

Best Interest Out of Sight

- The Treatment of Asylum Seeking Children in Hungary • 2017



Hungarian Helsinki Committee

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I. List of terms and the map of the Hungarian reception infrastructure

<i>Asylum Act</i>	Act LXXX of 2007 on Asylum
<i>Asylum detention</i>	Administrative detention of asylum-seekers only based on Section 31/A (1) of the Asylum Act
<i>Cordelia Foundation</i>	Cordelia Foundation for the Rehabilitation of Torture Victims
<i>CRC</i>	UN Convention on the Rights of the Child
<i>ECtHR</i>	European Court of Human Rights
<i>HHC</i>	Hungarian Helsinki Committee
<i>Immigration detention</i>	Administrative detention of third-country nationals based on Section 54 of the TCN Act
<i>OIN</i>	Office of Immigration and Nationality(as of 1 January 2017 called Immigration and Asylum Office)
<i>IAO</i>	Immigration and Asylum Office (formerly OIN)
<i>Menedék Association</i>	Menedék - Hungarian Association for Migrants
<i>TCN Act</i>	Act II of 2007 on the Entry and Stay of Third-Country Nationals
<i>TEGYESZ</i>	Department of Child Protection Services
<i>Transit Zone</i>	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. These transit zones are where asylum application can be submitted and where immigration and asylum procedures are conducted at the border. The confinement of asylum-seekers in these facilities for the purpose of assessing their claim amounts to deprivation of liberty.

The Hungarian reception infrastructure of asylum-seekers and migrants consists of the following facilities on 10 April 2017:

- Specific detention facilities for asylum-seekers ('asylum jails'): Békéscsaba, Nyírbátor, Tompa transit zone, Röszke transit zone. (Detainees from the Kiskunhalas asylum jail have been transferred to Nyírbátor and Békéscsaba in March 2017).
- Immigration detention facilities: Budapest Liszt Ferenc International Airport, Győr, Kiskunhalas, Nyírbátor.
- Open reception facilities: Balassagyarmat, Fót (designated special home for unaccompanied asylum seeking children (UASC)), Kiskunhalas, Körmend and Vámoszabadi.
- There are two operational transit zones where asylum applications can be submitted on the Hungarian-Serbian border –close to the border towns of Tompa and Röszke. The transit zones close to Beremend and Letenye remain inoperative since their opening in October 2015. These transit zones constitute places of detention, a conclusion confirmed by the recent jurisprudence of the European Court of Human Rights.¹



¹ In the landmark *Ilias and Ahmed vs. Hungary* judgement, on 14 March 2017, the European Court of Human Rights found *inter alia* that the placement of two Bangladeshi asylum-seekers in the Röszke transit zone in 2015 constituted unlawful detention. The applicants were represented by an attorney of the HHC. The judgement, which is not yet final at the time of writing, is available: <http://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=003-5655572-7163977&filename=Judgment%20Ilias%20and%20Ahmed%20v.%20Hungary%20-%20two%20asylum-seekers%2019%20border-zone%20detention%20and%20removal.pdf>, the HHC's brief summary of the judgement is available here: <http://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-rule39.pdf>

II. The Hungarian asylum procedure with focus on asylum seeking children

The Hungarian asylum procedure is one of the fastest in the EU, with only one instance of administrative decision making, carried out by the Immigration and Asylum Office (IAO, hereinafter referred to as the asylum authority)², and a one-instance judicial review. Specific accelerated and border procedures were introduced into Hungarian asylum law in 2015, as well as the notion of land-border transit zones.³ In 2016, the Asylum Act⁴ and the Act on State Borders⁵ were amended to further hinder access both to the territory of Hungary and to the asylum procedure. The amendments entered into force on 5 July 2016, allowing the Hungarian police to automatically push back asylum-seekers who are apprehended within 8 km (5 miles) of either the Serbian-Hungarian or the Croatian-Hungarian border to the external side of the border fence, without assessing their protection needs or even registering them.

Further changes entered into force on 28 March 2017, fundamentally altering the entire asylum procedure and the operation of the asylum infrastructure during times when the so-called 'state of crisis due to mass migration' is in effect.⁶ The term "state of crisis due to mass migration", hereinafter referred to as 'mass migration crisis' became part of the Hungarian legal system on 15 September 2015,⁷ with the official aim to create an effective legal framework to better manage situations when a large number of asylum-seekers enter the territory of Hungary. The amendment lists a number of objective circumstances⁸ under which a mass migration crisis may be proclaimed by the Government at the initiation of the police and the asylum authority through the Minister of the Interior. On 9 March 2016, the HHC sent an information request to the asylum authority to publish the data based on which the mass migration crisis was proclaimed. The asylum authority denied the request. The HHC filed a lawsuit to obtain the data, which resulted in an interim agreement, whereby the asylum authority is to publish the requested data by 1 May 2017.

The 28 March 2017 changes further extend the criteria for proclaiming a mass migration crisis. However, these criteria⁹ are highly subjective and leave considerable room for an arbitrary application of law. The amendment to the Child Protection Act resulted in taking unaccompanied minors above the age of 14 out of the scope of the Act during a mass migration crisis.¹⁰ The changes allow for the massive detention of children, a measure that is unconstitutional¹¹ and is clearly not in the best interest of children.

A mass migration crisis can be proclaimed by a government decree, for a maximum period of six months that then can be extended for another six months at most, on unlimited occasions.¹² A nation-wide mass migration crisis was proclaimed on 9 March 2016, extended on 9 September 2016 for six months, and then again on 7 March 2017, until 7 September 2017. Since the latest amendment to the Asylum Act entered into force on 28 March 2017 stipulating that during a mass migration crisis asylum claims can only be submitted at transit zones.¹³ Any irregular migrant apprehended anywhere in Hungary is escorted to the external side of the border fence without the

2 Until 1 January 2017, Office of Immigration and Nationality (OIN), called as the asylum authority in the report for the ease of reference

3 Sections 51 (7) and 71/A of the Asylum Act. <http://www.refworld.org/docid/4979cc072.html>

4 Amended Section 71/A (1) of the Asylum Act

5 Newly added Section 5 (1a) of Act on State Borders

6 The HHC's summary of the adopted changes is available at <http://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-New-Asylum-Bill-15.02.2017.pdf> An unofficial translation of the text of the adopted amendments is available at http://www.helsinki.hu/wp-content/uploads/Bill_No-13976_20-February-2017.pdf

7 Chapter IX/A of the Asylum Act

8 Section 80/A (1) (a)-(b) of the Asylum Act

9 Section 80/A (1) (c) of the Asylum Act

10 Section 4 (1) (c) of the Child Protection Act

11 The letter of the Hungarian Helsinki Committee to János Áder, President of Hungary, dated 10 March 2017 http://www.helsinki.hu/wp-content/uploads/Normakontroll_20170310.pdf

12 Section 80/A of the Asylum Act

13 Newly added Section 80/J of the Asylum Act

right to seek asylum.¹⁴ This regulation is applicable to all third-country nationals, regardless of age, sex, mental or physical state, including children and unaccompanied children. It means that people fleeing war or persecution, among them unaccompanied minors, are currently falling victim to indiscriminate collective push-backs without having access to an asylum procedure. In addition, an arbitrary admittance quota of 25 persons per transit zone per week has been introduced, unlawfully limiting the number of asylum-seekers who can have access to the asylum procedure in Hungary, and forcing hundreds and even thousands of others to wait for several months in Serbia.

The amended regulation stipulates that asylum-seekers will need to stay in the transit zone until a final decision is delivered in their case which cannot be appealed¹⁵ (except for unaccompanied children under 14, who are transferred from the transit zones to the special shelter in Fót on the same day of their admittance¹⁶). Due to the serious shortcomings in the age assessment procedure and the frequency of wrongly age-assessed asylum-seekers, unaccompanied children under 14 might be assessed to be between 14 and 18, and consequently be detained in the transit zones. Unaccompanied minors who are held in detention in the transit zones are not assigned a legal guardian either (as a consequence of the recent amendment and their removal from under the scope of the Child Protection Act), which further deprives them of the possibility of exercising their rights, in violation of Articles 5 and 18 of the UN Convention on the Rights of the Child (CRC). In a state of mass migration crisis, the law suspends the rule which limits the asylum-seekers' stay in the transit zone to maximum 28 days. This means that applicants, including children, can be held at transit zones for an unlimited time.

These latest amendments also set forth that all asylum-seekers accommodated at various open and closed facilities at the time the amendments enter into force, are to be transferred to the transit zones.¹⁷ The HHC successfully requested interim measures by the European Court of Human Rights to halt, among others, the transfer of eight unaccompanied asylum seeking children between the age of 14 and 18 to the transit zones.¹⁸

Since the creation of the transit zones in September 2015, the HHC has stated on numerous occasions that holding asylum-seekers in a transit zone, without a detention order, judicial oversight and any legal remedy constitutes a form of unlawful detention.¹⁹ The government has consequently disagreed with this statement. In a landmark judgement, the European Court of Human Rights confirmed the HHC's position, by ruling that the holding of two HHC-represented Bangladeshi asylum-seekers, was a form of unlawful detention.²⁰ The judgement is not yet final at the time of writing.

