

# Input by civil society to the EASO Annual Report 2019

Fields marked with \* are mandatory.

The production of EASO's *2019 Annual Report on the Situation of Asylum in the European Union* is currently underway. The yearly [annual report](#) series present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organizations, the UNHCR and researchers. To this end, we invite you to submit information on developments in asylum law, policy or practice in 2019 (and early 2020) by topic as presented in the online survey.

Please note that the EASO Annual Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections. It is preferred to provide your submission in bullet points to facilitate drafting.

All submissions are publicly accessible. For transparency, 2019 contributions will be published on the EASO webpage. Contributions to the 2018 annual report by civil society organisations can be accessed [here](#). All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the EASO annual report is subject to terms of reference and volume limitations. Submissions may be edited for length and clarity or may not be included in the final report. Contributions from civil society organisations feed into EASO's work in multiple ways and inform reports and analyses beyond the annual report.

Please complete the online survey and submit your contribution to the 2019 annual report by **Thursday, 12 March 2020**.

## [Instructions](#)

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Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, please only include the following type of information:

- New developments and improvements in 2019 and new or remaining challenges;
- Changes in policies or practices, transposition of legislation or institutional changes during 2019.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments.

## Contributions by topic

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### **1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)**

Since 28 March 2017, if and when the Government announces the “state of crisis due to mass migration”, asylum applications can only be lodged at one of the two transit zones located at the Hungarian-Serbian border and accessible only from the Serbian side (Section 80/J. (1) of the Asylum Act) unless the applicant already has a right to stay in Hungary or is being detained. The state of crisis has been continuously in effect since 9 March 2016 and is currently prolonged until September 2020. At the same time, third country nationals staying unlawfully on the territory of Hungary are removed to the Serbian side of the border fence by the Hungarian authorities without the right to seek asylum and without any procedure, registration or identification (Section 5(1b) of the Act on State Borders). According to the official statistics published by the Police on its website, there were 11101 such measures in 2019 ([http://www.police.hu/hu/hirek-es-informaciok/hatarinfo/illegalis-migracio-alakulasa?weekly\\_migration\\_created%5Bmin%5D=2019-01-01+00%3A00%3A00&weekly\\_migration\\_created%5Bmax%5D=2020-01-01+00%3A00%3A00](http://www.police.hu/hu/hirek-es-informaciok/hatarinfo/illegalis-migracio-alakulasa?weekly_migration_created%5Bmin%5D=2019-01-01+00%3A00%3A00&weekly_migration_created%5Bmax%5D=2020-01-01+00%3A00%3A00)).

According to the HHC’s position, this measure is in breach of the EU asylum regulations and Article 4 of Protocol 4 of the European Convention on Human Rights. The European Commission brought action against Hungary, among others, for this legislation as well at the Court of Justice of the European Union (case no. C-808/18) in which it stated that: “moving third-country nationals staying illegally in Hungary to the other side of the border fence, without respecting the procedures and guarantees laid down in Article 5, Article 6(1), Article 12(1) and Article 13(1) of Directive 2008/115” (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62018CN0808:EN:HTML>).

During these measures the excessive use of force is claimed regularly by third-country nationals the HHC has spoken to after their push-back to Serbia.

Access to the two transit zones where asylum can be sought has been continuously reduced by the Hungarian authorities. From the end of January 2018, admittance was, on average, 1 person per working day per transit zone (see also Eurostat data on first time applicants for the period of February-December 2018: 450 applications compared to 228 working days in the same 11-month period). In 2019 only 394 applicants were allowed to enter the transit zones and initiate an asylum procedure according to the information provided by the asylum authority to the HHC in a freedom of information request (excel sheet attached). This daily admittance was disrupted in December 2019: after 9 December, no admittance took place in the Tompa transit zone and admittance to the Rösztke transit zone became severely limited with only a handful of families allowed to enter in January and February. The Hungarian government announced that no new admittance is allowed in any of the transit zones indefinitely as of 1 March 2020: <https://www.kormany.hu/en/news/hungary-to-suspend-admission-of-illegal-migrants-to-transit-zone-indefinitely>) thus

practically shutting down access to the asylum system.

