2016 two lawyers from the Hungarian Helsinki Committee's lawyers network visit the home once a week to provide free legal counselling and legal representation if needed. The local GP, who is specialised in paediatrics, visits the Home every work day. A hospital with the necessary equipment and staff to treat children is also in close proximity.

The NGO Menedék provides basic social and language skills education on a daily basis for all children who choose to attend their sessions. Those children who show a willingness to learn Hungarian and to study in general are then taken up by Open Doors Hungary and the Jesuits, who provide preschool education in Hungarian and English on a daily basis as well. SOS Children's Village Hungary provides a designated teacher who works at the Than Károly School, so that children who are motivated and already possess basic language skills in Hungarian and English are able to enrol in the school's formal education programme.

It was clear that the Fót staff lack the necessary language skills to effectively communicate with the most of the minors because only a few staff members speak English or German. Communication between the staff and the minors are thus conducted with the aid of interpreters, usually provided by the visiting NGOs. The management mentioned that the rigidity of employment regulations make it difficult to employ staff on a temporary basis in times of high influx.

The shelter in Fót provides children with full-scale services, all personal and hygienic items, clothing and food is provided through this centralised system. The necessary conditions for schooling are also provided, such as tuition, textbooks, school tools and other costs of school are provided for minors who are still in primary and secondary school or doing vocational training.

The aim of the shelter is to assist UAMs to become independent and self-reliant. According to the staff and the methodology of the facility children are taught to economise. The purpose of economizing is that the refugee children can learn the handling and value of forint in everyday life situations, especially in regard to house holding and family life. Accordingly,

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<sup>107</sup> Information from the Hungarian Helsinki Committee

minors are involved in housekeeping and they participate in the activities of shopping, cooking and cleaning. They are also involved in financial planning and they are taught to be economically conscious.

## Conclusions and Recommendations

1. Stop re-escorting those irregular migrant families and UAMs with the aim to prevent them from seeking protection in Hungary.
2. Ensure that violence stops at the border with Serbia and conduct fair investigation to find and prosecute the perpetrators on each documented case.
3. Ensure that children have access to protection in a meaningful manner, both from a procedural and content perspective.
4. Provide migrant families and UAMs with humane and child friendly reception condition and basic services at the border.
5. Introduce a standard operating procedure for identification of vulnerable asylum seekers and consider to establish separate guidance on child asylum seekers encompassing both UAMs and children in families.
6. Introduce a standard operating procedure with a view to determining the best interests of the child (BID), involving all stakeholders in contact with the child / having an overview of the child's individual circumstances (civil society organisations as well).
7. Introduce tailor made information materials for applicants under 18
8. Ensure that the circumstances of the child and child specific forms of persecution are taken into account when deciding on the protection claim regardless of the child's family status.
9. Ensure that age assessment is regulated through binding protocols that provide for a multidisciplinary examinations where not only medical factors are taken into consideration, and also that minors are provided with legal remedies against the result of the age assessment.
10. Ensure that there is a free-of-charge possibility to have age assessment examination for those detainees who claim to be minors and who are first time applicants, those that are exempted from all costs in the asylum procedure.

# Annex I.

## Bibliography

### Domestic Legislation

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

- Act LXXX of 2007 on asylum<sup>108</sup> (hereinafter referred to as Asylum Act)
- Government Decree no. 301/2007 (XI.9.) on the Implementation of the Asylum Act<sup>109</sup>
- Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter referred to as TCN Act)<sup>110</sup>
- Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
- Government Decree no. 9/2013 (VI.28.) on the rules of execution of asylum detention and bail
  