For a more in-depth description of the Hungarian asylum procedure when mass migration crisis is not in effect, see the latest AIDA report on Hungary,²¹ the HHC's summary regarding the modifications adopted in 2015,²² or the UNHCR's latest country report on Hungary.²³

14 Newly added Section 5 (1b) of the Act on State Borders and newly added Section 80/J (3) of the Asylum Act

15 Section 80/J (5) of the Asylum Act

16 Newly added Sections 80/I and 80/J (6) of the Asylum Act

17 Newly added Section 92/C of the Asylum Act

18 See the HHC's information update at <http://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-rule39.pdf>

19 See for example the HHC's information update of 18 September 2015: http://helsinki.hu/wp-content/uploads/HHC_Hungary_Info_Note_Sept-2015_No_country_for_refugees.pdf

20 See *Ilias and Ahmed v. Hungary*, 47287/15, 14 March 2017:

<http://hudoc.echr.coe.int/eng?i=001-172091>

21 http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2016update.pdf accessed 9 April 2017

22 <http://helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf>

23 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 <http://www.refworld.org/docid/57319d514.html>

The following list summarises the main child-specific characteristics of the Hungarian asylum procedure, when a state of crisis due to mass migration is *not* in effect:

- a. Both minors travelling together with their family and unaccompanied minors are automatically (by law) considered vulnerable applicants with special needs;²⁴
- b. The law stipulates certain additional procedural safeguards for vulnerable asylum-seekers, however, these safeguards may not be entirely observed by authorities in practice;²⁵
- c. Vulnerable applicants are exempted from the border procedure in the transit zone;²⁶
- d. Unaccompanied minors' cases should be given priority;²⁷
- e. Unaccompanied asylum-seeking children are appointed a child protection guardian within 8 days from submitting an asylum application;²⁸
- f. Unaccompanied asylum-seeking children cannot be held in immigration or asylum detention;²⁹
- g. Unaccompanied asylum-seeking children are accommodated in a designated child protection facility, in the town of Fót;
- h. Unaccompanied asylum-seeking children have access to nationality with favourable conditions; they are entitled to apply for naturalization after 5 years of lawful residence in Hungary;³⁰
- i. Minor asylum-seekers under 16 years of age are entitled and obliged to attend public education (primary or secondary schooling is mandatory for all children in Hungary until the age of 16). Children have access to kindergarten and school education under the same conditions as Hungarian children.³¹
- j. Unaccompanied asylum-seeking children enjoy additional safeguards even when they are not granted international protection. They can only be expelled if it is for the purpose of family reunification or if adequate state care is provided in the receiving country.³² The HHC is not aware of any case where asylum-seeking children were rejected and their deportation was organised to their country of origin. Rejected unaccompanied minor asylum-seekers usually abscond and most probably continue their journey in an irregular manner towards Western Europe. Since September 2015, Serbian authorities are reluctant to readmit third-country nationals.³³ Prior to this policy change, unaccompanied minors migrants (including rejected asylum-seekers) were readmitted to Serbia as well, as documented by the UNHCR-HHC border monitoring initiative.³⁴

24 Section 71/A (7) of the Asylum Act

25 Section 71/A (7) of the Asylum Act. See *From Torture to Detention: Access of Torture Survivors and Traumatized Asylum-Seekers to Rights and Care in Detention*, Cordelia Foundation, Budapest, 2016. <http://www.helsinki.hu/wp-content/uploads/From-Torture-to-Detention-angol-WEB.pdf>

26 Section 71/A (7) of the Asylum Act

27 Section 35 (7) of the Asylum Act

28 Section 35 (6) of the Asylum Act

29 Section 31/B (2) of the Asylum Act and Section 56 (2) of the Act no. II of 2007 on Third Country Nationals

30 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: 10 April 2017

31 Government Decree 301/2007 (XI.9.) foresees in Section 29 that "(1) Upon request, in order to facilitate participation in pre-school education and in public education falling within the scope of the Act on National Public Education, until the asylum-seeker turns 21, during his/her stay at the reception centre, the asylum authority shall reimburse the asylum-seeker for the costs of education at a kindergarten, primary school, secondary school, institution for the education of handicapped children or conductive educational institution (hereinafter jointly referred to as "educational institution"), especially the costs relevant to the local or long-distance public transport tickets or seasonal tickets for travelling to and from the educational institution, the costs of meals at the educational institution and the costs of accommodation at a student hostel.

(2) The asylum authority shall subsequently reimburse all costs certified by the institution with an invoice.

(3) Upon the request of the parents or other relatives, the asylum authority shall reimburse the costs of the parents' or relatives' tickets or seasonal ticket for the purpose of accompanying a child under ten years of age or a handicapped child to the educational institution, if it cannot be arranged otherwise.

(4) If there are reimbursable costs based on Para. (1), the amount of reimbursement shall not exceed the minimum amount of the full old age pension. The refugee authority shall subsequently pay all costs certified with an invoice."

32 Section 45 (2) of the Asylum Act

33 Except for those holding the nationality of a former Yugoslav state

34 See Hungarian Helsinki Committee, *Asylum-Seekers' Access to the Territory and to the Asylum Procedure in Hungary*, 2013 http://www.ecre.org/wp-content/uploads/2014/09/helsinki.hu_wp-content/uploads_border_monitoring_2013_ENG_final.pdf

Despite these favourable provisions, practice shows that minors' asylum cases are often not given priority as required by law. In some cases, it takes almost a year to complete the asylum procedure. The 8-day deadline to appoint a child protection guardian is usually unrealistic, due to the administrative and bureaucratic burden on the system.

Unaccompanied asylum-seeking children are only entitled to aftercare services under the same conditions as Hungarian children in state care, but only if they are granted international protection (refugee status or subsidiary protection) *before* they turn 18, since asylum-seekers without a protection status are not entitled to such services. Given the fact that the majority of these children are between 15 and 18, the long duration of the asylum procedure can often jeopardise their access to aftercare services. Under the Child Protection Act, aftercare services provide accommodation, financial support and some limited personal assistance until the age of 24, provided that the beneficiary is still studying after turning 18.

III. Asylum seeking children: deprivation of liberty

1. Children travelling with their families

a) Asylum detention

According to the Hungarian legislation, when a state of crisis due to mass migration is *not* in effect, children travelling with their families may be detained for a maximum of 30 days in an asylum (or immigration) detention facility. During the first half of 2016, according to the information available to the HHC, only one family was detained in the Békéscsaba asylum detention centre awaiting their Dublin transfer to Bulgaria.

Until October 2016, the detention of families was not typical in the Hungarian asylum regime. However, this trend changed by mid-October 2016 when a larger group of Tajik families (62 people) arriving in Hungary at the Ukrainian border asked for asylum and they were subsequently detained in Békéscsaba. Later a group of Armenian families (37 people) also arriving through the Ukrainian border were detained in Békéscsaba. In November, a Syrian family with three children, a Kyrgyz family with three children and two Afghan families – one with four children and the other with five children – were also detained there. All the detained families arrived through the Ukrainian border according to the HHC attorney providing legal assistance in the Békéscsaba asylum detention facility. According to the HHC attorney's experience, families without legal representation are more likely to spend the maximum 30 days in detention than those with a legal representative, who can help them request their release. For example, an HHC attorney represented a Syrian family with three children (13-year old twin boys and a 16-year old girl), who arrived in November 2016 and assisted the family to request their release. They were interviewed by the asylum authority while detained, but within two weeks they were released and transferred to an open reception centre. Later they received subsidiary protection, but by that time they had already left Hungary.

The trend of detaining asylum seeking families continued in 2017. The HHC monitored the Békéscsaba detention facility on 8 February 2017 and met two Iraqi families with three small children (all children were younger than 6) in detention, in addition to a highly traumatised Iraqi couple who had lost three children on their way to Europe.

The HHC opposes the detention of asylum seeking families. During the maximum 30-day period of detention allowed by law, if the identity of the asylum-seeker is not clear, it usually cannot be ascertained, thus the asylum procedure does not move forward in any different way than it would in an open reception facility. Also, based on the Asylum Act, the applicants only have the obligation to cooperate with the asylum authority, not to provide documentary evidence of their identity and nationality. Therefore, as established by the ECtHR in the case of *O.M. v. Hungary*,³⁵ the detention

³⁵ [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-164466%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-164466%22]})

of asylum-seekers based on the ground that they did not provide such documentary evidence is arbitrary.

The deprivation of liberty further traumatises the often already traumatised asylum seeking families, without any reasonable justification. The impact is especially significant on children, who have difficulties to understand the reasons for their detention and do not cope well with this distress in most cases. Another common problem with the detention of families is that detention orders never consider or assess the best interest of children: they are simply detained because their parents are detained. Also, the detention order does not address the children individually, which is contrary to the principle established in the ECtHR judgement *Popov v. France*.³⁶

Detention is clearly against the best interest of children, who cannot spend their time in any meaningful way while in the detention facility. Although there is a courtyard in Békéscsaba, but it offers very limited activities for children. Also, older children are not able to attend school or to have organised age-appropriate activities due to the lack of qualified teachers within the facility.