The two restrictions (that asylum can only be sought in the transit zones AND that admittance to the facilities is severely restricted, even completely halted) led to European Commission to bring action against Hungary in the above cited case (C-808/18) for not providing access to the procedure. A hearing at the CJEU in this case was held in February 2020 and the Advocate General's opinion is set to be delivered in June 2020.

## **2. Access to information and legal assistance (including counselling and representation)**

Information to potential asylum-seekers, especially about the admittance to the transit zones is practically non-existent. This is partly due to the unofficial nature of the order of admittance (see the response to question 1 above) and partly because of the amendments to the criminal code that entered into force on 1 July 2018, which, among others, specifically prohibits the preparation and distribution of information materials that would allow a person to initiate an asylum procedure who, as a result of the procedure, is not found to be in need of international protection (section 353/A. 1 and 5b of the Criminal Code) (see the English translation of the relevant section: <https://www.helsinki.hu/wp-content/uploads/T333-ENG.pdf>). HHC's clients regularly complain about the lack of accessible information on the asylum procedure in general and on their individual case in particular. The lack of effectiveness of the authority's information provision is not a new problem, but prior to June 2017, the HHC had access to facilities where asylum-seekers were placed to conduct human rights monitoring and to provide general legal counselling and information on the asylum procedure. The HHC is no longer able to conduct such activities (<https://www.helsinki.hu/en/authorities-terminated-cooperation-agreements-with-the-hhc/>) and neither another civil society organisation was allowed to provide such information, nor the authority managed to improve the accessibility and/or quality of its own information provision.

The main factors that render access to information difficult are: (a) untimely provision of the information enabling asylum seekers to make an informed choice; (b) language barriers; (c) illiteracy; (d) failure to address specific needs of asylum seekers, e.g. by using child- and disability-friendly communication; and (e) highly complex and technical wording of official information material. Frequently, information is not provided in user-friendly language, and written communication is the main means of information provision, although it has been shown to be less effective than video material. The HHC's experience shows that alternative sources of information are rarely used in practice.

Legal assistance to asylum-seekers whose application has already been registered is available upon request free-of-charge by the state legal aid. According to information received from the Ministry of Justice in response to a freedom of information request of the HHC, there were 38 requests of state legal aid to be provided in asylum procedures in the 2 counties where the transit zones are located (Bács-Kiskun where Tompa is had 18 requests, Csongrád where Rösztke is had 20. See the letter attached). Those requesting the free services of the HHC must do so in writing and submit it to the authorities. This written request is then translated to Hungarian (as the official language of the administrative procedure) and the requested attorney is informed by the authorities. The attorney can then meet the asylum-seeker to receive a power of attorney from them. In the transit zones, the movement of the legal representative is limited to a designated metal container outside of the sector where the client is accommodated.

## **3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)**

As almost all asylum-seekers are automatically placed in one of the two transit zones, the fact that interpretation is in most cases not done in person in the transit zone but through videoconferencing is of concern. On account of the noise, it is hard to hear and to concentrate on what the interpreter is saying. In general, the connection is reported as of poor quality, as it is often not working and everyone has to wait. Sometimes it is hard to understand what the person on the other side is saying, so both parties have to

shout. Conducting an interview through a videoconference does not sufficiently protect the personal data and the flight story of an asylum seeker from those who are not entitled to hear it and it therefore raises confidentiality issues, as it is possible to hear the interviews of other applicants at the same time. It is also unnecessary that in order to communicate a decision, a videoconference has to be used, if the case officer is not present at the place of the applicant. It would be easier if the case officer would fax the decision to the NDGAP officer present at the place of the applicant and he or she would then read it out to the applicant. (Source: AIDA 2019 Hungary report: <http://www.asylumineurope.org/> )

