



Hungarian Helsinki Committee

TWO YEARS AFTER:

What's Left of Refugee Protection in Hungary?

Information Note by the Hungarian Helsinki Committee

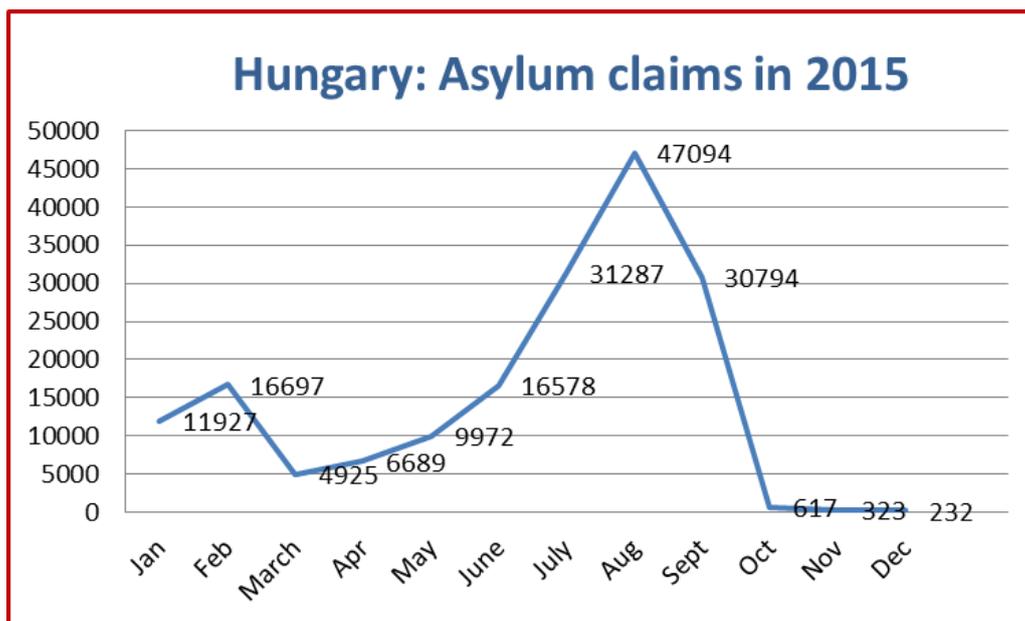
September 2017

"We have one message for refugees: Don't come!" Prime Minister Viktor Orbán said at a press conference in Brussels on 3 September 2015. Since then, this warning has been put to effect through **extremely restrictive legislative and policy changes**. These changes resulted in a **willingly destroyed asylum system** in a European Union member state. Only 26 years after the fence at the Austrian-Hungarian border was opened, a new 175-km long fence closed the Hungarian-Serbian border on 15 September 2015. The physical barrier at the border embodies the start of a **new era in asylum policy in Hungary**.

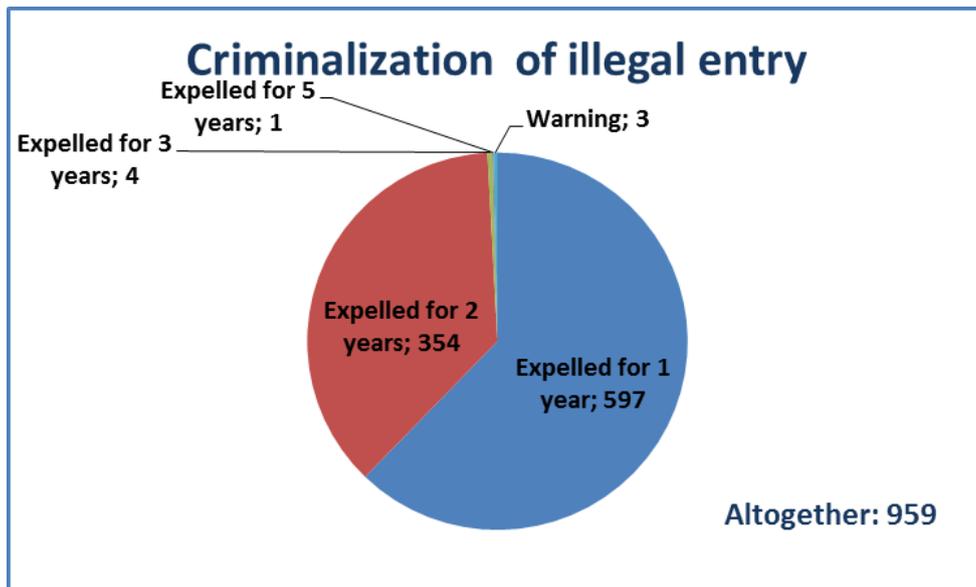
This Information Note summarizes the changes that took place since Fall 2015 in the field of asylum and shows how these changes have erected, step-by-step, a **new wall around Hungary**.