The reception conditions in Békéscsaba are inappropriate for housing families. The rooms in the facility have not been designed as family rooms, since mostly single men are held in asylum detention in Hungary. The families do not have the necessary level of privacy, as there are no kitchens where they could cook, and the bathrooms are shared. Although the management of the facility tries to separate the rooms of the families from those of the single men, all other premises such as the cafeteria, courtyard, washroom, internet room and doctor's office are shared. This can pose difficulties especially for families with teenage children. Consequently, despite all the efforts of the management of the Békéscsaba asylum jail, neither the reception conditions, nor the services available make this facility appropriate for families.

b) Detention in the transit zones

Before the legal amendment of 28 March 2017, families, after having waited several weeks in Serbia and the pre-transit area, entered the transit zone went through registration and a short interview and then were allowed to access the territory of Hungary. While entry to the transit zone took place in the morning, a bus usually picked up the families at the end of the day to transport them to an open facility, which meant that families were in fact detained for a day in the transit zone. The families waited in one of the blue containers that form the transit zone, where the border procedure is conducted. There they had access to a toilet and received food, but could not wash or do anything but wait all day. There was no wireless internet connection in the transit zone; therefore they could not communicate with the outside world on that day either.

The HHC regards stay in the transit zone as detention. Members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Hungary in October 2015 and also regarded the transit zone as a place of detention in their report.³⁷ On 14 March 2017, the European Court of Human Rights ruled in *Ilias and Ahmed v. Hungary* concerning the case of two Bangladeshi asylum-seekers, represented by an attorney of the HHC that placement in the transit zones is a form of unlawful detention.³⁸

As of 28 March 2017, all arriving families with children and unaccompanied minors between the ages of 14 and 18 are unlawfully detained in the transit zones, as the legal amendments entering into force on that day suspended the above-described favourable treatment for the period of a mass migration crisis. According to the Hungarian government, the expansion of the two transit zones was completed on 31 March 2017,³⁹ and four separate areas were created within each transit zone for families, single men, unaccompanied children and single women.

³⁶ <http://www.asylumlawdatabase.eu/en/content/ecthr-popov-v-france-application-nos-3947207-and-3947407>

³⁷ <http://www.cpt.coe.int/documents/hun/2016-27-inf-eng.pdf>

³⁸ ECtHR, *Ilias and Ahmed v. Hungary*, 47287/15, 14 March 2017. <http://hudoc.echr.coe.int/eng?i=001-172091>

³⁹ <http://www.kormany.hu/en/ministry-of-interior/news/expansion-of-transit-zones-completed>

2. Unaccompanied children and age assessment

According to Hungarian law, unaccompanied asylum seeking children cannot be held in detention.⁴⁰ However, if their age is wrongly assessed, these children are detained under the false assumption that they are adults. The HHC's experience in monitoring immigration and asylum detention facilities for over a decade shows that children, arriving in Hungary without valid travel documents, or documents the validity of which cannot be easily assessed, face a significant risk of being detained because of incorrect age assessment. Erroneous and unreliable practices therefore, as mentioned above, result in the unlawful asylum detention of children.

The age assessment practices in Hungary are not of a multidisciplinary character, as it would be advised by EASO,⁴¹ UNHCR⁴², UNICEF⁴³ and the UN Committee on the Rights of the Child.⁴⁴ The practices applied 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 and the impact of different nutrition.

In most cases, age assessment in Hungary consists of a simple physical observation of the child by a doctor who looks at signs of sexual maturity, facial and pubic hair, teeth, or of an X-ray examination of the wrist, collar bone or pelvis, lacking any individualised, culturally sensitive psycho-social analysis. The asylum authority confirmed that if a police doctor at the border issues a medical opinion confirming that the person is an adult, a second, more detailed, forensic expert's opinion can be obtained by the asylum authority, but only if it doubts the results of the first medical examination.⁴⁵ If this is not the case, the asylum-seeker has the right to request a repeated medical examination, but they must pay for its costs (at least cca. 100 EUR). The HHC believes that this practice is against Hungarian law, which stipulates that, *"if the asylum-seeker 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."*⁴⁶ Meanwhile, Hungarian law exempts asylum-seekers from bearing any costs related to their first asylum procedure. The applicant's age is a crucial factor to be considered in the asylum procedure, therefore, the costs of age assessment examinations should be borne by the state, at least in the first asylum procedure.

In its response⁴⁷ to the HHC's monitoring report⁴⁸ to the Kiskunhalas asylum jail on 30 August 2016, the asylum authority informed that, as a rule, they accept the result of the age assessment carried out during the alien policing procedure. The asylum authority stated that the only case when the costs are borne by the state – which is, the only time when such a procedure can realistically take place – is when an asylum-seeker is already detained but the procedure is still in an "early phase", and it "seems likely" that the detained asylum-seeker is indeed a minor. This stance was repeated in the asylum authority's response⁴⁹ to the HHC's monitoring report⁵⁰ on its visit the Békéscsaba asylum jail. This position is in contradiction with the non-discretionary character of the above-cited law provision, as well as it raises serious concerns due to the arbitrary nature of the concept of an "early stage".

40 Asylum Act, Section 31/B (2)

41 EASO, *Age Assessment Practice in Europe*, December 2013,

<https://www.easo.europa.eu/sites/default/files/public/EASO-Age-assessment-practice-in-Europe1.pdf>

42 <http://www.unhcr.org/publications/legal/3d4f91cf4/guidelines-policies-procedures-dealing-unaccompanied-children-seeking-asylum.html>

43 UNHCR, UNICEF: *Safe and Sound. What states can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October, 2014, <http://www.refworld.org/docid/5423da264.html>

44 Committee on the Rights of the Child, *General Comment No. 6*, 17 May- 3 June 2005, <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

45 For further in information on the shortcomings of age assessment, see: Zsolt Szekeres, *The detention of asylum-seeking children in Hungary: Dire tendencies in upholding the basic rights of children*, 8 March 2017, <http://www.asylumlawdatabase.eu/en/journal/detention-asylum-seeking-children-hungary-dire-tendencies-upholding-basic-rights-children>

46 Article 36/B of Government Decree 301/2007 (XI. 9.) on the Implementation of the Asylum Act

47 http://www.helsinki.hu/wp-content/uploads/BAH-valasz-MHB-jelent%C3%A9sre_Kiskunhalas.pdf

48 <http://www.helsinki.hu/wp-content/uploads/MHB-jelentes-Kiskunhalas-Befogadoallomas-20160817.pdf>

49 http://www.helsinki.hu/wp-content/uploads/BAH_valasz_Bekescsaba_MOBK_20160830.pdf

50 http://www.helsinki.hu/wp-content/uploads/B%C3%A9k%C3%A9sscsaba_MOBEK_2016_08_30.pdf

This practice is enforced with regard to unaccompanied minors irrespective of the type of reception regime they are in. The HHC is aware of cases in which children were placed in detention facilities as a result of a improper initial age assessment procedure and the asylum authority consistently resisted their requests for a second one, or insisted they cover the expenses of the second examination. This practice may result in unlawful detention and it is against the best interest of the child.

Children, who lack the financial means to pay for a repeated age assessment, are left without the ability to seek remedies against unlawful detention or placement in an adult reception facility. This is in violation of Hungary's international and domestic obligations.⁵¹ Regarding the asylum authority's response to the submissions requesting an age assessment or stating that the asylum-seeker is in fact a minor, the right to effective remedy should be ensured, as set forth by domestic, international and EU-law.⁵² The asylum authority does not issue a formal decision to the asylum-seekers' submissions regarding their age, it merely names its responses as "file", "letter", "communication", "response" or "minutes", which is therefore not a legal decision that can be challenged under the Act on Administrative Proceedings⁵³ or the Asylum Act. Therefore, the right to an effective remedy (or any sort of appeal) is not ensured with regard to this crucial element of the asylum procedure.

The term "doubt" is also broadly interpreted by the asylum authority, which routinely relies on the files provided by the police when registering asylum-seekers. The HHC is aware of instances where the police registered unaccompanied minors as young as 13 years old as adults. Asylum-seekers usually submit requests to have their age assessed in vain, since the asylum authority then, based on the police files with a false age recorded, informs the asylum-seekers that there is no doubt regarding their age. This creates a vicious circle, leaving children in desperate need of protection in a loop of little to no hope of being recognised as children.

When completed, the outcome of the age assessment procedure is normally an expert's opinion that briefly states whether the asylum-seeker is a minor or an adult. Some opinions state an "age window" within which the age of the child lies. This practice is in line with international recommendations, since it allows the margin of error to be appreciated and the benefit of the doubt to be granted to the child.

However, some opinions only contain a statement about whether or not the applicant is a minor, and does not specify an actual age range. This way the margin of error cannot be fully appreciated and taken into account when deciding about the lawfulness of the detention of the given asylum-seeker. The lack of this range, or "age window", beyond going against international scientific recommendations is also problematic since it makes it impossible to use the benefit of the doubt in favour of a person who is potentially a child, as well as it prevents any application of the best interest principle as foreseen by the CRC.

During the winter of 2016, the asylum authority told one detained asylum-seeker who claimed to be a child that in case the age assessment procedure is ordered and it does not indicate that the asylum-seeker is indeed a minor, he will be subject to a penalty up to 500 000 HUF (approximately 1600 EUR). This might be lawful in cases when the claim was ill-founded, or made in *mala fides*, but given the inaccuracies detailed above, this practice is likely to deter asylum-seekers who are in fact children from requesting an age assessment procedure for fearing that they would not be able to cover the penalty, should they receive a negative result. The State shall, under Article 3 and 4 of the CRC set up procedures which are child-friendly and encourage children to use their rights to the maximum extent. This practice clearly strikes in a different direction.

