



Hungarian Helsinki Committee

Monitoring the Situation of Unaccompanied Asylum Seeking Children in Hungary



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Contents:

I. The Hungarian asylum procedure and its aspects related to unaccompanied asylum seeking children (UASC)	3
II. Migrant and asylum seeking children: deprivation of liberty	5
1. Children travelling with their families	5
2. Unaccompanied children and age assessment	6
3. First criminalisation, then violence – migrant children crossing the border fence	9
III. Overview of the situation in Fót and cooperation with the guardians	12
1. General information and physical conditions	12
2. Accommodation	13
3. Services provided	14
4. Cooperation with the guardians and other stakeholders.....	14
IV. Situation at the pre-transit zone in the Serbian-Hungarian border area	15
V. Statistical data	17
1. Asylum statistics	17
2. Education statistics.....	18

I. The Hungarian asylum procedure and its aspects related to unaccompanied asylum seeking children (UASC)

The Hungarian asylum procedure is one of the fastest and simplest in the EU, with only one instance of administrative decision making, carried out by the Office of Immigration and Nationality (OIN), and one instance of judicial review. Hungarian asylum law incorporates the accelerated and border procedures, also the notion of the “transit zone”, which were amendments to the Act LXXX of 2007 on asylum (Asylum Act¹) in 2015. In 2016, both the Asylum Act² and the Act LXXXIX of 2007 on State Borders³ was amended to further hinder access to both the territory of Hungary and to the Hungarian 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.

For a more in-depth description of the Hungarian asylum procedure please see the latest [AIDA report](#) on Hungary, the Hungarian Helsinki Committee’s (HHC) summary regarding the [modifications](#) adopted in 2015 or the UNHCR’s latest country report on Hungary⁴.

This overview highlights the child-specific elements of the legal environment and the asylum procedure:

- a. Both minors travelling together with their family and unaccompanied minors are automatically (by law) considered vulnerable applicants with special needs;
- b. Under the law, vulnerable applicants are granted certain additional procedural safeguards, however, these safeguards may not be entirely observed by authorities in practice;
- c. Vulnerable applicants are exempted from the border procedure in the transit zone;
- d. Unaccompanied minors’ cases should be given priority⁵;
- e. UASC are appointed a child protection guardian within 8 days from submitting an asylum application⁶;
- f. It is forbidden to order asylum and immigration detention of an UASC⁷; UASC enjoy a broader *non-refoulement* protection, as they cannot be returned to another country unless they are reunited with their family or an appropriate child protection system is accessible for them⁸;
- g. UASC are accommodated in a designated child protection facility with childcare professionals, in the town of Fót;
- h. UASC have access to citizenship with favourable conditions, they are entitled to request naturalization after 5 years of lawful residence in Hungary⁹.
- 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. The

¹ Hungary: Act LXXX of 2007 on Asylum (2015) [Hungary], 1 January 2008, available at: <http://www.refworld.org/docid/4979cc072.html> [accessed 8 June 2016]

² Amended Section 71/A (1) of Act LXXX of 2007 on Asylum

³ Newly added Section 5 (1a) of Act LXXXIX of 2007 on State Borders

⁴ UN High Commissioner for Refugees (UNHCR), *Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016*, May 2016, available at: <http://www.refworld.org/docid/57319d514.html> [accessed 30 November 2016]

⁵ under Section 35 (7) of the Asylum Act;

⁶ Section 35 (6) of the Asylum Act

⁷ Section 31/B (2) of the Asylum Act and Section 56 (2) of the Act no. II of 2007 (Third Country Nationals Act

⁸ Section 45 (2) of the Asylum Act

⁹ 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 29 November 2016]

Public Education Act provides for compulsory education (kindergarten or school) to asylum seeker and refugee children under the age of 16 staying or residing in Hungary. Children have access to kindergarten and school education under the same conditions as Hungarian children. Schooling is only compulsory until the age of 16, according to a recent legislative change.¹ As a consequence, asylum-seeking children above the age of 16 are not offered the possibility to attend school, until they receive a protection status. They have to stay in the reception centre during the entire day without any education-related opportunities.¹⁰ for the questions you raised please consult this database, this will answer to many of your questions on the entitlements during the asylum procedure.

j. UASC should be treated differently 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. The HHC is not aware of any cases where asylum seeking children were rejected and their deportation was organised to their country of origin. The most common scenario is that these children either abscond to Western Europe and no information is available (no follow up) on their fate or they are readmitted to Serbia. Serbian authorities, however, are reluctant to take third-country nationals back since 15 September 2015. Before that date this used to be the practice as documented within the UNHCR-HHC border monitoring programme as well.¹¹

Despite these favourable conditions and 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.