Physical access: arbitrarily limited

Similarly to many other European countries, an unprecedented number of asylum claims were registered in 2015 in Hungary: **177 135 asylum applications**. The physical barrier erected at the southern border on 15 September 2015, which was the third most important entry point into the European Union at that time, led to a sharp decrease in the number of asylum claims.

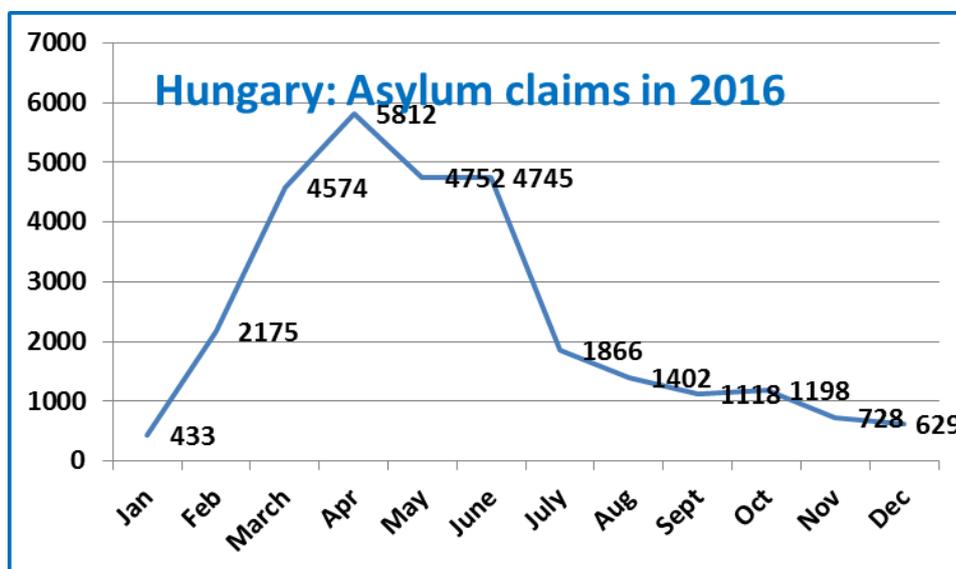


Yet, the number of **irregular entries through the border fence**, which since 15 September 2015 is a criminal act, **remained high**. Until 31 January 2016, based on statistics provided by the Szeged Court, **959 people had been found guilty** of unlawfully crossing the border fence.



Altogether, between the 15 September 2015 and 10 July 2016 **2 888** criminal procedures started at the Szeged criminal court under the new Penal Code for illegally crossing the border fence. In **2836** cases the decisions became final and **2 792** (over 98%) were found guilty and received an expulsion order. Between the 10 July and 31 December 2016 **only seven** cases have been tried for “illegally crossing the border fence”.

In 2016, a total of **29 432 asylum applications** were submitted in Hungary. While this is a much smaller number than in 2015, at the same time, it shows that the physical fence in itself cannot stop those wishing to seek protection. Therefore, the government decided to enact further measures to curb the number of irregular entries, in the form of a policy of **push-backs** at the border that were very often **violent**. This means that migrants who enter Hungary through the border fence are immediately returned to the Serbian side of the fence, often by using excessive force or ill-treatment. The following chart shows the growing trend of applications during the first half of the 2016 and the sudden decrease from 5 July 2016, which had been brought about by legal amendments aiming to 'legalise' the massive extrajudicial push-back of asylum-seekers.