- Other relevant legislation:
  - Act LXXX of 2003 on Legal Aid<sup>111</sup>
  - Act XXXI of 1997 on Child Protection and the Guardianship System<sup>112</sup>
  - Gvt. Decree 149/1997. (IX. 10.) on child protection authorities and guardianship and child protection procedures
  - NM. Ministerial Decree 15/1998. (IV. 30.) on the professional tasks and management of child welfare and child protection institutions providing personal care
  - EÜM Ministerial Decree 52/2006. (XII. 28.) on emergency treatment
  - Act CXL of 2004. on Public Administration
  - Act CLIV. of 1997 on Health Care
  - Act LXXX of 2003 on free legal assistance
  - Act CXC of 2011 on National Public Education

### EU Directives and Regulations

- a.) EU 2005/85/EK Asylum Procedures directive
- b.) Reception Conditions directive recast (2013/33/EU)
- c.) 2008/115/EC Return Directive
- d.) Regulation (EC) No 562/2006 (Schengen Borders Code)
- e.) Regulation (EU) No 604/2013 (Dublin III Regulation)

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<sup>108</sup> Hungary: Act LXXX of 2007 on Asylum (2016) [Hungary], 1 January 2008, available at: <http://www.refworld.org/docid/497as9cc072.html> [accessed 22 August 2016] The Act was subject to multiple amendments since, the last being Act XCIV of 2016 adopted by the National Assembly on 13 June 2016 (date of promulgation: 27 June 2016) with entry into force on 5 July 2016.

<sup>109</sup> Hungary: Government Decree No. 301/2007 (XI.9.) On the implementation of the Act on Asylum, 1 January 2008, available at: <http://www.refworld.org/docid/524544c44.html> [accessed 22 August 2016] The Decree was subject to multiple amendments since, the last being Government Decree 113 of 2016 (date of promulgation: 30 May 2016), entry into force: 1 June 2016.

<sup>110</sup> <http://www.refworld.org/pdfid/4979cae12.pdf> Unofficial translation by the courtesy of UNHCR dated May 2012.

<sup>111</sup> Available in English: [bit.ly/1QqHj5c](http://bit.ly/1QqHj5c)

<sup>112</sup> Available only in Hungarian: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV)

## Annex II.

### Transposition of relevant EU laws into Hungarian legislation<sup>113</sup>

Article 2(k) recast Reception Conditions Directive	<b>Article 2(k) Asylum Act: The definition of 'applicant with special reception needs' as referred to in Article 2(k) of the recast Reception Conditions Directive is not correctly transposed into the Hungarian legal system as in the definition of 'person in need of special treatment' victims of human trafficking, persons with serious illnesses, and persons with mental disorders are not mentioned. The Hungarian definition is non-exhaustive, while the Directive definition is exhaustive.</b>
Article 8(2) recast Reception Conditions Directive	<b>Article 31/A(2) Asylum Act</b> transposes it in an almost literal way, according to which Member States may detain an applicant if its purpose cannot be achieved through measures securing availability and it proves necessary and on the basis of an individual assessment of each case'. However the provision of the Directive has not been transposed in a conforming manner, due to the fact that the Hungarian national law does not provide the factors that need to be taken into account during the individual assessment of the asylum seeker. No clear criteria can be located in the Act on Asylum as regards the individual assessment, therefore it is the sole discretionary power of the refugee authority to detain an applicant instead of using other measures securing availability.
Article 8(3)(f) recast Reception Conditions Directive	<b>Article 31/A(1)(f) Asylum Act</b> transposes those provisions in a non-conform manner. According to the Directive provision, an applicant may be detained in accordance with Article 28 of the Dublin Regulation, which provides that the person shall no longer be detained 'when the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph. Despite this fact, the Asylum Act does not exclude Dublin detainees from the scope of Article 31/A(6) of the Asylum Act which means that the maximum length of detention may reach 6 months in case of Dublin detainees as well.
Article 11(1), second subparagraph recast Reception Conditions Directive	<b>Article 37/F(2) Asylum Act, Article 3(4)-(6) and Article 4 Decree 29/2013 of the Minister of the Interior</b> transpose it in a non-conform manner. The Directive provision requires Member States, if vulnerable persons are detained to ensure regular monitoring and adequate support taking into account their particular situation, including their health. Article 4 of Decree 29/2013 ensures appropriate specialist treatment of the injuries caused by torture, rape or other violent acts to any detained person seeking recognition based on the opinion of the physician performing the medical examination necessary for admission.