UASC are only entitled to aftercare services under the same conditions as Hungarian children in state care within the Hungarian childcare system if they are granted a protection status (refugee status or subsidiary protection) before they turn 18. Given the fact that the majority of these children are between the ages of 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 provides accommodation, financial support and some limited personal assistance until the age of 24 if the child (young adult) is studying after 18. The reason why aftercare is only accessible if these UASC receive a protection status is that the child protection system only deals with their aftercare if a legal status is obtained.

¹⁰ 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 person seeking recognition turns 21, during his/her stay at the reception center, the refugee authority shall reimburse the person seeking recognition 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 season 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 refugee authority shall subsequently reimburse any and all costs certified by the institution with an invoice.

(3) At the request of the parents or other relatives, the refugee authority shall reimburse the costs of the parents' or relatives' tickets or season 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 Subsection (1), the amount of reimbursement shall not exceed the minimum amount of the full old age pension. The refugee authority shall subsequently pay any and all costs certified with an invoice."

¹¹ For more information please see page 9 of the report: Asylum Seekers' Access to the Territory and to the Asylum Procedure in Hungary, 2013. available at: http://www.ecre.org/wp-content/uploads/2014/09/helsinki.hu_wp-content/uploads_border_monitoring_2013_ENG_final.pdf

II. Migrant and asylum seeking children: deprivation of liberty

1. Children travelling with their families

a) Asylum detention

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 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 seems to have changed by mid-October when a larger group of Tadjik families (62 people) arriving to Hungary at the Ukrainian border asked for asylum and 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. In the attorney's experience families without legal representation are more likely to spend the maximum 30 days in detention than the ones with a legal representative who requests their release. For example the HHC attorney represented a Syrian family with three children (13-year old twin boys and a 16-year old girl) who arrived in November and requested their release. They were interviewed by the Asylum Office 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 HHC opposes the detention of asylum seeking families. During the 30-day period 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 applicant only has the obligation to collaborate with the asylum authority. This requirement does not contain the obligation to provide documentary evidence of the applicant's identity and nationality. Therefore, as it was established by the European Court on Human Rights in the case of *O.M. v. Hungary*¹² regarding the case of the detention of a vulnerable asylum seeker, detention based on this ground is regarded as arbitrary.

Further, the deprivation of liberty unnecessarily further traumatizes the asylum seeking families. It is especially hard on the children who have a hard time understanding the reasons for their detention and do not cope with it well in most cases. Another problem with the detention of families is that the detention order does not at all address the best interest of children, they are simply detained because their parents are detained. The detention order does not address them individually, which is contrary to *Popov v. France* case¹³.

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

¹² [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-164466%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-164466%22]})

¹³ <http://www.asylumlawdatabase.eu/en/content/ecthr-popov-v-france-application-nos-3947207-and-3947407>

The reception conditions are in no way appropriate for housing families. The rooms in the facility have not been designed as family rooms since usually mostly single men are subject to asylum detention. 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 facility tries to house the families on separate corridors from the single men, all facilities such as the cafeteria, courtyard, washroom, internet room and doctor's office are shared. This can pose difficulties especially for families with teenage daughters.

The HHC has been opposed to the introduction of the asylum detention regime from its onset in Hungary in July 2013, and especially to the detention of asylum seeking families. The asylum detention of families serves neither the interest of the asylum procedure nor the best interest of the children in the family therefore it should be abolished.

b) Detention in the transit zones

Families travelling with children cannot be subject to the border procedure as they are regarded vulnerable by the Asylum Office. Therefore, when families, after having waited several weeks in the pre-transit area in inhuman conditions, enter the transit zone they go through registration and a short interview and are then allowed to access the territory of Hungary. This means that they are taken to an open reception facility the same day. While entry to the transit zone takes place in the morning, the bus usually picks up the families at the end of the day, which means that families are in fact detained for a day in the transit zone. The families wait in one of the blue containers that form the transit zone, where the border procedure is conducted. They have access to a toilet and receive food, but cannot wash and do anything but wait all day. There is no wifi connection in the transit zone, therefore they cannot 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 in their report¹⁴ also regarded the transit zone as a pace of detention. Taking this into consideration and the fact that the families are transferred to an open facility within the same day of their arrival in the transit zone, the HHC thinks that their unlawful detention in the transit zone should be avoided.