Between March and December 2016, an ever-growing number of migrants continued to gather in the so-called **'pre-transit areas'**. These areas are partly on Hungarian, partly on Serbian territory and can be found on the external side of the border fence, close to the entrance of the transit zones. Here, people waited in the

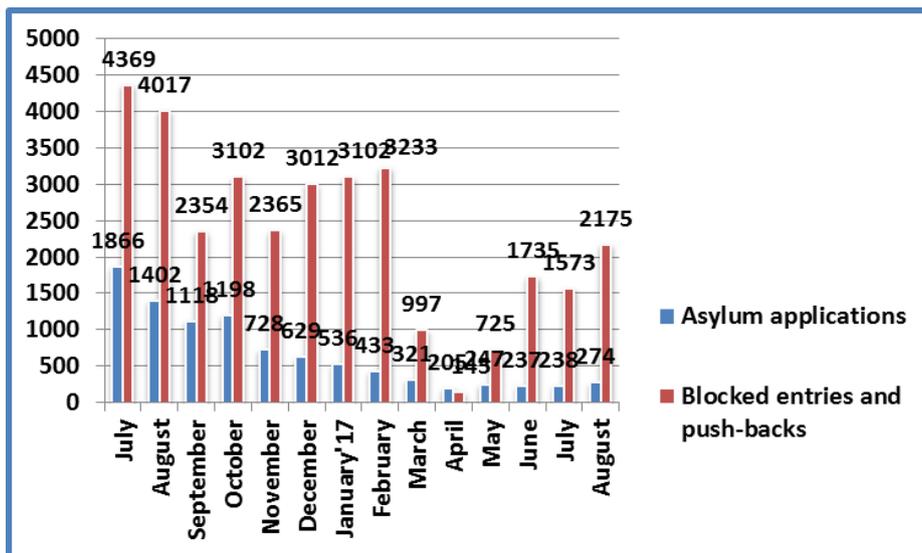
hope of entering the Hungarian transit zones and accessing the asylum procedure in a lawful manner. Although the pre-transit areas are physically partly located on Hungarian soil, the **Hungarian authorities provided little to nothing to meet basic human needs or ensure human rights**. People staying in the pre-transit areas waited in makeshift tents made of blankets distributed by UNHCR, which would provide some shade from the sun in the summer but gave no shelter from the rain and cold. Since the winter of 2016, Serbian authorities have been making efforts to provide shelter in Serbia for those who are waiting in Serbia. Now asylum-seekers only travel to the pre-transit area when they are about to be allowed to enter the transit zone in Hungary.



Those waiting in the pre-transit areas were very frustrated by **the unpredictable length of waiting and the arbitrary nature of the admission system**, based on a highly non-transparent waiting list managed by selected 'community leaders'. The Hungarian asylum authority limited the number of asylum-seekers allowed to access the transit zones to 10-10 persons in November 2016 and since 23 January 2017, to 5-5 persons per zone per day. These arbitrary limitations have no legal basis. Therefore, **only 10 asylum-seekers are admitted to the transit zones and thus to the asylum procedure on each working day (50 persons per week)**.

Under new rules that took effect on 5 July 2016 (and were expanded in late March 2017), the Hungarian police have to automatically push back potential 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. As a consequence of these measures, between 5 July 2016 and 31 August 2017, **14 438 irregular migrants were pushed back from deep within Hungarian territory to the external side of the border fence. Furthermore, in 18 334 cases irregular migrants were denied access** while they had attempted to cross the border fence. These people were **denied the right to apply for international protection, despite the fact that most of them came from war and terror-torn countries** such as Syria, Iraq or Afghanistan. The below chart illustrates the number of asylum applications submitted and the number of cases in which migrants were blocked from entering at the border (thus prevented from applying for asylum) since 5 July 2016. At the cost of breaching the right to seek asylum, this deterrence measure proved quite