<sup>113</sup> Based on AIDA 4th Update on Hungary: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hu\\_update.iv\\_0.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_update.iv_0.pdf)

	Nevertheless, the wording of Article 4 of Decree 29/2013 excludes from the scope of vulnerable persons: minor, elderly or disabled person, pregnant woman, single parent raising a minor child, victims of human trafficking, persons with serious illnesses, and persons with mental disorders.
Article 4(3) recast Asylum Procedures Directive	According to Article 4(3), Member States shall ensure that the personnel of the determining authority are properly trained and persons interviewing applicants shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past. No similar provision could be located in the Hungarian transposing measures (paras 1.2.7.2 and 1.2.8.2 of Joint order No. 9/2010 of the Minister of the Interior and the Minister of Public Administration and Justice).
Article 6(1), second subparagraph recast Asylum Procedures Directive	The provision foresees that registration shall take place 'no later than six working days' after the application is made, if the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law. As referred to in <b>Article 35(1)(b) Asylum Act</b> , if an application for international protection was submitted to any other authority, asylum procedure shall commence from the registration of the application by the refugee authority. However no provision regarding the timeframe of the registration by the refugee authority can be located in the Hungarian implementing measures.
Article 7(2), first subparagraph recast Asylum Procedures Directive	The provision sets out an option which Hungary chose to apply, but not in a conform manner. Based on <b>Article 35(8)-(9) Asylum Act</b> , the Hungarian law requires the written consent of the family member with limited capacity to the joint application in advance or at the personal interview, at the latest. Nevertheless, the Directive provision determines that only the dependent adults shall give consent to the lodging of the application on their behalf in case of joint application. The Hungarian law is more stringent than the Directive provision.
Articles 12(1)(a) and 30 recast Asylum Procedures Directive	Under <b>Section 5(3) Asylum Act</b> , asylum seekers can now be obliged to contact their country of origin in order to establish identity and obtain documentary evidence. This goes against the most basic prohibition in asylum law, as it may expose asylum-seekers and their families and friends to inhuman treatment, torture or even death.
Article 24(1) recast Asylum Procedures Directive	<b>Article 3 Government Decree 301/2007</b> transposes to this provision, however not in a conform manner. The Directive provision requires Member States to assess within a 'reasonable period of time' after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees. The Hungarian law provides that the refugee authority shall assess whether the person seeking international protection is in need of special treatment or not. However, the 'reasonable period of time' is not implemented by the Hungarian law. Therefore it is not exactly clear when the examination process is carried out by the refugee authority and without this time guarantee, an asylum seeker belonging to

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vulnerable group may lose the ability to benefit from the rights and comply with the obligations provided for an 'applicant in need of special procedural guarantees'. The lack of timeframe determination is especially problematic at border procedure due to the fact that the proceedings at the border cannot be applied to persons with special needs as specified in Article 71/A(7) Asylum Act. Furthermore, there is a huge concern on how the refugee authority examines the applicant as the employees of the refugee authority are neither doctors nor psychologists (assumed based on Article 3(2) Government Decree 301/2007). Hence it is not clear how and in what basis they can make judgement on whether an applicant is a victim of torture, rape or suffered from any other grave form of psychological, physical or sexual violence.

Article 24(3), first subparagraph recast Asylum Procedures Directive

**Article 29 Asylum Act, Article 33(1) and Article 35(4) Government Decree 301/2007** conform to Article 24(3), first subparagraph of the Directive. However it should be mentioned that the Hungarian transposing provision does not determine detailed rules on how and in what form adequate support shall be provided to the persons in need of special treatment. The Hungarian law only ensures separated accommodation in the reception centre for persons seeking international protection in cases justified by their specific individual situation as referred to in Article 33(1) of the Decree.