Amendments that entered into force on 1 January 2018 secure the right of the applicant to request a case officer and interpreter of the gender of his or her choice on grounds that his or her gender identity is different from the gender registered in the official database (Section 66(3a) of the Decree on the Implementation of the Asylum Act), however the HHC is not aware of any gender or vulnerability-specific guidelines applicable. There is no specific code of conduct for interpreters in the context of asylum procedures. Many interpreters are not professionally trained on asylum issues. There is no quality assessment performed on their work, nor are there any requirements in order to become an interpreter for the National Directorate-General for Aliens Policing (NDGAP, the asylum authority). The NDGAP is obliged to select the cheapest interpreter from the list, even though his or her quality would not be the best. For example, in the Vámoszabadi reception facility camp, the HHC lawyer reported that in all his cases regarding Nigerian clients, none of the English interpreters fully understood what the clients said; the lawyer had to help the interpreter. The same happened at the court. There was another case, where the interpreter did not speak English well enough to be able to translate; for example, he did not know the word "asylum".

In a case of Somali asylum seeker that started in summer 2018, the authorities could not find an interpreter for about a year. (Fortunately, the applicant was not staying in the transit zone through all this time).

An asylum seeker from Ghana entered the transit zone in July 2019, but was still not heard at the time of this update (January 2020). The attempts were made, but the client did not understand the interpreter and since then no new Hausi-Hungarian interpreter has been found.

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

#### **4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

The Dublin Unit of the NDGAP had 15 members in 2019. However, on 31 December 2019 the number was 7. HHC lawyers have experienced a general sense of goodwill and cooperative spirit from the NDGAP's Dublin Unit in cases where asylum seekers were requesting to be united with their family members. Communication between Dublin caseworkers and HHC lawyers was good and constructive, both sides working to realise transfers swiftly.

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

Despite the positive attitude of the Hungarian Dublin Unit, it is still evident that Dublin transfers could hardly take place without the active involvement of competent lawyers. HHC lawyers and attorneys experienced an increasingly strict and negligent attitude from the German asylum authority, BAMF, which has been even stricter in 2019.

Before 2018, the Hungarian authorities refused to apply Article 19(2) of the Dublin III Regulation with regard to Bulgaria in cases of asylum seekers who have waited more than 3 months in Serbia before being admitted to the transit zone. According to Article 19(2), the responsibility of Bulgaria should have ceased in such situations, but the Hungarian authorities argued that this is not something that the applicants can rely

on, but it can only be invoked by Bulgaria. The Hungarian authority's stance on this did not change, however, Bulgaria no longer accepts incoming requests from Hungary.

Since UNHCR's call to suspend all Dublin transfers to Hungary in April 2017 (<https://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html>), there were only 6 returns. All asylum seekers returned under Dublin are to be placed in the transit zone and will have to remain there until the end of their asylum procedure.

## **5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**

Since 28 March 2017, at times when the "state of crisis due to mass migration" is in effect, all procedures of all asylum applicants are conducted in the transit zone (except of unaccompanied children under the age of 14 and those applicants who already have the right to stay in Hungary) (Sections 80/H-80/K of the Asylum Act and Section 4 (1) c of the Child Protection Act). The border procedure cannot be applied when the "state of crisis due to mass migration" is in effect (80/l (i) of the Asylum Act), meaning that all guarantees of that special procedure are not applicable, but the conducted procedures are in fact conducted at the border in the transit zones. The "state of crisis due to mass migration" has been in effect in Hungary since March 2016 and is currently in effect at least until September 2020 (Government Decree no. 32/2020 (III. 5.) ).

After amendments to the Asylum Act and the Fundamental Law (Constitution) entered into force on 1 July 2018 (see in detail, including English translation of the amendments here: <https://www.helsinki.hu/en/lexngo-2018/>), the European Commission launched an infringement procedure against Hungary for non-compliance with the EU asylum acquis. Specifically the Commission stated: "The introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the "safe third country" and the "first country of asylum" concepts, the new law and the constitutional amendment on asylum curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights." ([https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4522](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4522)) This infringement procedure is now pending at the CJEU (case no. C-821/19).

This new inadmissibility ground resulted in almost automatic rejection of all asylum-seekers in the transit zone. According to data provided by the asylum authority (attached), the recognition rate in 2019 was less than 8%.