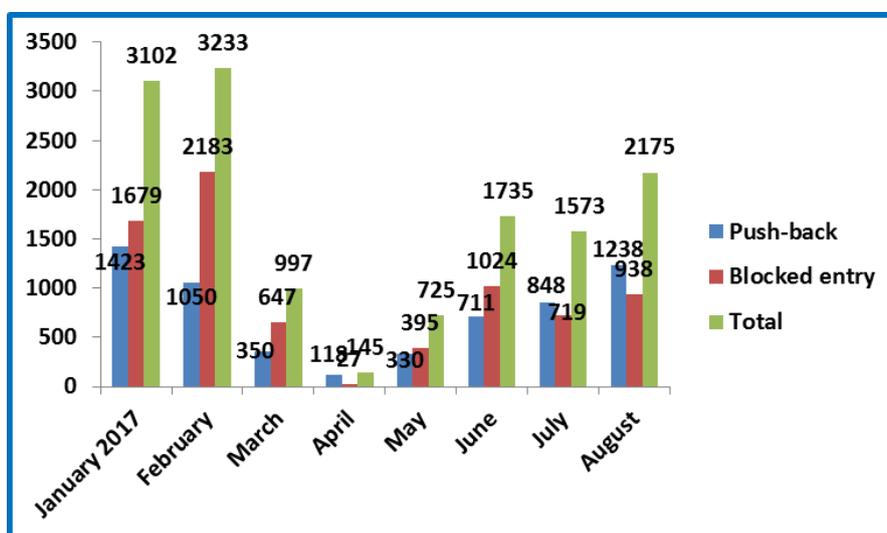
effective in keeping potential asylum-seekers out of the country and thus keeping the number of application extremely low.



As a result of all these measures, between January and August 2017, **only 2 491 asylum applications** were submitted in Hungary. Since the asylum authority kept the daily limit of asylum-seekers admitted to the transit zone at 10 per day, the wait in Serbia for those wishing to enter Hungary has become much longer. Since 28 March 2017, the contained detention centres that are **the transit zones have become the only** locations where asylum applications may be submitted.

Ill-treatment at the border: systematic

The fence at the Serbian-Hungarian border was built with the clear intention of **detering migrants and asylum-seekers** from entering Hungary. The physical barrier was accompanied and reinforced by legal measures, such as the criminalization of illegal entry and later, when this measure failed to stop irregular entries, followed by the legalisation of extrajudicial push-backs. These push-backs have been also accompanied and reinforced by **violence** as a further deterrence measure as reported by many persons who had attempted to cross into Hungary.



Since late spring 2016, the HHC and other organisations working with migrants and refugees, including the UNHCR and Médecins Sans Frontières (MSF), have been receiving reports and documented **hundreds of individual cases of violence perpetrated against would-be asylum-seekers and migrants** at and

around the Hungarian-Serbian border. Common to these reports is the indiscriminate nature of the violence and the claim that perpetrators wore uniforms consistent with those of the Hungarian police and military. Between 5 July 2016 and 31 August 2017, **14 438 irregular migrants were pushed back** from deep within Hungarian territory to the external side of the border fence. In addition to being **denied the right to apply for asylum**, many of them were also **severely ill-treated by persons in uniform**.

The HHC report ***Pushed Back at the Door***¹ summarizes these experiences of violent push-backs. The increasing and systematic pattern of violence against would-be asylum-seekers is further evidenced by reports released by Human Rights Watch and Amnesty International². The doctors of MSF in Serbia reported that they had been treating 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.³ A Frontex spokesperson has described the situation in an article of the French newspaper *Libération* on 18 September 2016 as "well-documented abuses on the Hungary-Serbia border".⁴ Despite the fact that **56 reports** had been filed for abuse committed against migrants at the border and the prosecutor's office launched 50 investigations, so far only one member of the police and one member of the army were convicted (fined) in court.⁵

Legal access to protection: obstructed

A series of legal changes enacted since September 2015 were aimed at severely curbing access to protection in Hungary. The following chronological list contains only the milestones, since a full inventory of these changes would exhaust the limits of this paper.

As of **1 August 2015**:

- **Serbia** is designated as a **safe third country** for asylum-seekers, resulting in the **quasi-automatic rejection of over 99 percent of asylum claims**;
- Extremely accelerated **asylum proceedings**;
- The one-instance **judicial review of asylum cases** is rendered **ineffective** with unreasonably **short deadlines** for submitting an appeal;
- **Transit zones** are introduced, where immigration and asylum cases are processed.

As of **15 September 2015**:

- The asylum procedure at the border - a specific type of **admissibility procedure** - is introduced, which can only be initiated if the applicant submitted her/his asylum claim in a **transit zone**;
- The **unreasonably short deadline** of the admissibility procedure is further shortened: the asylum authority has to deliver a decision in maximum **8 calendar days**;
- In parallel with the inadmissibility decision, the asylum authority also **immediately expels** the rejected asylum-seeker and orders a **ban on entry and stay for 1 or 2 years**;
- **Criminal sanctions** are introduced for illegal border-crossing through the border fence.