2. Unaccompanied children and age assessment

Unaccompanied asylum-seeking children (UASC) cannot legally be held in detention.¹⁵ However if their age is wrongly assessed, UASC are detained under the false assumption that they are adults. This way *de facto* UASC are detained as *de jure* adults. 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 an 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 advised by EASO¹⁶ and the UN Committee on the Rights of the Child¹⁷, and the practices applied completely disregard the

¹⁴ <http://www.cpt.coe.int/documents/hun/2016-27-inf-eng.pdf>

¹⁵ Asylum Act Section 31/B. Paragraph (2)

¹⁶ EASO: Age Assessment Practice in Europe, December 2013

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

¹⁷ Committee on the Rights of the Child, General Comment No. 6

<http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

differences between various populations of the world regarding pubescence, the psychological and emotional development of children as well as their cultural background. The age assessment carried out this way is solely based on one medical examination and lacks another, crucial part, the individualised psycho-social analysis recommended by the institutions named above.

In most cases, age assessment in Hungary consists of a simple physical observation of the foreigner 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. The OIN 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 only be obtained by the OIN, but only if it doubts the results of the first medical examination. 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 OIN practice is against Hungarian law, which stipulates that, *"if the applicant seeking recognition declares, after the ordering of detention, that he/she is an unaccompanied minor, the asylum authority shall contact the medical service provider who has jurisdiction at the place of detention in order to immediately establish the age of the applicant."*¹⁸

The above-mentioned practice is enforced with regard to UASC irrespective of the type of reception regime they are in. The HHC is aware of cases when children were placed in open reception facilities as a result of a false initial age assessment procedure and the OIN consistently resisted their requests for a second one, or insisted they cover the expenses of the second examination. Also, there have been cases when children were placed in detention because of false age assessment practices or the OIN's unwillingness to carry out a second procedure. In this case, naturally the consequences were more serious to the individual applicant and were absolutely against the best interest of the child.

This practice is unlawful also because Hungarian law exempts asylum-seekers from bearing any costs related to the asylum proceedings with respect to the first asylum claim. 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 with respect to the first asylum claim.

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.¹⁹ Regarding OIN'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, set forth by domestic, international and EU-law²⁰, is violated. The OIN 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 Proceedings²¹ or the Asylum Act.

The term 'doubt' is also broadly interpreted by the OIN, which routinely relies on the files provided by the Police when registering asylum-seekers. The HHC is aware of instances where the Police registered UASC as young as 13 years old as adults. Asylum-seekers usually submit requests to have their age assessed in vain, since OIN then, based on the Police files with a false age recorded, informs the asylum-seekers that there is no doubt regarding their age.

¹⁸ Article 36/B of Government Decree 301/2007 (XI. 9.) on the Enactment of the Asylum Act

¹⁹ For a more detailed description of the problem of children's deprivation of liberty, please see: http://helsinki.hu/wp-content/uploads/BHC_2014_Children_Deprived_of_Liberty_EN.pdf

²⁰ The right to effective remedy is set forth by the Basic Law of Hungary, the European Convention on Human Rights and the EU Charter of Fundamental Rights.

²¹ Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

When completed, the result of the age assessment procedure is normally an expert's opinion that is a presumption on whether the asylum-seeker is a minor or an adult. Since the opinions only contain this presumption but not a range within which the asylum-seekers age lies, 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' is also problematic because this way the benefit of the doubt cannot be applied in the cases of these asylum-seekers who could potentially be minors. This triggers another problem, namely that the best interest principle of the UN Convention on the Rights of the Child (CRC) cannot be applied in cases where the asylum-seeker is not obviously a minor.

Recently the OIN told detained asylum-seekers who claimed to be minors that in case the age assessment procedure is ordered and it does not indicate that the asylum-seeker is a minor, they will be subject to a penalty up to 500 000 HUF (cc. 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 not to request an age assessment procedure for fearing that they would not be able to cover the penalty should they receive a negative result.

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) have developed a standard operating procedure (SOP) as a guideline for the age assessment of non-asylum seeking children to be used in the immigration procedure. 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 is it necessary for the authorities to initiate an age assessment examination in case of doubt;
- b. since age assessment is considered in principle as a medical issue, there is a lack of an interdisciplinary approach;
- c. a lack of nationally harmonised application of age assessment procedures;
- d. a lack of an effective legal remedy against the expert opinion on age assessment;
- e. a lack of an effective legal remedy against OIN not ordering the age assessment procedure to be carried out;
- f. a lack of legal representation by the appointed guardian of UAMs at age assessment procedures initiated during the immigration procedure.

In 2016, attorneys working with the HHC in the asylum lawyers network identified at least **35** cases in Nyírbátor, and Kiskunhalas where potentially underage persons were unlawfully detained due to an incorrect age assessment and at least **20** cases in Vámoszabadi when they were placed together in an open reception facility with adults due to incorrect age assessment or the lack of thereof. Attorneys then turned to the asylum or immigration authorities (OIN or the Police) and to the court to request a new age assessment and release of the asylum seekers from detention.