Placement in the transit zone has no time limit, neither in the asylum procedure, nor in the aliens policing procedure in case the applicant is rejected. The average length of stay in the asylum procedure in the transit zones in cases that started in 2019 (or before, but were still pending in 2019) was 223 days. For unaccompanied minors, this was 316 days, while the longest stay in the first asylum procedure in the transit zone was 523 days (and at the time of writing, the case was still pending). These averages were calculated based on the 379 applicants the HHC represented in their asylum procedure in 2019 in one of the two transit zones; the calculation was done on 3 February 2020. More details on this: <https://www.helsinki.hu/wp-content/uploads/Average-length-of-stay-in-transit-asylum-3-Feb-2020.pdf>

In most cases between 1 July 2018 and 1 July 2019, after the asylum authority found the application inadmissible based on the new inadmissibility ground (see above), the rejected applicant was issued an expulsion order to Serbia. As Serbia refuses to readmit rejected asylum applicants from Hungary since September 2015, none of these third country nationals could have been returned lawfully to Serbia. After Serbia's negative response to the readmission request, the NDGAP did not conduct an in-merit asylum procedure, instead merely changed the destination country of the expulsion order to the country of origin of the applicants. This meant in practice that the asylum application of these people were never examined on their merits, no proper, individualised non-refoulement examination took place. Under domestic legislation, there is no available judicial remedy against changing of the destination of the expulsion order. The

compatibility of this practice with EU law is one of the questions raised in the two pending PPU preliminary ruling requests that were initiated in December 2019 (see below, case no. C-924/19 and C-925/19). In May 2019, three families of Afghan origin were almost deported to Kabul in this manner. One was halted by an interim measure of the ECtHR, while the other 2 families were not transferred on time from the transit zone to the airport in Budapest thus they were simply pushed back to Serbia during the night. UNHCR's statement on the case: <https://www.unhcr.org/news/press/2019/5/5cd3167a4/hungarys-coerced-removal-afghan-families-deeply-shocking.html> BBC footage of the actual push-back: [https://www.bbc.com/news/world-europe-48198645?fbclid=IwAR1UYVaXxRUWlpolikYvttLwE1bLwsScJ2xeNDvt\\_R0qvn7HI0q8Clr2WQs](https://www.bbc.com/news/world-europe-48198645?fbclid=IwAR1UYVaXxRUWlpolikYvttLwE1bLwsScJ2xeNDvt_R0qvn7HI0q8Clr2WQs) , After international condemnation, the Hungarian authorities refrained from repeating such returns, but many remain in the transit zones in similar legal situation. More on this in detail: <https://www.helsinki.hu/wp-content/uploads/One-year-after-2019.pdf>

## **6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

With the sole exception of unaccompanied children under the age of 14, all asylum applicants are placed in one of the transit zones. The total capacity of these two transit zones is 700.

There is a community shelter, mainly for those under alien policing procedure, in Balassagyarmat with a capacity of 140. An open reception centre operates in Vámoszabadi for those who received protection and are thus eligible for free-of-charge stay for 30 days in an open reception facility, with a capacity of 210.

Unaccompanied asylum-seeking children under the age of 14 and those unaccompanied children who receive protection in the transit zone are placed in Fót in a childcare facility, with a capacity of 130.

In a low number of exceptional cases, applicants were ordered to be released from the transit zone during their asylum procedure by a domestic court were placed either in the Balassagyarmat community shelter or in the Vámoszabadi reception centre. According to the NDGAP, on 31 December 2019 there were altogether only four asylum seekers in Vámoszabadi and one asylum seeker in Balassagyarmat.

Services in the metal containers that make up the two transit zones remain inadequate and extremely limited and do not take into account that asylum applicants, including children, are kept there for excessive periods of time. No formal education is provided to children; some form of communal activities are provided for a few hours during work days, but there is neither a specific curriculum, nor structured classes. No formal recognition of participation is provided either.