As of **5 July 2016**:

- Hungarian police are obliged 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.

As of **28 March 2017**:

- 'State of crisis due to mass migration' extended until 7 September 2017 (and now extended by a further six months);
- During this state of crisis special rules apply to third-country nationals unlawfully entering and/or staying in Hungary and to those seeking asylum, including:
 - Police are authorised to **push-back** unlawfully staying migrants who wish to seek asylum in Hungary across the border fence from any part of the country, without any legal procedure or opportunity to challenge this measure.⁶

- **Asylum applications can only be submitted** in the transit zones at the border. Asylum-seekers are to be **held in the transit zones** for the entire asylum procedure without any legal basis for detention or judicial remedies.
- All **vulnerable persons and unaccompanied asylum-seeking children** over 14 years of age will be also **automatically detained**.
- **The deadlines to seek judicial review** against inadmissibility decisions and rejections of asylum applications are **drastically shortened to 3 days**, hindering the applicant's ability to challenge these decisions in court.

These legal changes constitute flagrant violations of European Union asylum law as well as European and international human rights standards and European values.

Reception conditions: worsening

The new era in asylum policy that began in 2015 also manifested itself in a different approach to the provision of reception conditions. Permanent, better equipped reception facilities were replaced with temporary centres offering less favourable reception conditions. In 2015, the asylum authority closed the Debrecen Reception Centre (which had the largest capacity). At the end of 2016, another open reception centre, in Bicske, was also closed. The Bicske facility used to be the best equipped reception centre and, since it was located close to Budapest, it provided more opportunities for asylum-seekers and refugees to start a new life, build new relationships and start their integration.



In parallel with **closing down permanent asylum reception facilities**, a temporary container camp in Kiskunhalas was opened, which had previously been an asylum detention centre. A **tent camp** opened in Körmend in May 2016. Both facilities exemplify **poorer reception conditions and fewer opportunities for integration**. In addition to that, the tent camp in Körmend was inadequate during the cold winter of 2016, since the tents were cold and dark. The immigration office refused to transfer asylum-seekers from

these severely inadequate conditions to other centres with ample free capacity, despite repeated requests. In May 2017, the tent camp in Körmend was closed. At the time of writing, there is only one person staying in the Kiskunhalas temporary container camp.

In 2016, **asylum-seekers were frequently detained** and in 2017 the detention of asylum-seekers has become the norm rather than the exception.

As of **1 April 2016** the asylum authority stopped the **monthly cash allowance** of free use to asylum-seekers as well as the school-enrolment benefits previously provided to asylum-seekers.

At the moment of writing, most asylum-seekers in Hungary are **detained** in one of the **two transit zones** along the Serbian-Hungarian border. On 31 August 2017, in the two transit zones **436 asylum-seekers were held in detention**, including **226 children and unaccompanied minors** between the age of 14 and 18 years. The material conditions and the services available in the transit zones are seriously lacking and unfortunately have not significantly improved since their opening.

The **transit zones** are in remote locations, built into the border fence.

Offices and living quarters are found in containers about 13 sq. meters in size (approximately 4 x 3 meters). Asylum-seekers stay in containers furnished with 5 beds. When five people are staying in a room, there is no moving space left. The containers are placed in a square and in the middle there is a courtyard with a playground for children and a ping-pong table. The entire transit zone is surrounded by a **razor-wire fence, and is patrolled by police officers and armed security guards**. There are cameras in every corner; there is no privacy or silence.

Although there are some amenities suitable for children, such as a playground, playroom and a studying room, and social workers draw with children for some hours every other day, there is currently still **no access to adequate children-specific care and proper education**. There are no activities organized for the adults, therefore asylum-seekers have no opportunity to spend their time in a meaningful way.