Although age assessment continues to be a critical issue, there have been some positive developments since 2009. The Police (more specifically, the National Police and Criminal Forensic Research Institute)

51 For a more detailed description of the problem of children's deprivation of liberty see: http://helsinki.hu/wp-content/uploads/BHC_2014_Children_Deprived_of_Liberty_EN.pdf

52 The right to effective remedy is set forth by the Fundamental Law (Constitution) of Hungary, the European Convention on Human Rights and the EU Charter of Fundamental Rights.

53 Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

have developed a standard operating procedure (SOP) as a guideline for the age assessment of non-asylum-seeking children to be used in alien policing procedures. Another notable development regarding age assessments undertaken during the asylum procedures is that these examinations are now conducted by a forensic medical expert in the presence of a guardian, and are based on the Greulich-Pyle method.

However, there are still several challenges regarding the age assessment procedure that have not been addressed, including:

- a. due to the lack of clear legal provisions or SOPs, it is not transparent and certain 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 result on age assessment;
- e. a lack of an effective legal remedy against the asylum authority not ordering the age assessment procedure to be carried out.

Between January 2016 and March 2017, HHC lawyers identified at least **60** cases in Nyírbátor, Békéscsaba and Kiskunhalas in which potentially underage persons were unlawfully detained due to an incorrect age assessment, and at least **20** cases in Vámosszabadi in which they were placed together with adults in an open reception facility due to incorrect age assessment or the lack of thereof. Attorneys then turned to the asylum authority, and to the court in charge to request a new age assessment and the release of the asylum-seekers from detention.

3. Asylum seeking children crossing the border fence: criminalisation and violence

The legislation criminalising illegal entry 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 Convention⁵⁴ and EU law⁵⁵.

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 have not been 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 favourable rules relating to deferred prosecution, nor the specialised rules of evidence pertaining to juveniles (i.e.: prohibition of the use of lie detectors) apply in these cases. This is discriminatory and is in violation of the best interest of the child.

Between 15 September 2015 and 30 November 2016, **2895** criminal procedures were conducted at the Szeged Criminal Court under the new Penal Code for illegal crossing of the border fence.⁵⁶ In

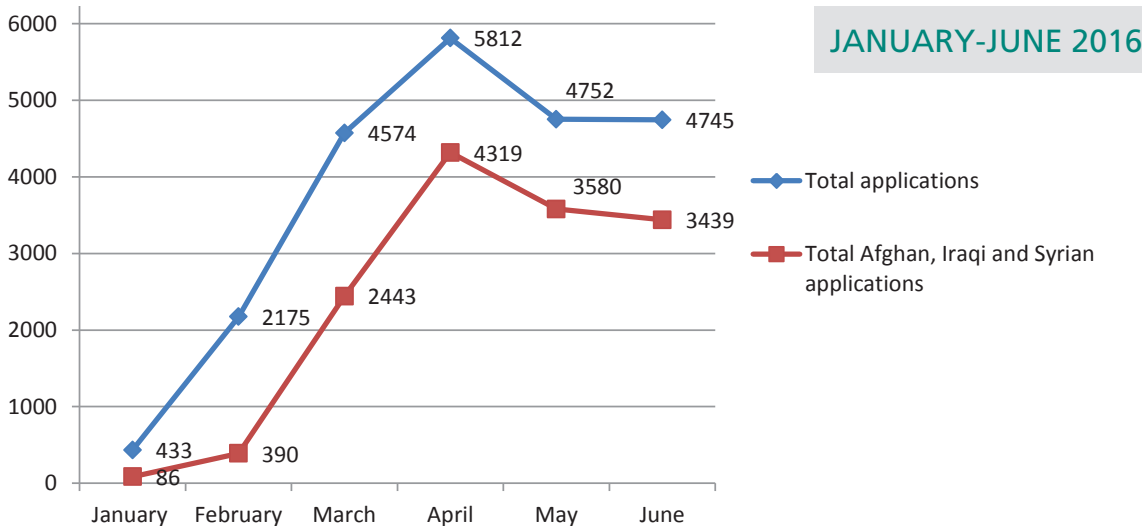
⁵⁴ In case of asylum-seekers – see also the UNHCR Summary Conclusions on the interpretation of this provision at <http://www.unhcr.org/419c783f4.pdf>

⁵⁵ 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; <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=82038&occ=first&dir=&cid=1213734>, *Md Sagor*, C-430/11, 6 December 2012; <http://curia.europa.eu/juris/document/document.jsf?text=&docid=131495&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1215176>, *Alexandre Achughbabian v. Préfet du Val-de-Marne*, C-329/11, 6 December 2011, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=115941&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1215328> – 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>

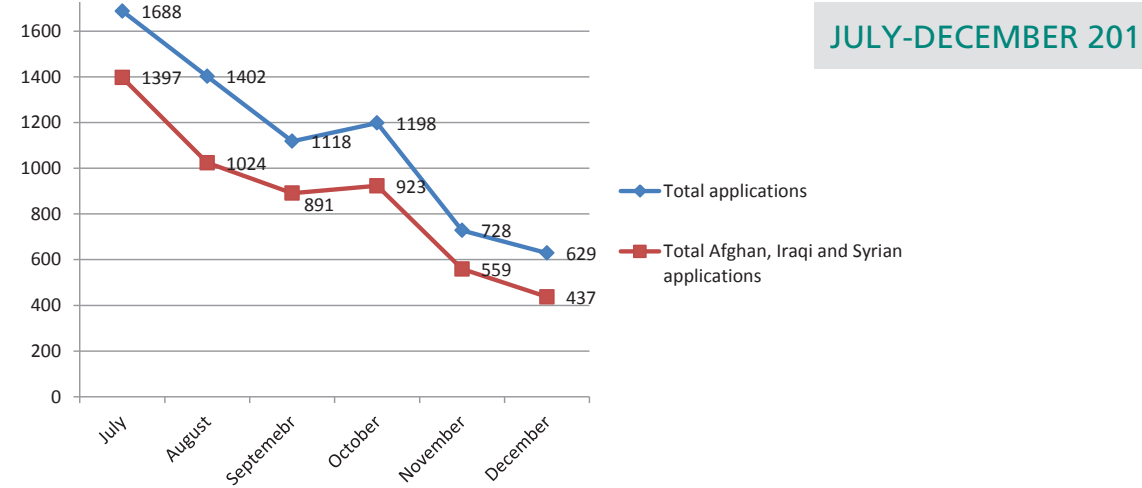
⁵⁶ Hungary: Key Asylum figures as of 1 December 2016, see <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-figures-1-December-2016.pdf>

2843 of those cases, the defendants were found guilty and convicted -- in **2799** cases, the punishment was expulsion and an entry ban of 1-2 years. According to the HHC's knowledge, minors entering Hungary through the border fence during this period received warnings from the court rather than a punishment.⁵⁷ No further criminal procedures have been conducted for illegal crossing of the border fence since November 2016 until the publication of this report.

As the graph shows below, despite the government's efforts, neither the border fence, nor the accompanying legal barriers (the establishment of the transit zones, the criminalisation of crossing the border fence) resulted in a sustainable decrease of asylum applications during the first half of 2016.



In a bold move, the parliamentary majority adopted amendments to the Asylum Act⁵⁸ and to Act on State Borders⁵⁹ that entered into force on 5 July 2016. The resulting so-called "8 km rule" authorising the police to escort anyone apprehended within 8 km of the border fence back to the other (Serbian) side of the border fence, led to a sharp drop of asylum applications in the second half of 2016. The decline can be explained by the fact that those who fall under the scope of this newly introduced regulation do not have the right to apply for asylum as it can be seen from the figures below:



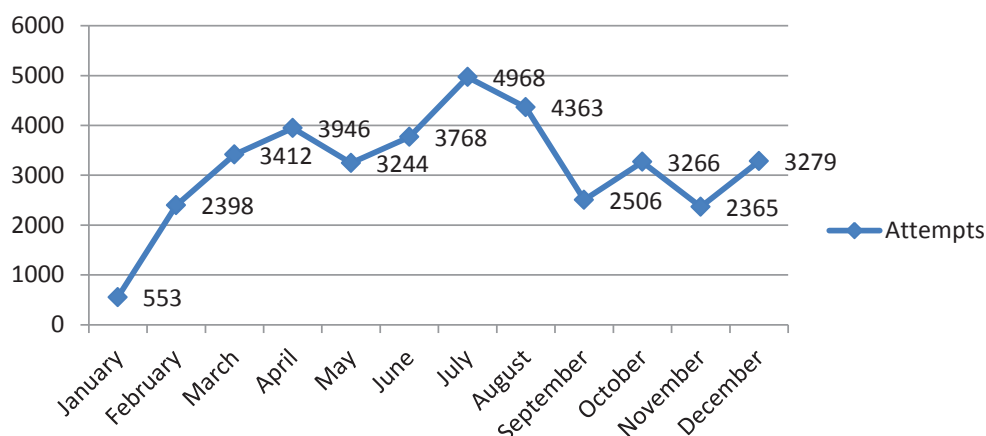
57 Further breakdown of the figures about criminal procedures against minors are not available in public sources.
58Section 71/A (1) of Asylum Act
59Section 5 (1a) of Act on State Borders

Meanwhile, the number of attempts to access Hungary by potential asylum-seekers was more balanced in 2016. These attempts consist of:

- applications submitted in the transit zones anytime;
- attempts to cross the border irregularly before 5 July after which the persons concerned were apprehended in Hungary;
- attempts to cross the border irregularly after 5 July after which the persons concerned were apprehended within the 8 km from the border fence;
- attempts to cross the border fence after 5 July but where the persons concerned were stopped by the police before being able to cross;
- attempts to cross the border irregularly after 5 July after which the persons concerned were apprehended beyond the 8 km from the border fence.