Article 25(1), first sentence recast Asylum Procedures Directive

**Article 46(f)(fa) Asylum Act** transposes it in a non-conform manner. The Directive provision requires Member States to take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in the recast Asylum Procedures Directive. Nevertheless, the Hungarian law provides that in the case of a crisis situation caused by mass immigration there is no place for initiating the designation or designating a guardian *ad litem* to an unaccompanied minor. This is not in alignment with the Directive provision.

Article 25(5), first subparagraph recast Asylum Procedures Directive

**Article 44(1) Asylum Act and Article 78(1)-(2) Government Decree 301/2007** conform to Article 25(5), first subparagraph of the Directive. Based on Article 78(2) of the Asylum Government Decree, if the person seeking recognition debates the outcome of the expert examination regarding his or her age, he or she may request a new expert to be designated by the refugee authority. In case of contradicting expert opinions, it is up to the refugee authority to decide whether to appoint another expert or to determine which expert opinion shall be used regarding the age of the applicant. This provision is not in lign with the Directive provision as if Member States still have doubts concerning the applicant's age after the age assessment, they shall assume that the applicant is a minor.

Article 25(6) recast Asylum Procedures Directive

**Article 51(7) and Article 71/A(7) Asylum Act** transpose Article 25(6)(a) of the Directive. Article 51(7) of the Asylum Act incorrectly transposes it, as the Hungarian law does not exclude unaccompanied minors from the scope of accelerated procedure, while the provision of the Directive permits unaccompanied

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minors to be channelled into an accelerated procedure only in cases specified in Article 25(6)(a)(i)-(iii).

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## Annex III.

### Statistical Data

#### Overview of Migrant population

##### Statistical data

According to the OIN the number of newly registered asylum applications significantly dropped in 2016 compared to 2015. Statistics are publicly available for the first 6 months of 2016, according to which there were 22491 applications registered between 1 January and 30 June 2016. For the same period in 2015 this figure was 66788.

Despite the construction of the border fence on the Serbian and Croatian border sections, the number of irregular migrants apprehended by the Hungarian police has been constantly on the rise since the beginning of 2016 until the introduction of a new border control regime following the 5th July<sup>114</sup>:

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Total
<b>irregular migrants apprehended as of 1 October</b>	553	2398	3412	3946	3395	3768	572	346	152	18542
<b>entries blocked after 5 July 2016</b>	0	0	0	0	0	0	<b>4396</b>	<b>4017</b>	<b>2354</b>	<b>10767</b>
<b>Total</b>	553	2398	3412	3946	3395	3768	4968	4363	2506	29309

Since the '8-kilometre rule' practically legalising push-backs came into force on 5 July 2016, the number of registered asylum applications radically decreased:

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Total
<b>asylum applications registered in Hungary as of 1 August 2016</b>	433	2175	4574	5812	4752	4745	1866	1402	1118	<b>24357</b>

In January-June 2016, only **252** asylum-seekers were **granted protection** (of which 87 were refugee and 165 were "subsidiary protection" statuses).

Statistics for the period 1 January - 31 December 2015<sup>115</sup>:

<sup>114</sup> <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-figures-1-August-2016.pdf>

<sup>115</sup> Based on statistical data of the OIN shared with the Hungarian Helsinki Committee, August 2016