Medics are available in the two facilities 24/7 and in case someone requires complex treatment, the person is escorted by armed guards to a hospital where the person remain guarded for the whole time. This includes women giving birth too who labour in the presence of armed guards.

In 2019, a psychologist and a psychiatrist was contracted on and off during the year and whenever there was such a service contract, they were present in each zone once a week for a few hours. No interpretation is provided during sessions.

Meals are provided to asylum-seekers in the transit zone 3 times a day (5 times to children).

## **7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

On 14 March 2017, the ECtHR issued a long-awaited judgment in the HHC-represented Ilias and Ahmed v. Hungary case that concern the placement of 2 applicants in the transit zone for 23 days in September 2015. The Court confirmed its established jurisprudence that confinement in the transit zones in Hungary amounted to unlawful detention and established the violation of Article 5(1), a violation of Article 5(4) and a

violation of Article 13 in conjunction with Article 3 of the Convention due to the lack of effective remedy to complain about the conditions of detention in the transit zone. The government appealed against the judgment and the Grand Chamber of the ECtHR did not agree with the Chamber's unanimous decision concerning the nature of the placement in the transit zone and ruled that the applicants were not deprived of their liberty within the meaning of Article 5. The HHC believes that this finding is applicable only to the situation in the material time of the case, therefore before March 2017, when the stay in the transit zone was for max. 28 days, when the border procedure was conducted and vulnerable applicants were not held there. If prolonged placement in the transit zone for the whole duration of asylum procedure, without a time limit and applicable to all asylum seekers, including the most vulnerable also does not amount to deprivation of liberty remains to be seen not only because of pending ECtHR and UNWGAD cases pertaining to placements after the changes to the legal framework entered into force on 28 March 2017, but also because of the ongoing infringement procedure and 2 preliminary ruling requests pending at the CJEU that, among others, concern the nature and lawfulness of indefinite placement in the transit zones. (above cited case no. C-808/18 and joint cases PPU C-924/19 and C-925/19.)

In 2019, a total of 433 asylum seekers were de facto detained in the transit zones.

That keeping almost all asylum applicants in the transit zones replaced formal and lawful asylum detention is clearly shown by the number of asylum detention orders issued before and after the automatic placement of asylum-seekers entered into force in March 2017. In January-March 2017, out of the 1290 asylum applicants, 345 were placed in asylum detention. After the changes entered into force, from April until December 2017 out of the 2107 asylum applicants a mere 46 were placed in formal asylum detention. Statistics for 2018 and 2019 follow the same trend and are available here: <https://www.helsinki.hu/wp-content/uploads/HHC-Statistical-Brief-Series.pdf>

As opposed to formal asylum detention, de facto detention in the transit zones does not have any safeguards for vulnerable individuals and does not have a time limit and lacks any available judicial remedy.

## **8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decisionmaking, timeframes, case management - including backlog management)**

As of 1 July 2019, the authority in charge of examining asylum applications is the National Directorate-General for Aliens Policing (NDGAP); its operations and staff are now regulated by the Act on Police. Apart from this, no significant changes were observed in the second half of 2019.

Decision-making in asylum cases remains highly centralized and those case workers working in the transit zones and conducting the interviews are not the ones making the decisions in the asylum applications themselves. Since the introduction of a new inadmissibility ground in July 2018 (see above), no in-merit examination of applications took place until 1 July 2019. In the second half of 2019 the HHC saw a growing number of applicants entering the in-merit examination phase.

Due to the extremely low number of people allowed to initiate an asylum procedure, Hungary does not have a significant amount of backlog cases. According to the NDGAP, there were 234 pending asylum cases in December 2019.

As Hungarian courts still do not have the right to change the decision of the NDGAP in asylum cases upon appeal (but merely order the authority to conduct a new procedure, unless the court's previous instructions were ignored in which case courts' right to directly grant protection was reinstated by the CJEU judgment in case C-556/17, see below), there is no clear time limit to deliver a final decision. This leads to extensively prolonged stays in the transit zones, especially when taking into account that courts in 2019 quashed the NDGAP's decisions in 90% of the cases where the HHC provided legal representation.