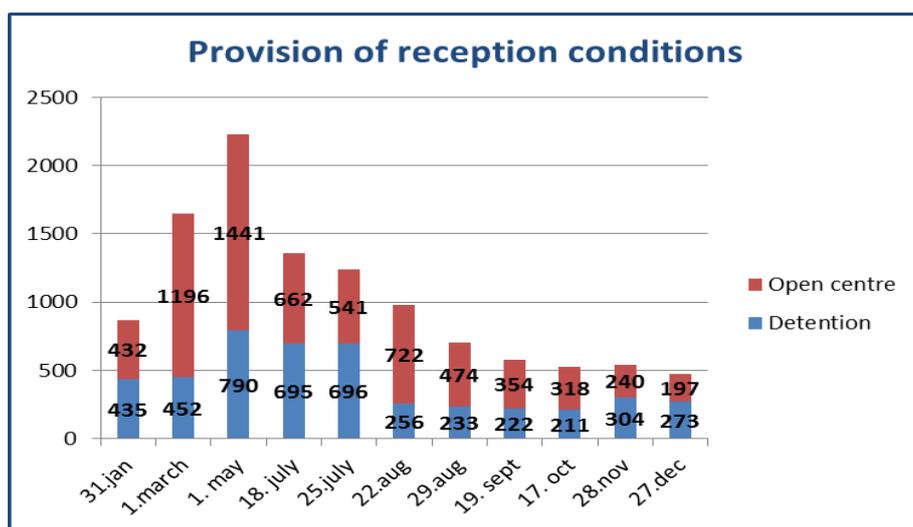
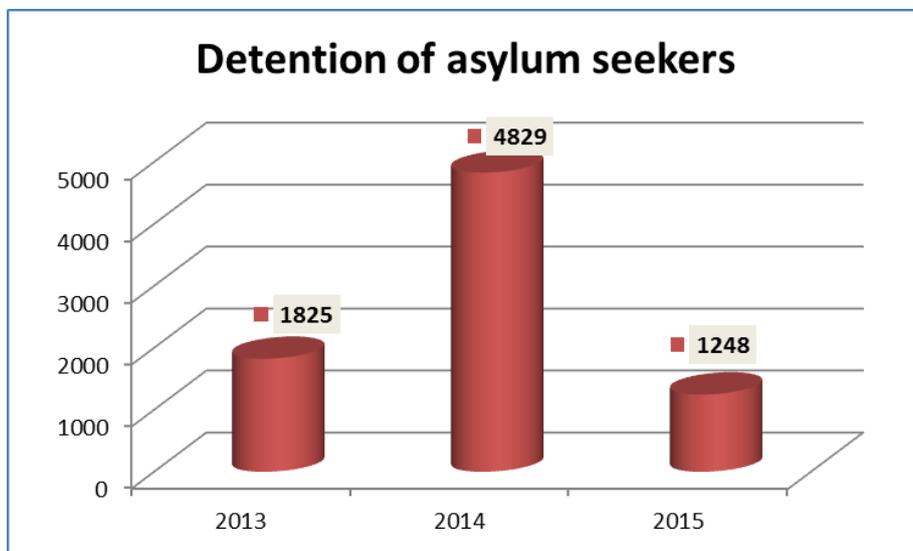


Specialized medical assistance is not available within the transit zones. Therefore, when pregnant women have to be taken for a medical examination, 2 or 3 policemen escort them to a nearby hospital. A pregnant woman reported that the policemen had stayed in the examining room during her pre-natal medical

check-up. No interpretation is provided during the medical examination, which makes communication and building confidence between doctor and patient extremely difficult.

Detention: automatic

In 2015, amid the large-scale arrivals, relatively few asylum-seekers were held in detention compared to previous years. However, this changed in 2016, when asylum-seekers were frequently detained, meaning that **asylum detention** was used far more frequently than as a last resort. In 2016, asylum-seekers in detention frequently outnumbered those staying in open reception centres.



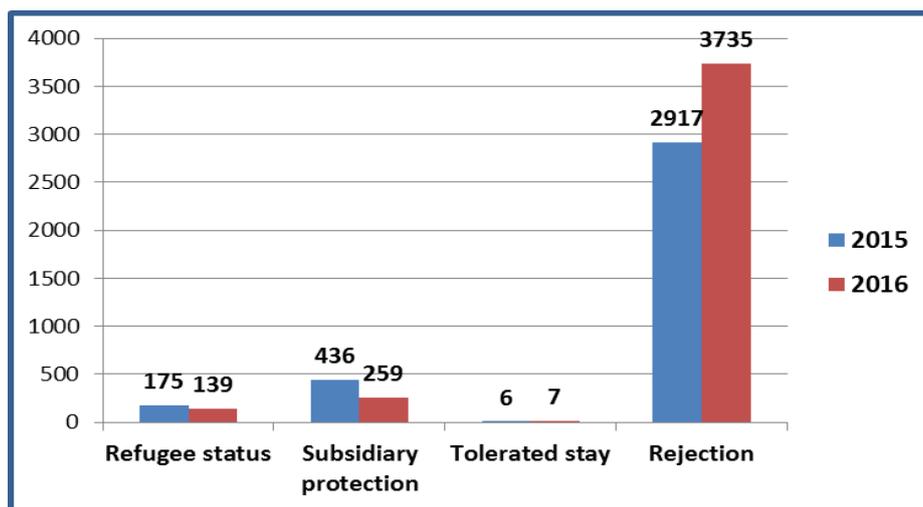
In 2017, this policy continued with the **automatic detention** of all asylum-seekers in the transit zones since 28 March 2017, save unaccompanied minors under the age of 14.