3. First criminalisation, then violence – migrant children crossing the border fence

The criminalization of entering Hungary through the border fence established along the Hungarian-Serbian and Hungarian-Croatian borders took effect on 15 September 2015, in violation of Article 31 of the 1951 Refugee Convention²² and EU law^{23,24}.

Although the Criminal Procedure Code requires that all coercive measures must be used with regard to the interests of minors in mind, the special protections and rules pertaining to minors are not met in the criminal procedures relating to the border closure. This means that there is no requirement to appoint a guardian for children under 18, and parents or legal guardians cannot exercise their rights related to the case of a minor even if they reside within Hungary. Neither the favourable rules relating to deferred prosecution, nor the specialized rules of evidence pertaining to juveniles (i.e.: prohibition of the use of lie detectors) apply in these cases. This is discriminatory and it is in violation of the best interest of the child principle, guaranteed by a number of international instruments.

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.²⁵ In **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. While very few minors were sentenced, to the HHC's knowledge, those minors who were received warnings from the court rather than a punishment.²⁶

As the graph below shows, 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.

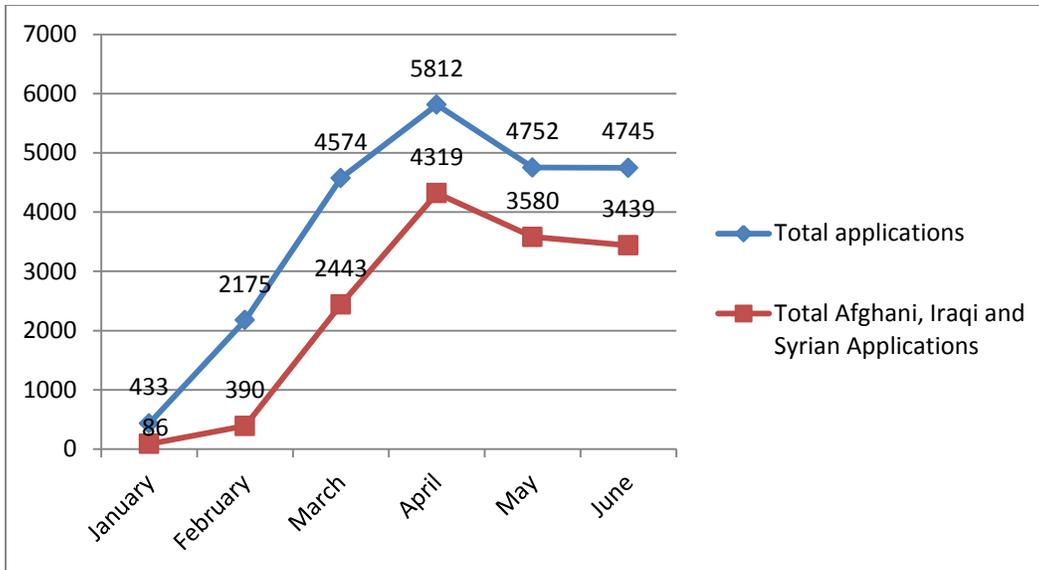
²²In case of asylum-seekers – see also the UNHCR [Summary Conclusions](#) on the interpretation of this provision

²³In case of irregular migrants who do not seek asylum or whose asylum case has already been rejected with a final decision, and thus who fall under the scope of the EU Return Directive. Under EU law (as interpreted by the EU Court of Justice), the mere fact of illegal entry or stay cannot justify a criminal sanction amounting to imprisonment, unless the person has been expelled and the maximum amount of time for immigration detention has been exhausted, without the actual return being carried out, for a reason imputable to the third-country national concerned. Cf. [Hassen El Dridi, alias Karim Soufi](#), C-61/11 PPU, 28 April 2011; [Md Sagor](#), C-430/11, 6 December 2012; [Alexandre Achughbabian v. Préfet du Val-de-Marne](#), C-329/11, 6 December 2011