Note that one person may figure in various attempts (one person may try to cross the border on several occasions in one month); therefore the overall number of attempts does not indicate the exact number of potential asylum-seeker trying to access Hungary.

ATTEMPTS



Since the “legalisation” of extrajudicial push-backs (the “8 km rule”) in the border area, the HHC and other organisations working with migrants and refugees, including the UNHCR and Médecins Sans Frontières (MSF), received reports and documented hundreds of individual cases of violence perpetrated against would-be asylum-seekers on and around the Hungarian-Serbian border. Common to these accounts is the indiscriminate nature of the violence and the claim that the perpetrators wore uniforms consistent with the Hungarian police.

The increasing and systematic pattern of violence against would-be asylum-seekers is further evidenced by reports released by Human Rights Watch and Amnesty International⁶⁰. The medical personnel of MSF in Serbia treat injuries caused by Hungarian authorities on a daily basis. This shocking reality is evidenced by a set of video testimonies recorded by a Hungarian news portal on 24 August 2016 in English.⁶¹ A Frontex spokesperson described the situation in an article of the French newspaper *Libération* on 18 September 2016 as “well-documented abuses on the Hungary-Serbia border”.⁶²

⁶⁰HRW’s reports are available here: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border> and <https://www.hrw.org/news/2016/09/20/hungary-failing-protect-vulnerable-refugees>

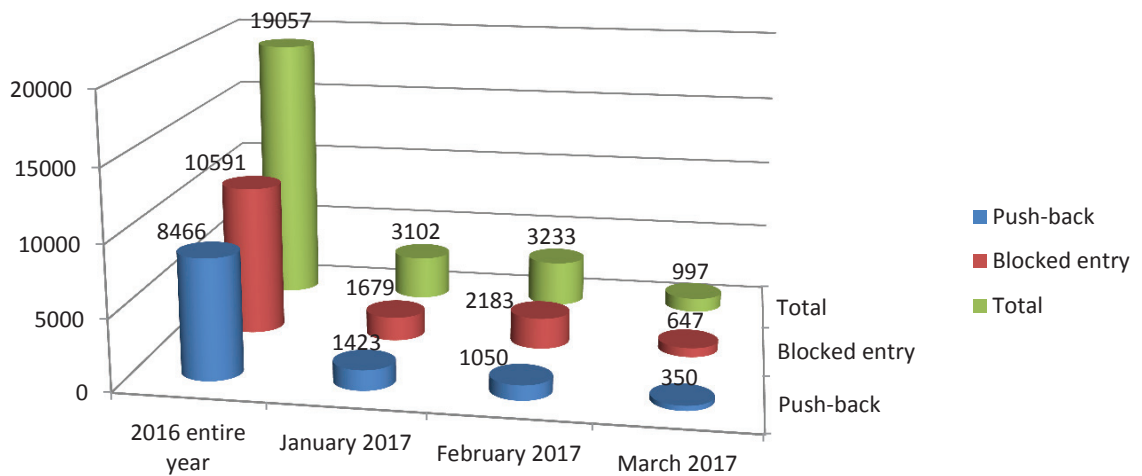
⁶¹http://hvg.hu/itthon/20160824_roszke_horgos_tompa_szerbia_hatar_menekultek_sor_embercsempesz_video_eroszak

⁶²http://www.liberation.fr/planete/2016/09/18/a-la-frontiere-serbe-frontex-s-embourbe-dans-la-galere-hongroise_1501920

Alarmed by the unprecedented number of reports of violence committed at and around the Hungarian-Serbian border, the HHC turned to the Hungarian Police urging investigations into these allegations on 14 June 2016. On 23 June 2016, the Police responded by stating that it “guarantees humane treatment and the enforcement of fundamental human rights in all cases”. The response failed to address any of the reported abuses and only promised to pay particular attention to instructing police personnel on duty at and around the border to guarantee the lawfulness of police measures.

The HHC requested detailed description of the measures taken by the authorities within the 8 km zone against third country nationals on 25 August. The Police informed the HHC on 20 October that no personal details are recorded during these push-backs. The Police also claimed that whenever possible, photo and/or video recordings are made once irregular migrants are made to cross one of the gates of the border fence.

The following chart shows the number of push-backs and blocked entries between 5 July 2016 and 31 March 2017:



Related case profile No. 1

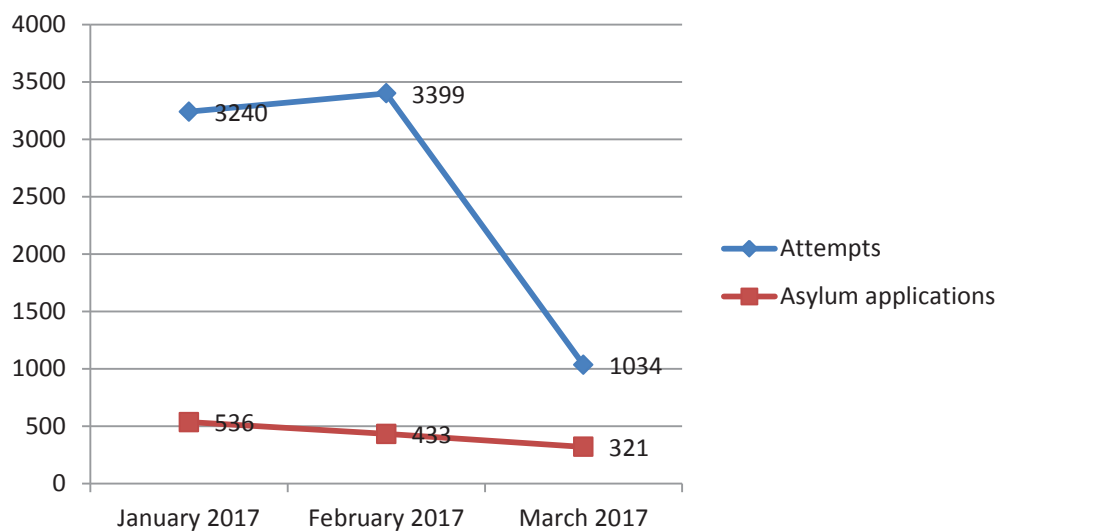
On 31 May 2016, HHC monitors met three minors from Afghanistan who had crossed to Hungary on 15 May and were subsequently beaten, kicked and sprayed by Hungarian police. Dogs were unleashed on them, and two weeks later the traces of dog bites were still visible on the nose of one of the minors. There was no medical record of the injuries, neither any follow-up treatment at the reception center in Hungary.

Related case profile No. 2

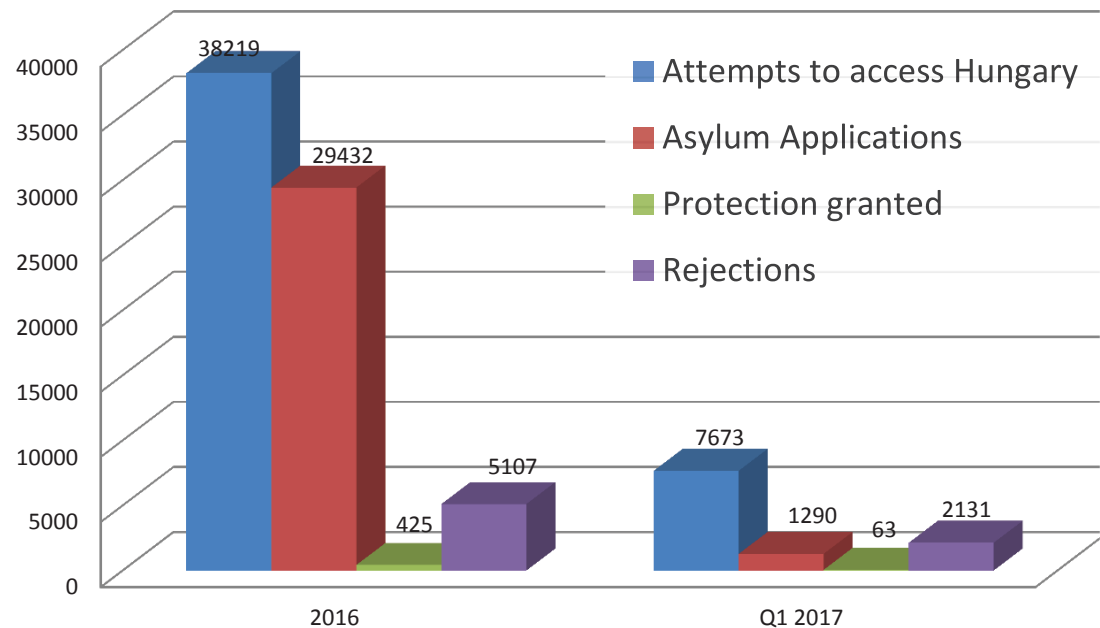
On 12 August 2016, the HHC on a visit to Serbia met a group of Pakistani single men who attempted to cross into Hungary close to Tompa on 11 August and walked for 8 hours before stopping on a corn field to rest. They were woken up by two Hungarian policemen in blue uniforms. Soon 13 other men in green uniform arrived and requested each Pakistani man to hand over their mobile phones. Some of the phones were simply checked, some were disassembled and their IMEI number noted down. After a thorough check of their belongings they were escorted to the closest road and were made to board a green van. They were driven to a gate on the border fence and were made to cross it one by one and were ordered to sit down and wait for further instructions. Once everyone was sent through the gate, the men in uniform surrounded them, immediately in front of the fence, still on Hungarian territory. One of the men in uniform shouted something in Hungarian and then all the 15 uniformed men started beating the Pakistani men. They attempted to flee and some of them had to leave their belongings behind. Two of them suffered serious injuries; one of them was treated in Subotica, the other in Belgrade.