<b>Country</b>	<b>Asylum Applications</b>	<b>Refugee status</b>	<b>Subsidiary protection</b>	<b>Tolerated stay</b>	<b>Rejection</b>	<b>Inadmissible claims</b>
Syria	65085	23	168	1	108	93
Afghanistan	46669	31	84	0	367	170
Iraq	9158	6	53	0	72	34
Pakistan	15132	5	4	1	257	116
Iran	1804	18	8	0	36	14
Eritrea	541	4	6	0	1	0
Somalia	327	21	55	0	7	7
Palestinian Territories	1060	12	6	0	3	1
Ukraine	32	0	2	2	7	0
Kosovo	24742	0	0	0	1221	40
Stateless	21	1	0	0	2	2
Unknown	299	15	13	0	17	4
<b>TOTAL</b>	<b>177135</b>	<b>175</b>	<b>436</b>	<b>6</b>	<b>2917</b>	<b>661</b>

Statistics on nationality and age group breakdown between 1 January-31 July 2016<sup>116</sup>:

<b>Asylum applications 1 January-31 July 2016</b>	<b>Age groups</b>			
<b>Country of origin (TOP10)</b>	<b>0-13</b>	<b>14-17</b>	<b>18+</b>	<b>TOTAL</b>
<b>Afghanistan</b>	1465	1593	6014	9072
<b>Syria</b>	1224	314	2368	3906
<b>Iraq</b>	823	220	1636	2679
<b>Pakistan</b>	70	235	3262	3567
<b>Iran</b>	104	38	997	1139
<b>Eritrea</b>	1	4	44	49
<b>Somalia</b>	11	46	248	305
<b>Palestinian Territories</b>	27	5	150	182
<b>Ukraine</b>	0	0	8	8
<b>Kosovo</b>	21	57	47	125
<b>Unknown</b>	17	3	24	44
<b>Stateless</b>	0	0	2	2
<b>TOTAL TOP10</b>	<b>3763</b>	<b>2515</b>	<b>14800</b>	<b>21078</b>
<b>Others</b>	131	70	2874	3075
<b>TOTAL</b>	<b>3894</b>	<b>2585</b>	<b>17674</b>	<b>24153</b>

The above table contains data of all children seeking asylum in Hungary: unaccompanied, separated and those within their families.

<sup>116</sup> Based on statistical data of the OIN shared with the Hungarian Helsinki Committee, August 2016

Statistical data on the transit zones:

<b>Statistical data on transit zones 15 September 2015 - 24 July 2016</b>	<b>RÖSZKE</b>	<b>TOMPA</b>	<b>BEREMEND</b>	<b>LETENYE</b>	<b>TOTAL</b>
<b>Number of applicants altogether</b>	3372	3086	0	0	<b>6458</b>
<b>out of which persons with special needs</b>	3100	2770	0	0	<b>5870</b>
<b>unaccompanied minors</b>	42	61	0	0	<b>103</b>
<b>families with children</b>	2801	2449	0	0	<b>5250</b>
<b>other vulnerabilities (elderly, sick, handicapped)</b>	257	260	0	0	<b>517</b>
<b>rejected due to inadmissibility procedure terminated</b>	220	140	0	0	<b>360</b>
<b>requests for court review</b>	21	36	0	0	<b>57</b>
	187	130	0	0	<b>317</b>

Statistics on unaccompanied minors (UAMs)

Citizenship and gender breakdown:

<b>Unaccompanied minor asylum seekers 2016<sup>117</sup></b>	<b>TOTAL</b>	<b>0-13</b>	<b>14-15</b>	<b>16-17</b>
	<b>865</b>	<b>85</b>	<b>278</b>	<b>502</b>
<b>Afghan</b>	628	73	236	319
<b>Pakistani</b>	100	3	23	74
<b>Kosovar</b>	50	0	1	49
<b>Somalian</b>	32	7	11	14
<b>Syrian</b>	14	1	2	11
<b>Bangladeshi</b>	7	0	1	6
<b>Moroccan</b>	5	0	1	4
<b>Egyptian</b>	5	0	0	5
<b>Turkish</b>	5	0	0	5
<b>Algerian</b>	4	0	1	3
<b>Ethiopian</b>	3	0	0	3
<b>Iraqi</b>	3	0	0	3
<b>Iranian</b>	2	1	1	0
<b>Lebanese</b>	1	0	0	1
<b>Myanmar</b>	3	0	0	3
<b>Nepalese</b>	2	0	1	1