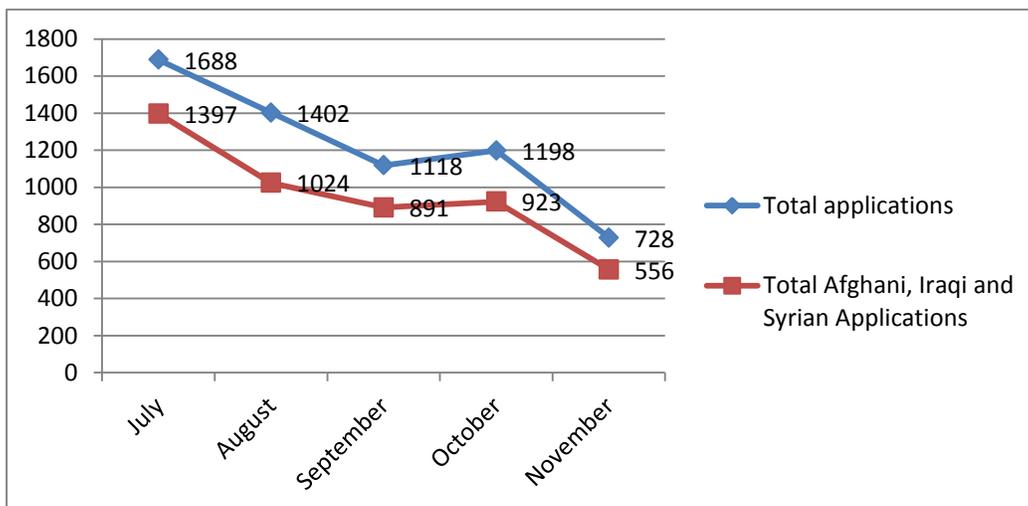
²⁴For a full analysis of the criminal law provisions related to the border fence, see <http://helsinki.hu/wp-content/uploads/modification-of-criminal-laws-16092015.pdf>

²⁵Hungary: Key Asylum figures as of 1 November 2016, see <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-figures-1-November-2016.pdf>

²⁶Further breakdown of the figures about criminal procedures against minors are not available in public sources.



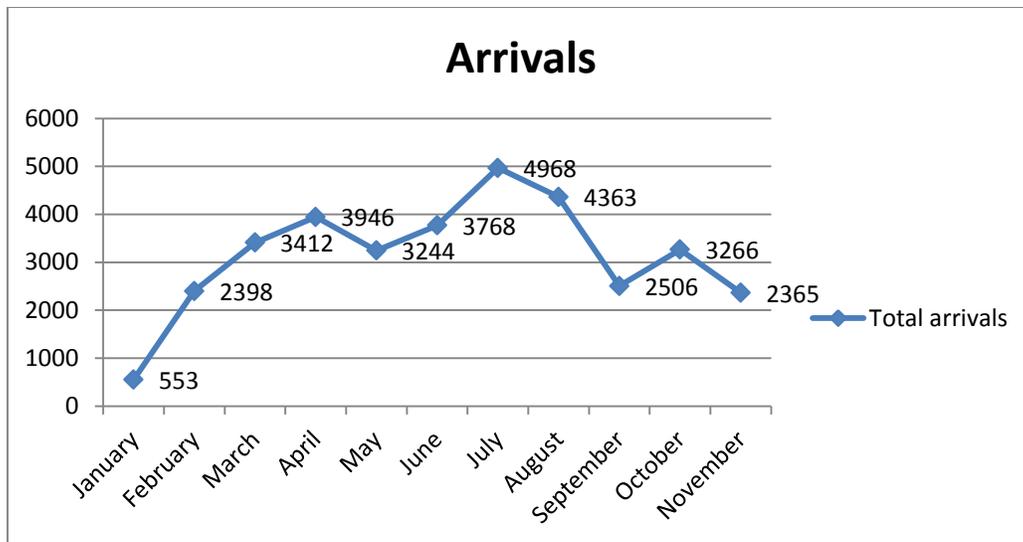
In a bold move, the parliamentary majority adopted the amendments described in Section I. that entered into force on 5 July 2016. The so-called '8 km rule' resulted in a sharp drop of asylum applications as those who fall under the scope of these newly introduced regulation do not have the right to apply for asylum.



Meanwhile, the number of those who entered Hungary, more precisely

- a. those who applied through the transit zones anytime
- b. those who crossed the border irregularly before 5 July and were apprehended in Hungary
- c. those who crossed the border irregularly after 5 July and were apprehended within the 8 km perimeter of the border fence
- d. those who attempted to cross the border fence after 5 July but were stopped by the police before doing so
- e. those who crossed the border irregularly after 5 July and were apprehended beyond the 8 km perimeter of the border fence

is more balanced:



Since the “legalisation” of extrajudicial push-backs in the border area, the HHC and other organisations working with migrants and refugees, including the UNHCR and the 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 and military.

The increasing and systematic pattern of violence against would-be asylum-seekers is further evidenced by reports released by Human Rights Watch and Amnesty International²⁷. The doctors 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 English²⁸. 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”.²⁹

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. Since then, however, according to information available to the HHC, no internal investigation or criminal procedure has been launched in this matter.