The fact that these incidents have not ceased is further evidenced by the series of video testimonies a Subotica-based volunteer group published on social media in January 2017. In these videos victims of violence, including a 13-year old boy and other visibly young people describe in full detail what they experienced after crossing into Hungary.⁶³

Since 28 March 2017, the so-called “8-km rule” has been extended to the entire territory of Hungary during a mass migration crisis, resulting in a sharp drop in attempts to enter Hungary (see previous note regarding the comparability of the number of asylum-seekers and border crossing attempts):



There is no available data on how the legalisation of extrajudicial push-backs affect unaccompanied asylum seeking children, however it transpires from the above set of data that access to Hungary (and consequently to the asylum procedure) is extremely limited while violence around the Serbian-Hungarian border remains prevalent. Below is a summary chart of attempts to enter Hungary, submitted asylum applications and protection granted between January 2016 and March 2017:



63 <http://freshresponse.org/border-violence/videos/>

IV. The Children's Home in Fót and cooperation with the guardians

Fót is a small town just a few kilometres from Budapest. It hosts the Károlyi István Children's Home, which is the only place where unaccompanied asylum seeking children are accommodated under the regular legal provisions (when there is no mass migration crisis). According to the Asylum Act, unaccompanied asylum seeking children are not placed in a regular reception centre managed by the asylum authority, but in this particular facility, meaning that the latter is not part of the Hungarian asylum reception system, and the body responsible to ensure adequate reception conditions and the operation of the facility is not the asylum authority but the Directorate-General for Social Affairs and Child Protection (SZGYF), which is directed by the Ministry of Human Resources (EMMI). This organisational framework also signals the intention to integrate unaccompanied minors into the mainstream Hungarian child welfare system.

1. General information and physical conditions

a) Access to unaccompanied minors

The HHC has a long-standing partnership agreement with the asylum authority, according to which the HHC's lawyers can access all reception and detention centres to provide free legal assistance and conduct monitoring visits. Since the Children's Home in Fót is not part of the asylum reception system, it is not covered by the partnership agreement. Despite the lack of a formal cooperation agreement, the Ministry of Human Resources provided a written letter supporting the cooperation of the HHC, UNICEF and the Children's Home. The HHC staff has never experienced difficulties in entering the Children's Home and providing legal assistance in the facility.

b) Situation in the Children's Home in Fót

The Children's Home in Fót is in a difficult position due to the generally hostile attitude towards them in town, which is not independent from the massive, state-funded xenophobic propaganda campaign of the Hungarian government targeting migrants and refugees since early 2015. Hungary held a referendum on the EU's relocation plan on 2 October 2016. Following this example, local representatives of the radical right-wing party, Jobbik, initiated a local referendum proposing not to allow foreign citizens to reside on the territory of Fót. The radical party failed to collect enough valid signatures and the referendum was not ordered.⁶⁴ Although the referendum would not have had binding legal consequences, it could have further boosted xenophobia in the region.

c) Announced closure of the Children's Home

On 18 January 2017, representatives of the Government announced that the Children's Home will be closed by mid-2018 (the year of the next general election).⁶⁵

At the time of writing, it remains unclear what will happen to those unaccompanied minors who are currently being housed by the Children's Home. The Home provides accommodation not only to unaccompanied minors awaiting a decision in their asylum procedure, but also those unaccompanied minors who have already been granted international protection and Hungarian children with special needs. In case of Hungarian children, alternative places of accommodation have already been appointed. As for unaccompanied asylum seeking minors, no such plan has yet been introduced. SOS Children's Villages Hungary is, at the time of writing, working closely with TEGYESZ and NGO partners, such as the HHC, on setting up a network of foster parents who can accommodate unaccompanied minors, but the project is still in an early phase.

⁶⁴ Decisions nr. 1/2017 (I.30.) and 2/2017 (I.30.) of the Local Elections Committee <http://www.fot.hu/images/attachments/article/1106/HVB-jkv-2017-01-30-Hat%C3%A1rozatokkal.pdf>

⁶⁵ Átalakul a fóti gyermekváros <http://www.kormany.hu/hu/emberi-eroforrasok-miniszteriuma/szocialis-ugyekert-es-tarsadalmi-felzarkozasert-felelos-allamtitkarsag/hirek/atalakul-a-foti-gyermekevaros>

d) Number of unaccompanied minors

On 10 April 2017, the Children's Home hosted 32 unaccompanied asylum seeking children. The vast majority of them were 14-17 years old and there were two children between 10 and 13 years of age.

The majority of children were from Afghanistan. Apart from them, there were children from Pakistan, Syria, Egypt, Somalia, Iran and the Gambia.

Usually the fluctuation of children is extremely high at this facility. Most of them move on from the Children's Home within 2-3 days following their arrival, and only regard it as a transit station. Although the HHC was informed that smugglers disappeared from around the premises, they visibly still have access to the children through alternate channels and can assist them in moving on.

2. Accommodation

The Home for unaccompanied minors consists of three buildings, two of which are functional at the time of writing (Building A and Building B). One has been out of use since September 2016 because of the decreasing number of children.

Building A is part of a larger building and, despite being an old building, is neat and tidy inside. This building accommodates both girls and boys without having the possibility to separate them. There were six children accommodated here at the time of writing. With the exception of one asylum-seeker all of them were the beneficiaries of international protection. They are all younger than 18, and once they turn 18, they will be transferred to one of the aftercare homes.

The kitchen of Building A has recently been renovated and modernised. One of the rooms was converted into a communal place and merged with the kitchen, which resulted in a modern communal space with friendly cooking and resting facilities.

The other house, Building B hosts the remaining children. Building B consists of two wings (Wing 1 and Wing 2) and each wing has two floors. The ground floor of Wing 2 is used for hosting the new arrivals until they are given their permanent rooms. The ground floor of Wing 1 consists of the dining hall and the kitchen where lunch and dinner are served. The rooms where children are permanently accommodated can be found on first floors of both wings.

Building B has been more recently built than Building A, though since it hosts a much larger group of children, it is visibly in worse conditions. At the same time attempts by the local staff to make it more friendly and welcoming are clearly visible. The building has two balconies, both of which are very much liked by the children.

Each room contains two beds, two lockers and one or two sets of drawers and two shelves on the walls where children can place their properties. The staff tries to arrange children into rooms based on their nationality. There have been cases in the past when this could not always be done. However, there seems to be a silent understanding that even if rooms become somewhat crowded for a while and children from different nationalities are hosted in the same room, the high fluctuation will automatically resolve the problem because within a short period of time occupied places will become available again. This, however, has not been a relevant problem in 2017, because the number of children arriving has drastically decreased, especially since the entry into force of the previously presented legal amendments (as of 28 March 2017).

Despite all genuine efforts, the lack of effective separation of children under 14 inevitably generates problems. There was a case when an 11-year old Afghan boy reported that the older boys regularly took his money and made him go shopping for them. The HHC initiated a procedure whereby he could be placed elsewhere. The procedure is still pending at the time of writing.

3. Services provided

According to information received from the staff, the majority of children were enrolled in formal education at the time of writing. 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 arriving minors. Within the Fót Children's Home, the educators 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 having received a decision on their asylum claim are not eligible for aftercare services. Several NGOs (SOS Children's Village Hungary and Menedék Hungarian Association for Migrants as well as Open Doors Hungary) provide non-formal education sessions, Hungarian language classes and community programs for minors on a regular basis. Two lawyers from HHC visit the home once a week to provide free legal counselling and legal representation. The local doctor, who is specialised in paediatrics, visits the Home every day from Monday to Friday. 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 willingness to learn Hungarian and to study in general are then taken up by Open Doors Hungary, who provide preschool education in Hungarian and English on a daily basis and arrange extracurricular activities, such as ice-skating. SOS Children's Village Hungary provides designated teachers who work at the Than Károly School (a secondary school that has been enrolled a high number of asylum seeking children in recent years), 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.

4. Cooperation with the guardians and other stakeholders

In 2016, the HHC embarked upon an intensive collaboration with the child protection guardian services of Budapest (TEGYESZ), who expressed a wish to participate in a series of trainings on migration and asylum. The HHC held three training and information sessions on 16 March, 1 and 22 April 2016, that were aimed at:

- identifying the main challenges for guardians,
- clarifying the roles and responsibilities of different stakeholders,
- providing opportunities and facilitating communication between the Károlyi István Children's Home (Fót) and the guardians,
- giving introductory seminars into asylum law, its basic notions and concepts,
- improving collaboration between the two organisations and building cooperation.