On 31 August 2017, **436 asylum-seekers were detained** in the two transit zones, 17 asylum-seekers were held in asylum detention facilities and **only 15 asylum-seekers were accommodated in open reception centres. 96 percent asylum-seekers are held in detention.**

Procedural safeguards: deteriorating

Already in 2015, among EU member states, Hungary had one of the lowest recognition rates with only 14.6 % of asylum decisions granting international protection. **The recognition rate in 2016 dropped to 9 %,**

the lowest in the entire EU, granting only 405 asylum-seekers international protection. In 2016, Hungary **rejected 91 % of Syrian, 87 % of Iraqi and 94 % of Afghan asylum claims.**



In January-August 2017, **618** asylum-seekers were **granted protection** (of which 68 were refugee and 550 were subsidiary protection statuses); **2 551** applications were rejected. The recognition rate for those arriving from war- and terror-torn countries is extremely low.

January-August 2017

Country of Origin	All in-merit decisions	Protection Granted	Protection Refused	Recognition Rate
Afghanistan	1 359	225 (14 refugee, 211 subsidiary protection)	1 134	19,8%
Iraq	370	65 (7 refugee, 58 subsidiary protection)	305	17,5%
Somalia	12	9 (1 refugee, 8 subsidiary protection)	3	75%
Syria	826	253 (9 refugee, 244 subsidiary protection)	573	30,6%

Vulnerabilities: ignored

The early identification of asylum-seekers with special needs is lacking **a proper legal framework and an established protocol**. Hungarian law defines this group as unaccompanied minors and other vulnerable persons, 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 her/his individual situation – that she/he has special needs".⁷

When the border procedure was introduced on 15 September 2015, asylum-seekers with **special needs** were exempted. Due the lack of an established framework, however, this safeguard remained **ineffective in practice** as case officers identified an applicant's vulnerability solely on the basis of visible criteria such as pregnancy, being a minor or having a physical disability. Since 28 March 2017, all asylum-seekers, including **all vulnerable persons** and unaccompanied asylum-seeking **children over 14 years of age** are **detained in the transit zones**. The detention of unaccompanied minor children between the ages of 14-18 years is clearly against the best interest of the child. The special rules applied in the state of crisis have resulted in the **complete disrespect** for the rights of vulnerable asylum-seekers to be treated according to their special needs and Hungary's obligations set forth in EU law.

Integration: dismantled

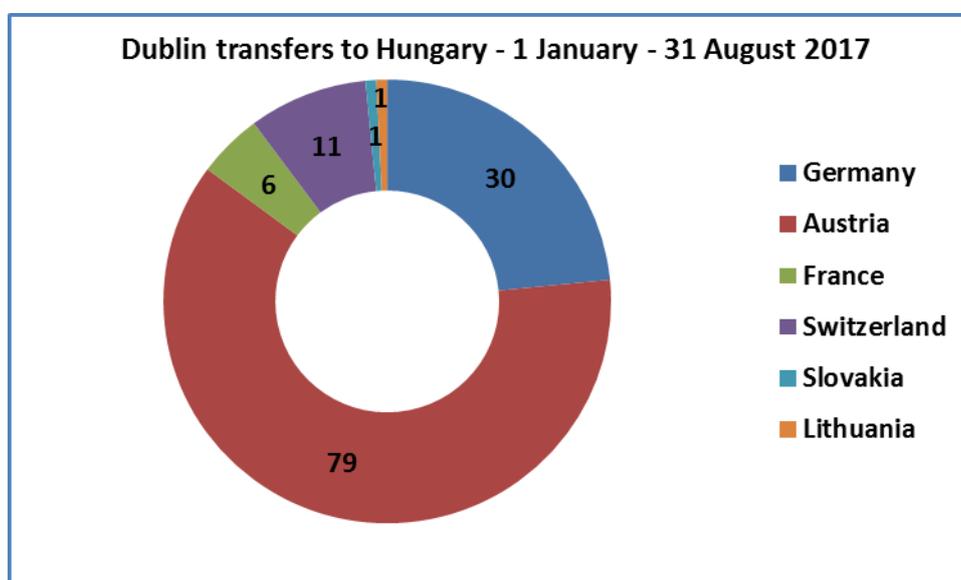
Since 1 June 2016, the Hungarian **state has completely withdrawn from integration services** provided to beneficiaries of international protection. This leaves recognised refugees and beneficiaries of subsidiary