The HHC requested detailed description of the measures taken by the authorities within the 8 km perimeter 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.

²⁷HRW’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>

²⁸http://hvg.hu/itthon/20160824_roszke_horgos_tompa_szerbia_hatar_menekultek_sor_embercsempesz_video_erosz_ak

²⁹http://www.liberation.fr/planete/2016/09/18/a-la-frontiere-serbe-frontex-s-embourbe-dans-la-galere-hongroise_1501920

Related case profile No. 1

On 31 May 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 the HHC on a visit to Serbia met a group of Pakistani single males 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 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 the 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 treated in Subotica, the other in Belgrade.

III. Overview of the situation 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 which hosts UASC in Hungary. According to the Asylum Act, UASC are not placed in a reception centre managed by the OIN, but in the Children's Home. This means that Fót is not part of the Hungarian reception system regime, and the body responsible to ensure the adequate reception conditions and the operation of the facility is not the OIN 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 UASC into the mainstream Hungarian child welfare system.

1. General information and physical conditions

a) Access to UASC

The HHC has a long-standing partnership agreement with the OIN, according to which the HHC's lawyers can access all reception and detention centres to provide free legal assistance and conduct monitoring visits. Since Fót is not part of the asylum reception regime, it is not included in the partnership agreement. Despite the lack of a formal cooperation agreement, the HHC staff never experienced difficulties in entering the Children's Home and providing legal assistance in the facility.

b) Situation in Fót

Fót is in a difficult position due to the generally hostile attitude towards the Home in the town, which is not independent of the massive, state-funded xenophobic propaganda campaign of the Hungarian government targeting migrants and refugees. 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. At the time of writing, Jobbik is still in the process of collecting signatures from residents to support the local referendum. The results of their efforts are not known yet but the attempt in itself signals a worrying shift in local politics which negatively affects UASC in Fót.

c) Number of UASC

On 7 December 2016 Fót hosted 36 UASC. The vast majority of them were 14-17 years old (30), there were 2 children who were between 10-13 and 4 siblings younger than 10 years old. The appearance of children younger than 10 years old is not part of a trend but a single instance. These children are currently awaiting their transfer back to Germany, from where they were abducted from by their father, who is currently under criminal procedure.

The vast majority of UASC are from Afghanistan (23). Apart from them, there were 2 people from Libya, 2 from Iraq, 3 from Somalia, 3 from Pakistan, 2 from India and 1 from Gambia. The fluctuation of children is extremely high. Most of them move on from Fót within 2-3 days of their arrival and only regard it as a transit station. Although staff of the Home informed the HHC 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 UASC 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 UASC.

Building A is part of a larger building and looks somewhat old from the outside but is neat and tidy inside. This building accommodates both girls and boys without having the possibility to separate them. There are five children accommodated here and with the exception of one asylum seekers all of them are the recipients 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 was recently renovated and modernised. One of the rooms was converted into a communal place and merged with the kitchen, which resulted in a modern communal place with adequate cooking and resting facilities.

The other house, Building B hosts the remaining 29 UASC, 27 boys and 2 girls. Building B consists of two wings (Wing 1 and Wing 2) and each wing has two floors. The ground floor of Wing 2 is normally used for hosting the new arrivals until they are given their rooms which permanently host UASC. The ground floor of Wing 1 hosts the dining hall and the kitchen where lunch and dinner are made. The first floors of both Wings host the rooms where UASC are permanently accommodated.

Building B is visibly more recently built than Building A, though since it hosts a much larger group of children, it is feels more used. However, the attempts of 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, although they often complain that the balconies are closed for the night, which the staff considers a necessary safety measure.

Each room contains two beds, two lockers and one or two drawers and two shelves on the walls where children can place their properties. The staff attempt to arrange children into rooms based on their nationality, yet this does not always succeed due to the lack of space and the number of rooms available. However, there seems to be a silent understanding that even if rooms become crowded for a while and children from conflicting 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 for a while, because the number of children arriving has been decreasing.

Since there are only 6 children under the age of 14, they do not occupy a separate Wing but are hosted in Wing 2 together with boys between 14 and 17. Recently one of the rooms was turned into a playing room with toys and a TV, which is popular among the younger children.

Despite all efforts, the lack of efficient separation of children under 14 inevitably generates problems. There was a case when an 11-year old Afghan boy reported abuse from the older boys who 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, 22 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 receiving a decision on their asylum claim are ineligible 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 if needed. The local doctor, who is specialised in paediatrics, visits the Home every day from Mondays to Fridays. 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 a designated teacher who works at the Than Károly School, so that children who are motivated and already possess basic language skills in Hungarian and English are able to enrol in the school's formal education programme.