Following these meetings the HHC organised a knowledge transfer event with the help of NIDOS, an independent Dutch organisation in charge of providing guardians to unaccompanied asylum seeking children.⁶⁶ The one-day programme was attended by four guardians, the temporary head of the Children's Home in Fót, a social worker from the Budapest Social Services specialised in child care, an educator from Menedék Association for Migrants working in Fót, and HHC staff. The temporary head of the Children's Home also participated in a workshop organised by the HHC and the Cordelia Foundation for the Rehabilitation of Torture Victims on torture survivors and PTSD.

Encouraged by the success of these discussions, the HHC initiated a regular roundtable meeting with the participation of staff of the Children's Home, the guardians, UNHCR Hungary, the Cordelia Foundation, SOS Children's Village and the Menedék Association. The meetings focus on both general policy issues and on discussing individual cases and aim to introduce a multidisciplinary best

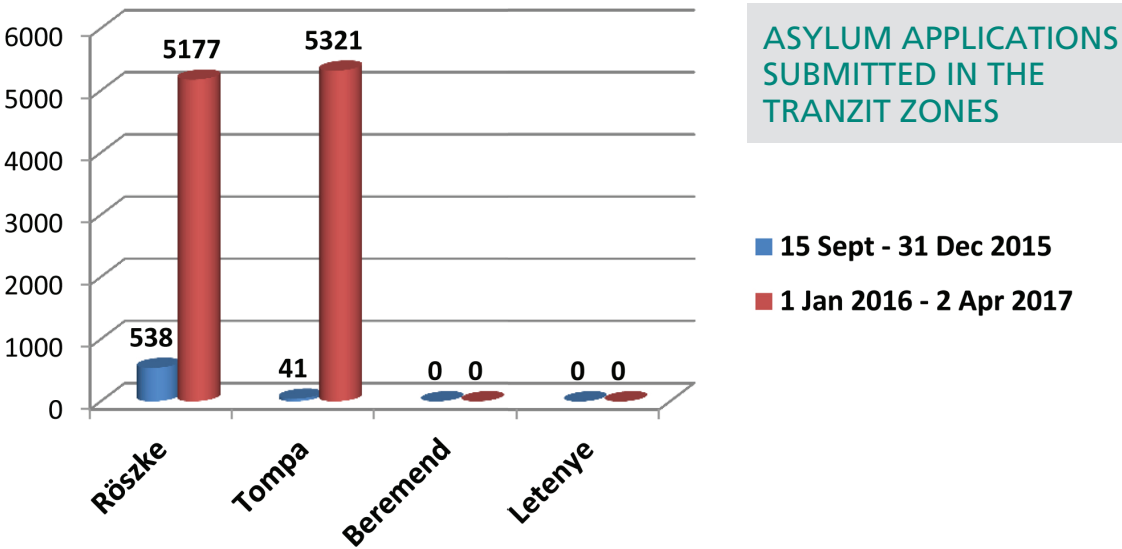
66 www.nidos.nl

interest determination process, which is currently lacking from the legal framework. The first meeting was held on 9 December 2016 and was followed by one every month. The organisation and coordination of these roundtable discussions are undertaken by HHC and the meeting is hosted by a different organisation every month. These monthly occasions provide a much needed opportunity for professionals in the field for cooperation and an exchange of experiences to make their work more effective.

V. Situation at the pre-transit area on the Serbian-Hungarian border

By 15 September 2015, the Hungarian government had essentially dismantled the Hungarian asylum system through a series of legal amendments and non-legal measures, including the decision to erect a barbed-wire fence first along the Serbian-Hungarian, then at the Croatian-Hungarian border. Two transit zones were created along the Serbian and Croatian border sections, 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.

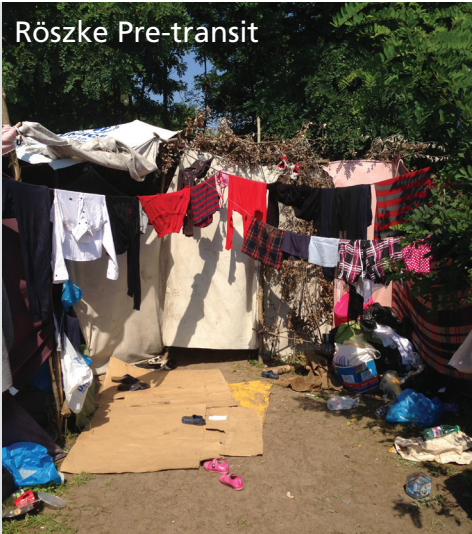
Despite all of the measures taken with the explicit aim of diverting refugee and migrant flows from Hungary's Southern border, the Serbian-Hungarian border section continues to be one of the main entry points to the EU (while no asylum claim has been submitted at the transit zones along the Croatian border):



The Hungarian asylum authority operates the transit zones and decides exactly who can enter. Between March and the winter of 2016, an ever-growing number of migrants continued to gather in the "pre-transit areas" (the territory in front of the transit zones and the border fence, in the direction of Serbia, partly on Hungarian, but mainly on Serbian soil). Here, migrants waited in the hope of entering the territory and the asylum procedure of Hungary in a lawful manner. According to the HHC's estimates based on a number of field visits, approximately one-third of those waiting to access the transit zones were children.

During 2016, migrants waited in the Tompa pre-transit area idly, in makeshift tents made of the blankets distributed by the UNHCR, which could provide some shade from the sun but did not protect against the rain and cold. In Röszke, the authorities allowed the use of real tents. However, the cold and rain took its toll on the migrants in both pre-transit areas.

Röszke Pre-transit



Tompa Pre-transit

Toilets were set up only during late summer of 2016 by UNHCR, following months of advocacy by Médecins sans Frontiers (MSF) and other organisations. Serbian authorities, such as the Commissariat for Refugees or the Ministry of Health also supported the initiative and helped persuade the Serbian Ministry of Interior to let UNHCR set toilets up in both pre-transit areas. UNHCR, along MSF and volunteer groups, provided humanitarian relief to the tired and destitute migrants. MSF's doctors visited every day, while UNHCR distributed blankets, clothes and food packages to those waiting.

The lack of food, absence of shelter and sanitary facilities and the overall inhuman conditions were, however, not the main source of frustration for the hundreds of people seeking asylum. It was rather the long and arbitrary wait, in which nobody knew how long they would have to remain under these conditions. The transit zones in Tompa and Röszke have limited capacities, and between March and 1 November 2016 on average, only 20-30 asylum-seekers were allowed to enter per day, which on some summer days left hundreds to wait outside.

On 2 November 2016, the transit zones started operating with reduced working hours and only on working days from 8-16 which resulted in only about 20 people per day gaining access to the Hungarian asylum procedure. This made the wait in front of the transit zones even longer, and those waiting even more desperate. Since January 2017, only 10 people (5 in Röszke, 5 in Tompa) per day are allowed to enter the transit zones on weekdays. And as of 28 March 2017 the transit zones have become the only places where asylum applications can be submitted as long as the state of mass migration crisis is proclaimed (currently in force until 7 September 2017).

The asylum authority decides exactly who can enter the transit zone on a particular day. The clear factors that determine access to the transit zone are the time of arrival and vulnerability. In Röszke, there are three separate lists for those waiting: one for families, one for unaccompanied minors and one for single men. In Tompa there is a single list containing the names of all three groups. Both lists are managed by so-called community leaders or list managers who communicate both with the Serbian and Hungarian authorities. The Hungarian authorities allow people into the transit zones based on these lists. Families with small children enjoy priority over single men and usually some unaccompanied minors are also allowed entry on any given day. However, there appears to be other determining factors that influence the time of entry, which are not so clear and not knowing them further frustrates those waiting. The HHC believes that these lists should be considered as expressions of intention to seek asylum in Hungary and according to the recast Asylum Procedures Directive, Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible.⁶⁷ Forcing migrants, who express their wish to ask for asylum in the EU and who – in majority – flee from zones of war and terror, to wait for months in order to be let into the transit zone is therefore in violation of EU law.

⁶⁷ Article 6 (2) of the Recast Asylum Procedures Directive

Despite giving priority to families with small children, the HHC spoke with several families with small children who had been waiting both in Röszke and Tompa for several weeks, during its visits to the pre-transit areas on 18 August and 12 September 2016 respectively. For example, the HHC met a family from Syria with four children who had been waiting in Tompa for weeks. This is how the mother of the children described their situation in the pre-transit area:

"We had a decent life in Idlib and even after the heaviest bombings, I always made sure to clean the flat from debris and to mop up the kitchen. When the situation became unbearable, we decided with my husband to flee with our four children and my husband's sick cousin. We never imagined this would await us. We burn empty plastic bottles and rubbish to cook, to heat water and to warm ourselves. When it rains, all the rugs we sleep on become soaking wet. Recently we decided to sleep on the ground rather than the wet and cold rugs and blankets: if my children get sick, I can hardly make a tea for them in these conditions."

The inhuman material conditions, the lack of transparency when it comes to allowing access to the transit zones in addition to the limited access of humanitarian relief organisations and volunteers to these areas, make the migrants in the pre-transit areas, among them many children, especially vulnerable.