## **9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)**

The HHC provided representation in a case where the judge requested a preliminary ruling reference from the CJEU on whether the Hungarian rules in place since September 2015 that took away the courts' right to change the asylum authority's decision on appeal and directly grant protection to the applicant was in breach of EU law and rendered judicial review ineffective (case no. C-556/17). The CJEU delivered its judgment on 29 July 2019 and established: "that applicant must be granted such protection on the ground that he or she relied on in support of his or her application, but after which the administrative or quasi-judicial body adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court or tribunal must vary that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, disapplying as necessary the national law that would prohibit it from proceeding in that way." At the judicial stage, asylum seekers held in the transit zones are not heard if the case is adjudicated by the Metropolitan Court. The reason is that the technical requirements are not met by the court, as the videoconference system is not set up at all and the court would not want to summon the clients – even if there is a credibility issue – from the transit zones, as that would require transport by the police which they deem problematic in terms of costs, time, logistics etc. This is extremely problematic as the Metropolitan Court has the sole territorial jurisdiction to adjudicate all asylum cases, as mentioned above. HHC is aware of a recent case, where the Metropolitan Court judge actually ordered the applicants from the transit zone to be brought to the Court for a hearing. But the NDGAP filed an objection, claiming that according to the law, due to the mass migration crisis, the hearing can only take place through the video conference and that the law does not allow the applicants to be brought to the court. After that the judge established that since there is no possibility to conduct a videoconference at the Metropolitan Court, the applicants will not be heard (case no 17.K.33.700/2019/10, 3 January 2020.)

## **10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

The NDGAP operates its own country of origin research department. The HHC has no knowledge of fact-finding missions conducted by the NDGAP in 2019. Country of origin information is often not shared with legal representatives prior to issuing the first instance decision.

## **11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)**

Vulnerable persons (VP) are defined by the Asylum Act as unaccompanied minors (UAMs) and other VP, in particular children, elderly and disabled persons, pregnant women, single parents with children and victims of torture, sexual or other forms of violence, of whom it can be established – following the assessment of their individual situation – that they have special needs (2(k) of the Asylum Act). Since 28 March 2017, VPs are not exempt from the placement in the transit zones which also means that in practice no vulnerability assessment takes place and VPs do not enjoy procedural safeguards. The law does not provide for an identification mechanism for UAMs. The Asylum Act only foresees that an age assessment can be carried out in case there are doubts as to the alleged age of the applicant (44(1) of the Asylum Act). In case of such uncertainty, the asylum officer, without an obligation to inform the applicant of the reasons, may order an age assessment to be conducted. The applicant (or their statutory representative or guardian) has to consent to the age assessment examination. However, upon entry to the transit zone, an age assessment procedure is normally carried out before a guardian can be appointed to the UAM in question. The child is therefore on their own in this process with no adult representing their best interest. The age assessment is conducted by the military doctor in the transit zone. The main method employed is the mere observation of the child's



physical appearance, e.g. weight, height etc., and the child's sexual maturity. In the context of age assessment, the NDGAP does not use a psychosocial assessment. Since the entry into force of the new legal regime in March 2017, age assessment practices became even more important since the law differentiates between UAMs below and above the age of 14. The consequences are severe: erroneous assessment of the applicant's age may result in their detention in the transit zone. The military doctor does not possess any specific professional knowledge that would make him appropriate to assess the age of asylum seekers, let alone differentiate between a 14 and a 15-year-old. The practice of age assessment has been criticised by the CPT as well (see CPT's report <https://bit.ly/2TTgsTq>) Transit zones are not physically equipped for age assessment procedures, standards have therefore fallen even lower. Based on interviews with UAMs, the HHC lawyers found that in reality "age assessment" takes mere minutes, during which the military doctor simply measures the applicants' height, looks at their teeth, measures the size of their hips and examines the shape of their body (whether it "resembles that of a child or more like that of an adolescent") alongside with signs of their sexual maturity (e.g. pubic hair, size of breasts). The HHC is of the opinion that this practice is highly unprofessional and is in breach of the fundamental rights of children (CoE Lanzarote Committee's special report <http://bit.ly/2C6bYyZ>).

No protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the NDGAP. On several occasions (conferences, roundtables etc.), the former IAO denied its responsibility to adopt such a protocol, stating that age assessment is a medical question, which is beyond its professional scope or competence. There is no direct remedy to challenge the age assessment. It can only be challenged through the appeal against a negative decision in asylum procedure, which cannot be considered effective as in practice several months pass by the time the rejected application reaches the judicial phase of the procedure. According to the NDGAP, there was one age assessment procedure conducted in 2019 by which the adulthood of the applicant was established. In September 2019 GRETA in its 2nd evaluation round recommended to the Hungarian authorities, inter alia, to review the age assessment procedures, taking into account the requirements of the UN CRC's General Comment No. 6 and EASO's practical guide on age assessment. To date this hasn't taken place. (<http://bit.ly/364g3D2>). As unaccompanied children above 14 are considered to have full legal capacity, they are assigned a formal legal representative only for the asylum procedure (an "ad hoc guardian"). Ad hoc guardians are only able to meet the children sporadically, and their consent is not required if a child decides to leave the transit zone through the one-way exit to Serbia (FRA report: <https://bit.ly/2To4QI2>). The children report that they do not talk to those temporary guardians at all, they only meet them during the interview conducted by the NDGAP. There are no protocols to identify SGBV victims or to provide them with special services or care (IOM SGBV report 2019 <http://bit.ly/39I28KM>), possibly because the provision of those would not be possible in the transit zones.

## **12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)**

The most dramatic changes in the field of integration include the state's complete withdrawal from the provision of integration assistance as of 1 June 2016. The most concerning modifications in the Asylum Act include (i) terminating the newly introduced integration support scheme facilitating the integration of recognized refugees and beneficiaries of subsidiary protection; (ii) introducing mandatory and automatic revision of the refugee status at minimum 3 year intervals following recognition or if an extradition request was issued; (iii) reducing from 5 to 3 years following recognition the mandatory interval for reviewing the status of beneficiary of international protection beneficiaries; (iv) reducing the maximum period of stay in open reception centres following recognition as beneficiary of international protection from 60 days to 30

days, and (v) decreasing the eligibility period for basic health care services following recognition from 1 year to 6 months.

Following the state's withdrawal from integration assistance, the resources of the European Union's Asylum, Migration and Integration Fund (hereinafter: AMIF) have become the major source for securing the funding for NGOs providing integration assistance. On 24 January 2018, the government withdrew its call relating to 13 areas, several of them related to integration services. These areas include the provision of assistance to unaccompanied minors; legal assistance; psycho-social assistance; housing assistance; training for professionals and the monitoring of returns (see the Ministry of Interior's website: <http://belugyalapok.hu/alapok/menekultugyi-migracios-es-integracios-alap/tajekoztatas-palyazati-kiirasok-visszavonasarol-20180124> ). Consequently, AMIF-funded crucial integration and housing services provided by NGOs to refugees stopped in June 2018.

### **13. Return of former applicants for international protection**

The lawful return of rejected asylum applicants to Serbia did not take place in 2019 as Serbia refuses to readmit third-country nationals from Hungary with the exception of citizens of the successor states of former Yugoslavia, and Turkey.

Return of rejected asylum applicants to their country of origin in case their original expulsion was ordered to Serbia based on the newly introduced inadmissibility ground constitutes a violation of the principle of non-refoulement. Except for the case of the 3 Afghan families cited above, the HHC has no knowledge of actual attempts by the Hungarian authorities to return rejected applicants to their country of origin. Those rejected are kept in the transit zones' aliens policing sector indefinitely. As opposed to formal aliens policing detention with a view to the person's removal, placement in the transit zones (neither in asylum procedures nor in aliens policing procedures) does not have any time limit. The HHC represents numerous rejected asylum applicants who have been detained in the transit zone's aliens policing sector for over a year.