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 workshops on migration and asylum. The HHC held three sessions in order to exchange experiences on 16 March, 1 and 22 April 2016 aimed at:

- identifying the main challenges for guardians,
- attempting to clarify the roles and responsibilities of the different stakeholders,
- giving introductory lessons into asylum law, its basic notions and concepts and
- improving collaboration among all stakeholders and building contacts.

Following those 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.³⁰ The one day programme was attended by 4 guardians, the temporary head of the Fót's UASC

³⁰ www.nidos.nl

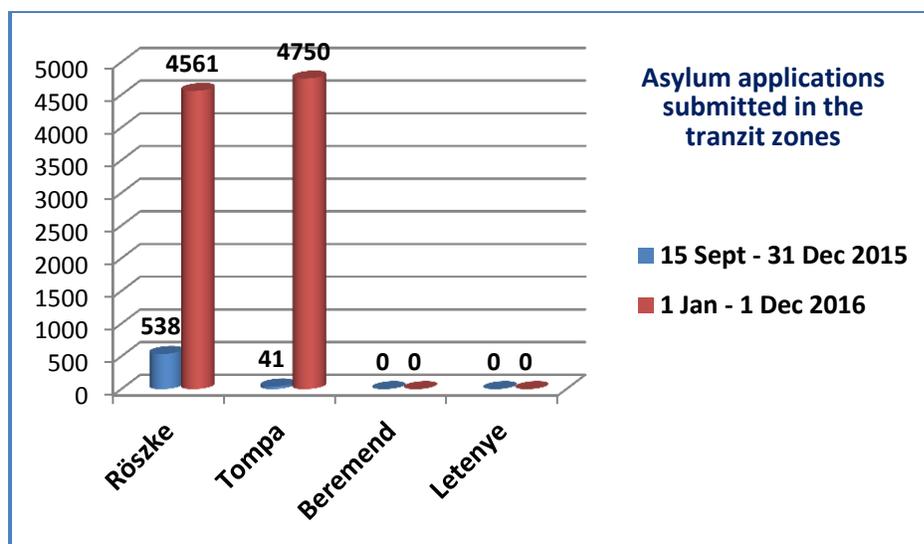
unit, a social worker from the Budapest Social Services specialised in child care, an educator from Menedék Association for Migrants working in Fót, and staff from the HHC. The temporary head of Fót's UASC unit, also participated on a workshop organised by the HHC and the Cordelia Foundation for the Rehabilitation of Torture Victims on torture survivors and PTSD.

Encouraged by the success of these discussion, the HHC initiated a regular roundtable meeting with the participation of Fót, the guardians, the Cordelia Foundation, SOS and Menedék. The meetings will focus on discussing individual cases and aim to introduce a multidisciplinary best interest determination process, which is currently lacking from the legal framework. The first meeting will be held on 9 December 2016.

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

By 15 September 2015, the 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 the Serbian border, this border section continues to be the third biggest entry point to Europe. The transit zones along the Croatian border have not been visited by asylum seekers, but in 2016 the significance of the transit zones along the Serbian border has grown as shown by the below chart:



The Hungarian Office for Immigration and Nationality (OIN), which operates the transit zones and is in charge of asylum procedures in Hungary, decides exactly who can enter the transit zone on a particular day. Since March 2016, an ever-growing number of migrants continue to gather in the 'pre-transit zones', which are areas on Hungarian territory that are sealed off from the actual transit zones by fences in the direction of Serbia. Here, migrants wait in the hope of entering the territory and the asylum procedure of Hungary in a lawful manner. Approximately one-third of those waiting to access the transit zones are children younger than 18 years. Although the pre-transit zones are physically located on Hungarian soil,

they are considered to be in no man's land by Hungarian authorities, who provide little to nothing to meet basic human needs or human rights.

In the Tompa pre-transit area, migrants wait idly in makeshift tents made of the blankets distributed by the UNHCR, which can provide some shade from the sun but do not protect the migrants from the rain and cold. In Röszke, the authorities allow the use of real tents. However, the cold and rain takes its toll on the migrants in both pre-transit areas.