Since the winter months of 2016, the Serbian authorities have made a considerable effort to provide accommodation in reception facilities for those waiting to enter Hungary. Therefore, the number of asylum-seekers waiting in the pre-transit areas has decreased to a minimum. The practise of signing up on the waiting list for the transit zones has also changed by 2017. Asylum-seekers can register on the list once they have expressed their intention to seek asylum in Serbia and then will be accommodated in a so-called transit-camp. Reception capacities in Serbia have been increased and new transit camps have opened since the summer of 2016 to cater for the increasing number of migrants and to adjust to Hungary's willingly decreased acceptance policy. Asylum-seekers usually wait 6-8 months in these transit camps in Serbia. Once their date of entry to the transit zone is approaching, they are transferred to the Subotica One-Stop Centre. Here, they also spend some weeks and then are taken to the pre-transit area only the day before they are to enter the transit zone. The pre-transit areas are now deserted and have only a few tents in Röszke, while in Tompa asylum-seekers spend the night before entering the transit zone in the building at the border that had once been the duty-free shop.



Röszke Pre-transit 2017



Tompa Pre-transit 2017

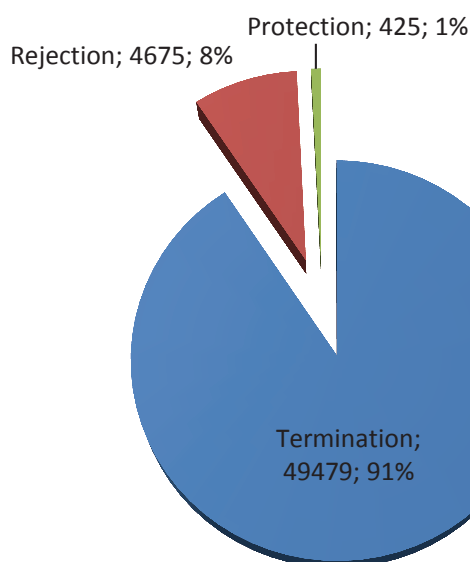
At the time of writing this report it is estimated that almost 8000 people are stranded in Serbia. The HHC on its last visit to the pre-transit areas on 27-28 February 2017 spoke to the list managers who are in touch with both the Serbian and the Hungarian authorities. They told the HHC that the lists for both the Röszke and Tompa transit zones are full until end of 2019 (!) based on the current level of access to the transit zones.

VI. Statistical data

1. Asylum statistics

	2015	2016	Jan-March 2017
Number of arrivals	over 400 000	38219	7673
Number of asylum applications	177135	29432	1290
Protection granted	617	425	73
Asylum-seekers under 18 years	36286	8551	488
Unaccompanied asylum seeking children	8804	1221	63
Protection granted to unaccompanied minors	20	16	1
Number of unaccompanied minors assisted by the HHC	115	121	84

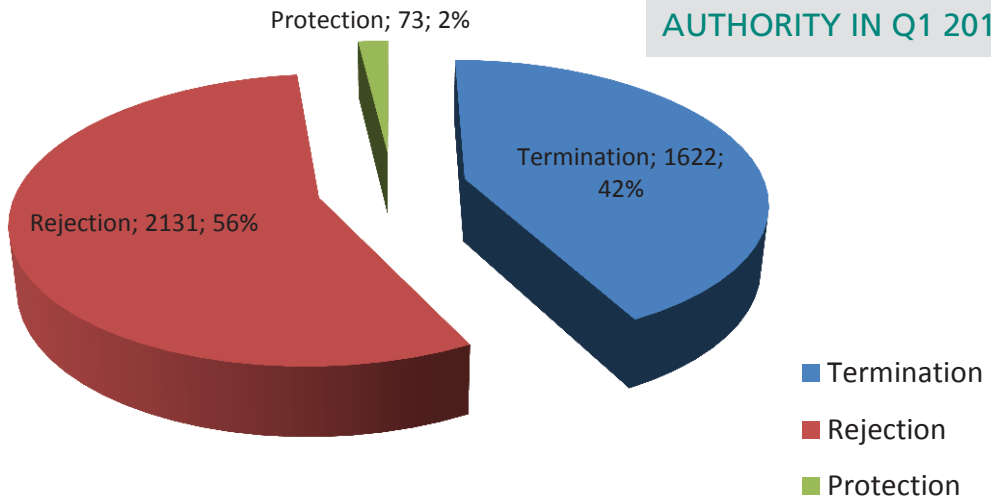
The rate of decisions granting international protection (among all in-merit decisions) has been strikingly low in Hungary in recent years (8% in 2016, 3% in Q1 2017 of all in-merit decisions), representing one of the lowest such rate in the EU. Recognition rates for Afghan (8% in 2016, 1% in Q1 2017 of all in-merit decisions), Iraqi (16% in 2016, 3% in Q1 2017 of all in-merit decisions) and Syrian (12% in 2016, 4% in Q1 2017 of all in-merit decisions) citizens are also extremely low. This is in spectacular contradiction with statistics from basically all other EU Member States, indicating systemic deficiencies in the decision-making process.



ASYLUM DECISIONS BY THE ASYLUM AUTHORITY IN 2016

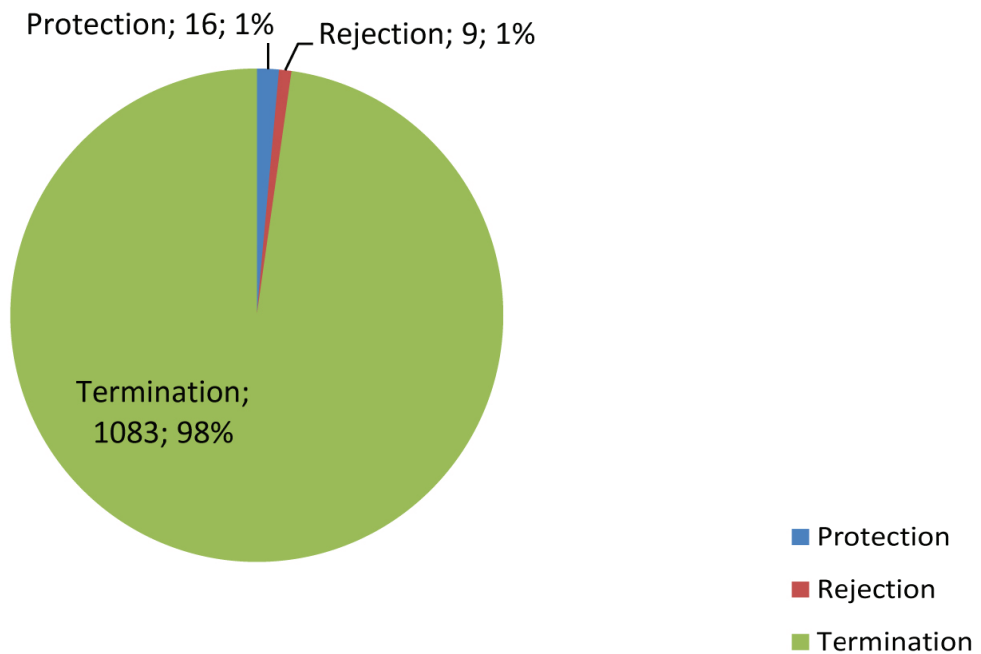
- Termination
- Rejection
- Protection

ASYLUM DECISIONS BY THE ASYLUM AUTHORITY IN Q1 2017

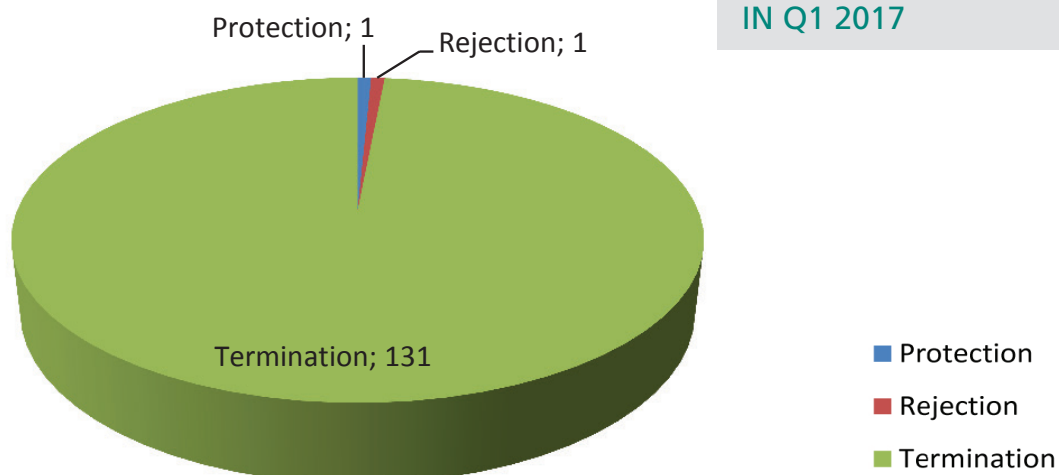


Unaccompanied minors are granted protection at a higher rate than asylum-seekers in general (64% in 2016, 50% in Q1 2017), but they are more likely to continue their journey before a decision is made in their case:

ASYLUM DECISIONS FOR MINORS IN 2016



ASYLUM DECISIONS FOR MINORS IN Q1 2017



2. Education statistics

	on 31 March 2017
Unaccompanied minors in Fót ⁶⁴	21
Unaccompanied minors in formal education	11
Unaccompanied minors in non-formal education	32
Asylum-seekers, refugees and beneficiaries of subsidiary protection under 16 enrolled in formal education in 2016/2017 school year ⁶⁵	77

⁶⁴ Data provided by HHC attorney

⁶⁵ Data provided by Klebelsberg Központ, Ministry of Human Resources