Moreover, the NDGAP began "releasing" third country nationals from formal aliens policing detention facilities to the transit zones once the maximum length of detention was reached in their individual cases. Placing rejected applicants in the transit zones indefinitely without the slightest chance of their lawful removal, with extremely limited services, in certain cases even depriving them of food, is another systemic breach of EU law. This is exacerbated when the record-high rejection rate of 2019 (92%) is taken into account.

### **14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)**

Hungary does not participate in humanitarian admission programmes or resettlements.

### **15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)**

Hungary does not participate in any type of relocation.

**16. National jurisprudence on international protection in 2019 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))**

**17. Other important developments in 2019**

The CJEU held a hearing on 11 September 2019 in a case where a Hungarian judge requested preliminary ruling from the Court on the compatibility of the new inadmissibility ground introduced in July 2018 (case no. 564/18). Advocate General Bobek delivered his opinion on 5 December 2019 where he concluded that the newly introduced inadmissibility ground is in breach of EU law (<http://curia.europa.eu/juris/document/document.jsf?text=&docid=221331&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1461389>). The judgment is expected to be delivered in the first half of 2020.

Two judges initiated preliminary ruling procedures in December, covering the same issues and requesting that the Court conducts an urgent procedure (PPU) taking into account that the applicants are held in detention in the transit zones. The Court granted PPU in both cases (case no. C-924/19 and C-925/19). The questions (16 in total) concern, among others, whether placement in the transit zones for longer than the 4-week limit included in the Asylum Procedures Directive (43 (2) ) represent detention; whether such detention is compatible with the Reception Conditions Directive if it does not meet relevant legal guarantees (e.g. lawful detention order, available judicial remedy, individualised assessment, etc.). The hearing takes place in March 2020.

Denying food from rejected adult applicants in the transit zones while awaiting removal continued in 2019 too. In each individual case the HHC requested interim measures under Rule 39 of the Rules of Court of the ECtHR to ensure that third-country nationals are not starved by the Hungarian authorities in detention. In all cases the ECtHR granted the HHC's request and ordered the Hungarian government to immediately start providing food to those detained. Between August 2018 and February 2020 a total of 31 individuals were deprived of food in detention (see the list with the ECtHR application numbers: [https://docs.google.com/spreadsheets/d/10V84xAVREKSScFwz4ME\\_2kfpBRV\\_CPqCr7SUKitE2o8/](https://docs.google.com/spreadsheets/d/10V84xAVREKSScFwz4ME_2kfpBRV_CPqCr7SUKitE2o8/) ). The European Commission decided to launch a new infringement procedure against Hungary in July 2019 because of this practice. The Commission stated: "In the Commission's view, their compulsory stay in the Hungarian transit zones qualifies as detention under the EU's Return Directive. The Commission finds that the detention conditions in the Hungarian transit zones, in particular the withholding of food, do not respect the material conditions set out in the Return Directive and the Charter of Fundamental Rights of the European Union" ([https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_4260](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260) ).

## References and sources

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**18. Please provide links to references and sources and/or upload the related material in PDF format**

Links, for ease of reference, are provided in-text. (See comments below)

The xlsx file is the Hungarian National Directorate-General for Aliens Policing's (the asylum authority) response to our freedom of information request concerning asylum statistics in 2019. Please note that this

data is more accurate and detailed than the one made available by EUROSTAT.

The pdf file is the Ministry of Justice's response to our freedom of information request concerning the provision of state legal aid in 2019 to asylum-seekers.

## 19. Feedback or suggestions about the process or format for submissions to the EASO Annual Report

I would like to propose that participants are either required to fill in a word document and send it back (so footnotes, in-text hyperlinks would be possible) or if this is not manageable, the technical settings of this form is made clear before people start filling it out. I spent the last hour and a half to edit our answer to the question on vulnerable applicants as it is one of the most serious systemic shortcomings with the current Hungarian asylum regime. Our original submission was over the maximum 5000 characters - as it turned out after I tried to submit the form.

Please upload your file

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I accept the provisions of the EASO [Legal and Privacy Statements](#)

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