Röszke Pre-transit



Tompa Pre-transit

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

The lack of food, absence of shelter and sanitary facilities and the overall inhumane conditions are, however, not the biggest source of frustration for the hundreds of people seeking asylum. It is rather the long and arbitrary wait, in which nobody knows how long they will have to remain under these conditions. The transit zones in Tompa and Röszke have limited capacities, and between March and 1 November on average, only 20-30 asylum seekers were allowed to enter per day, which on some summer days left hundreds to wait outside. Since 2 November the transit zones operate with reduced working hours and only on working days from 8-16 which results in only about 20 people per day gaining access to the asylum procedure. This makes the wait in front of the transit zones even longer, and those waiting even more desperate.

The clear factors that determine who is allowed access to the transit zone are time of arrival and extent of vulnerability. The other determining factors are not so clear. 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 a so-called community leader or list manager who is chosen by the people waiting at the given place and who communicates 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. But there are other determining factors when it comes to entry, which are not so clear and not knowing them further frustrates those waiting.

Despite giving priority to families with small children, the HHC spoke to several families with small children who had been waiting both in Röske and Tompa for several weeks on the visits to the pre-transit areas on 18 August and 12 September respectively. For example, the HHC met a family from Syria with four children 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 organizations and volunteers to these areas, make the migrants in the pre-transit zones, among them many children, especially vulnerable.

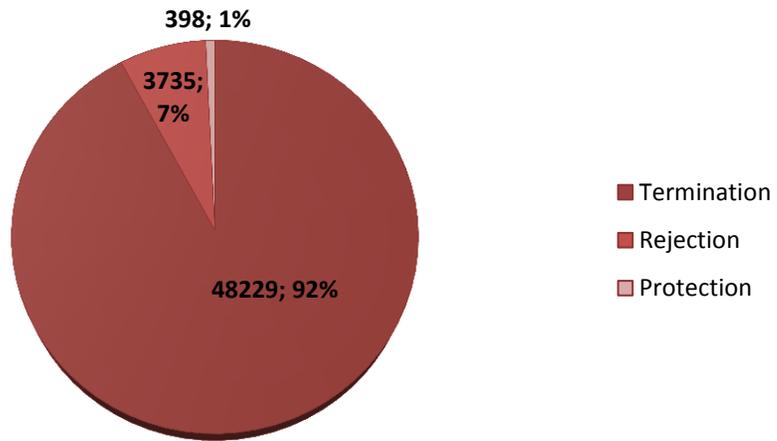
V. Statistical data

1. Asylum statistics

	2015	1 Jan – 30 November 2016
Number of arrivals	over 400 000	34940
Number of asylum applications	177135	28803
Protection granted	617	398
Asylum seekers under 18 years	36286	8332
Unaccompanied asylum seeking children	8804	1202
Protection granted to UAMs	20	11 (until June 30)
Number of UAMs staying in Fót	2422	1301
Number of UAMs assisted by the HHC	115	114

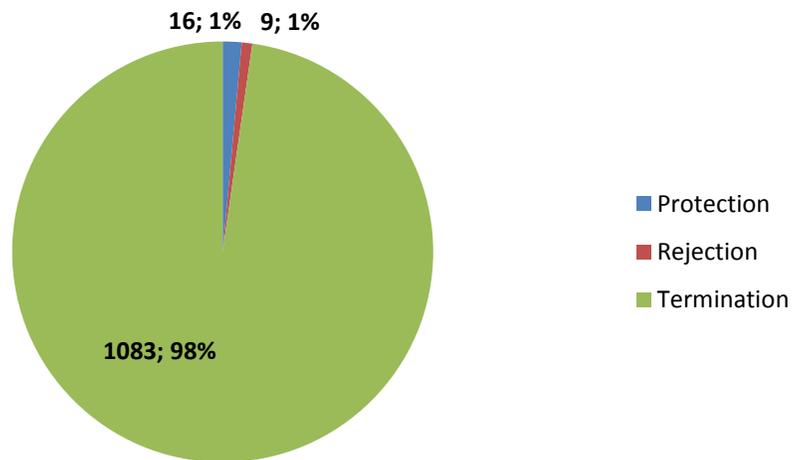
The low recognition rate in Hungary is usually attributed to it being a transit country for asylum seekers. While Hungary's geographical location and certain instruments that hinder access to the asylum and the welfare systems indeed play a role in the large number of terminated cases, the strikingly low rate of recognition (9%) suggests systemic deficiencies. Recognition rates for Afghan (8%), Iraqi (16%) and Syrian (12%) citizens are also low.

Asylum decisions by OIN (Jan-Nov 2016)



Unaccompanied minors are granted protection at a higher rate (64%), but they are more likely to continue their journey before a decision is made in their case.

Asylum decisions by OIN re: UAMs



2. Education statistics

	on 30 November 2016
UAMS in Fót	43
UAMS in formal education	11
UAMS in non-formal education	32