<sup>117</sup> Statistical information from the UNHCR RRCE on 23 August 2016 covering the period until 30 June 2016

<b>Sri Lankan</b>	1	0	0	1
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<b>Sex</b>	<b>TOTAL</b>	<b>0-13</b>	<b>14-15</b>	<b>16-17</b>
	<b>865</b>	<b>85</b>	<b>278</b>	<b>502</b>
<b>boys</b>	<b>857</b>	<b>82</b>	<b>275</b>	<b>500</b>
<b>girls</b>	<b>8</b>	<b>3</b>	<b>3</b>	<b>2</b>

Mid-August 2016, there were 44 residences in the Károlyi István Children's Centre in Fót<sup>118</sup> (the shelter/home for UAMs), who's the citizenship breakdown was the following<sup>119</sup>:

Afghan	Iraqi	Syrian	Pakistani	Kosovar	Somali	Iranian	Indian	Albanian
28	5	2	2	2	2	1	1	1

41 of the above UAMs were over 14 years of age and three were under 10.

41 were boys while three were girls. Usually the vast majority of the children here is between 14 and 18 and most of them are males.<sup>120</sup>

Between 1 January and 9 August there were **1098** children accommodated in Fót. Until 30 June 2016, **1** UAM was recognized as a refugee and **10** were granted subsidiary protection according to the statistics shared by the UNHCR. The average time spent in this home is 11 days.<sup>121</sup> After that the vast majority of UAMs leave the facility for good, according to some estimates of the staff it may concern even more than 95% of the UAMs. The disappearance of these UAMs is a phenomenon that remains completely unaddressed, Hungarian authorities simply close their procedure and the police orders their search but no measures are taken to follow up their cases and according to the information NGOs have access to, member states of the EU do not share information about missing migrant children.

According to the OIN's statistical data there were only **103** (!) unaccompanied minors registered at the transit zones between 15 September 2015 and 24 July 2016 (42 in Rösztke and 61 in Tompa), while the number of UAMs seeking asylum between 1 January and 31 July 2016 was **994**.<sup>122</sup>

In the framework of the present research exercise, the police shared the data of apprehended minors at the border.<sup>123</sup> According to this information there were altogether 1849 minors apprehended until 31 July 2016. 959 boys and 717 girls with families and only **173** unaccompanied minors were registered by the police in the first 7 months of the year.

The majority was Afghan (331 boys, 231 girls in families, 73 UAMs, altogether 635), Syrians (262 boys 201 girls 1 UAM, altogether 464), Iraqi (222 boys, 183 girls, 2 UAMs, altogether 407), Turkish (59 boys, 30 girls, 2 UAMs, altogether 91), Pakistani (16 boys, 13 girls, 22

<sup>118</sup> Information available in Hungarian at: <http://www.wp.kigyk.hu/gyermekotthoni-ellatas/kisero-nelkuli-menekult-kiskoruak-gyermekotthona/>

<sup>119</sup> Statistical information from the UNHCR RRCE on 23 August 2016

<sup>120</sup> Statistical information from the UNHCR RRCE on 23 August 2016

<sup>121</sup> Statistical information from the UNHCR RRCE on 23 August 2016.

<sup>122</sup> Information shared by the OIN with the UNHCR RRCE and the Hungarian Helsinki Committee.

<sup>123</sup> Data shared by the National Police Headquarters on 22 August 2016

UAMs, altogether 51), Iranian (29 boys, 21 girls, 1 UAM, altogether 51), Kosovar (11 boys, 13 girls, 21 UAMs, altogether 45).

The above statistics show discrepancy with the data shared by the OIN, according to which 994 asylum applications were registered from UAMs until 31 July 2016.