protection at grave risk of **destitution and homelessness**. The period of stay in open reception centres following recognition as a beneficiary of international protection has been reduced from 60 days to 30 days. Now only civil society and religious charity organisations provide the much-needed services aimed at helping the integration process, such as assistance in housing, finding employment, learning the Hungarian language or family reunification.

As of 1 July 2016, the period during which family members of recognised refugees may apply for family reunification under preferential conditions has been reduced from 6 months to 3 months after the sponsor has been recognised as a refugee. This makes family unification even more difficult.

Hungary as an EU member: failing its obligations

Hungary fails to honour its obligations as a member state of the European Union when it does not take part in responsibility sharing and solidarity mechanisms with other member states in the field of asylum. Participation in the **relocation** plan that started in September 2015 is both a symbolic and a tangible expression of solidarity with Greece and Italy, EU member states that have been struggling with receiving and processing the claims of asylum-seekers. Hungary in line with its 'no refugees' policy challenged the relocation plan⁸ at the Court of Justice of the EU (CJEU) and decided not to implement the relocation of 1294 asylum-seekers to Hungary. Although on 6 September 2017, the CJEU dismissed Hungary's and Slovakia's legal action⁹, so far no asylum-seeker has been relocated to Hungary.



By wilfully destroying its asylum system and driving standards below the minimum requirements, the government of Hungary has created a situation where other member states can no longer use the **Dublin system** to return asylum-seekers to Hungary. In 2016, administrative authorities and courts at various levels in 15 EU Member States had stopped Dublin transfers to Hungary.¹⁰ Although the reasons for such suspensions of Dublin returns to Hungary vary, the most often cited reasons include:

- the general application of the safe third country concept with regards to Serbia,
- consequently the risk of chain *refoulement*,
- systemic deficiencies in the Hungarian asylum system.

Similarly to 2016, the number of actual Dublin transfers to Hungary in 2017 remains very low: altogether **128**. On 10 April 2017, **UNHCR called for an immediate suspension of Dublin transfers to Hungary**.¹¹ Most countries seem to respect UNHCR's call: since 10 April 2017 till 31 August a mere 7 transfers have taken place (1 from Lithuania, 2 from France and 4 from Switzerland).

NOTES:

¹ http://www.helsinki.hu/wp-content/uploads/pushed_back.pdf

² <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>,
<https://www.hrw.org/news/2016/09/20/hungary-failing-protect-vulnerable-refugees>

³ http://hvg.hu/itthon/20160824_roszke_horgos_tompa_szerbia_hatar_menekultek_sor_embercsempesz_video_eroszak

⁴ http://www.liberation.fr/planete/2016/09/18/a-la-frontiere-serbe-frontex-s-embourbe-dans-la-galere-hongroise_1501920

⁵ <https://444.hu/2017/08/25/a-honvedseg-es-a-rendorseg-egy-egy-beosztottjat-iteltek-el-eddig-mert-migransokat-bantalmazott>

⁶ <http://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf>

⁷ Asylum Act, Section 2 (k)

⁸ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, p. 80)

⁹ Judgment of the Court of Justice of the EU of 6 September 2017 in Joined Cases C-643/15 and C-647/15, Slovakia and Hungary v Council

¹⁰ ECRE: Legal note: Asylum in Hungary damaged beyond repair? <https://www.ecre.org/wp-content/uploads/2017/03/Legal-Note-1.pdf>

¹¹ <http://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html>