

# Hungary



as a country  
of asylum



## Observations on the situation of asylum-seekers and refugees in Hungary

### I. Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) is mandated to monitor the implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter jointly referred to as the 1951 Convention) by virtue of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of the 1967 Protocol. The purpose of this paper is to provide an assessment of the current protection situation for asylum-seekers and refugees in Hungary as of early 2012 in response to a number of queries received from different European states. Given the significant amendments introduced to the Hungarian asylum law in 2010, this report offers an assessment of these changes, and the impact on persons of concern to UNHCR. While highlighting good practices, this paper will also indicate areas where progress can be made.

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## II. General background

2. Hungary acceded to the 1951 Convention in 1989 and was elected as a Member of UNHCR's Executive Committee in 1992 in the midst of an influx of tens of thousands of refugees from neighbouring Yugoslavia. Hungary has acceded to almost all relevant human rights conventions, as well as the 1954 UN Convention relating to the Status of Stateless Persons (henceforth the 1954 Convention) in 2001 and to the 1961 UN Convention on the Reduction of Statelessness in 2009.
3. The year 2011 saw unscheduled visits by the UN Special Rapporteurs on the Promotion and Protection of the Rights to Freedom of Opinion and Expression (April),<sup>1</sup> and on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (May).<sup>2</sup> Both Rapporteurs expressed concerns about xenophobia, racism and intolerance encountered by refugees and asylum-seekers in Hungary as well as the harsh conditions of detention imposed on asylum-seekers.
4. In May 2011, the UN Human Rights Council<sup>3</sup> discussed Hungary's first report under the Universal Periodic Review. The national report was drafted in a consultative process with NGOs, academics and UNHCR, and some 148 recommendations were put forward by States. Those relevant for refugees and asylum-seekers related mainly to insufficient social integration and prolonged periods of detention.

## III. Migration and asylum policies

5. A European Union Member State, Hungary is located at the crossroads of migratory movements in Central Europe and along the Eastern border of the European Union. Despite its geographic position, Hungary has not yet developed an official migration policy. The Government, in place since 2010, has considered asylum matters primarily in the context of the fights against "illegal" migration and perceived abuses of the asylum system. In amendments to legislation on asylum and foreigners, as well as in the respective implementing measures, the human rights and protection needs of asylum-seekers and refugees have been accorded lesser priority than security and law enforcement objectives. For example, fewer resources have been allocated to open reception arrangements or alternatives to detention, while more resources are devoted to the refurbishment and maintenance of the expanding administrative detention regime. The detention regime and practice has become more extensive, while access to the asylum procedure is more restricted.

<sup>1</sup> Office of the High Commission for Human Rights, "UN expert to engage Government on criticized media legislation," 1 April 2011, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10906&LangID=E>.

<sup>2</sup> Office of the High Commission for Human Rights, "Time to transform international obligations into effective implementation at home", 31 May 2011, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11085&LangID=E>.

<sup>3</sup> Office of the High Commissioner for Human Rights, Universal Periodic Review, 18th session, 11 May 2011, <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/HUSession11.aspx>.

6. Hungary has increased returns to countries it deems safe countries of asylum, and this creates the risk of indirect *refoulement*. By way of example, approximately 450 applicants were prevented from entering the in-merit procedure in Hungary including those returned to Serbia in 2011.<sup>4</sup> Ten cases of possible *refoulement* were identified by UNHCR in 2010, seven in 2011. In some cases foreigners, including asylum-seekers, once returned to Serbia, are immediately upon admission transported by the Serbian police to the Macedonian border and handed over to the authorities of the former Yugoslav Republic of Macedonia without further formalities. As the former Yugoslav Republic of Macedonia considers Greece a safe country of asylum, asylum-seekers may end up, as a result of chain deportation, in Greece, and exposed to further removal, without ever having had their asylum claim considered on the merits.<sup>5</sup>
7. In 2011, a total of 1,693 asylum-seekers were registered (mostly from Afghanistan, Serbia and Kosovo, Pakistan, Syria, Somalia), representing a decrease of 19.5% compared to 2010 (following a 55% decrease from 2009 to 2010). Forty-seven persons were recognized as 1951 Convention refugees (74 in 2010), 98 received subsidiary protection, 11 benefited from protection against *refoulement* on the basis of tolerated stay (compared with 115 and 58 respectively in 2010), while 623 applications were abandoned (1,384 in 2010), due in most cases apparently to the departure from the country of the applicant to destinations in Western Europe. According to government statistics, twenty-five per cent of the applications were considered as subsequent applications (either in the context of Dublin II returns or otherwise), compared to 20% in 2010.<sup>6</sup>

## IV. Domestic legal framework

### (including the transposition of relevant EU Directives and implementation)

8. Hungary has broadly transposed the relevant EU asylum-related Directives into national legislation. The Law on Asylum was adopted in June 2007,<sup>7</sup> followed by implementing provisions to the law covering the structures and procedures necessary to determine and provide for international protection needs, reception and integration services.<sup>8</sup> The Office of Immigration and Nationality (OIN) is responsible for asylum and statelessness determination procedures, the provision of reception services and limited integration services to asylum-seekers and refugees, respectively.
9. As of 24 December 2010, amendments to the legislation relevant to asylum-seekers and refugees were enacted, providing for the following:<sup>9</sup> the detention of asylum-seekers while their cases are pending in the in-merit procedure; an increase in the maximum length of administrative detention from six to 12 months; and the detention of families with children up to 30 days. In addition, the amendments introduced the concept of manifestly unfounded applications. Furthermore, it provided that claimants submitting repeat application may be subject to limits on their rights to accommodation, and that appeals against negative decisions on their claims would no longer have suspensive effect.

<sup>4</sup> Letter issued by UNHCR for a case before the ECtHR: *Ghafory v Hungary*, 40773/11, 30 August 2011 on Serbia not considered as safe for asylum-seekers.

<sup>5</sup> In the Former Yugoslav Republic of Macedonia, 740 applications were recorded in 2011, 58 cases were closed down based on the notion of Greece being a safe country of asylum and only 7 interviews were conducted in the framework of refugee status determination. Information provided by UNHCR Macedonia.

<sup>6</sup> Figures from the Office of Immigration and Nationality.

<sup>7</sup> Act LXXX of 2007 (in force since 1 January 2008), amended by Act CXXXV of 2010.

<sup>8</sup> Government Decree No. 301/2007 (XI.9.).

<sup>9</sup> Act CXXXV of 2010 (adopted by Parliament on 22 November 2010); Government Decree 290/2010. (XII.21.).

10. Generally, while Hungarian legislation on asylum is consistent with international and European standards and contains essential safeguards, there are some exceptions. Moreover, a number of shortcomings are revealed in its implementation. This paper will present several examples.

## V. Consistency with the 1951 Convention

11. Currently, Hungary's legislation and practice is at variance with provisions of the 1951 Convention in three main areas. Firstly, the Hungarian law lacks sufficient legal guarantees to ensure full conformity with **Article 31** of the 1951 Convention ("Refugees unlawfully in the country of refuge") Asylum-seekers are often arrested and legal proceedings are initiated against them for arriving in Hungary with false or forged travel documents. Despite UNHCR's consistent and long-term efforts to influence the legislation and practice, persons convicted of the administrative offence of unlawful entry or stay face harsh detention conditions in prison facilities housing persons charged with criminal offences.
12. Secondly, while children recognized as stateless generally enjoy preferential treatment in naturalization,<sup>10</sup> in line with Hungary's obligation under the 1954 Convention relating to the Status of Stateless Persons, the law does not address the particular situation of children born by refugee parents. This is the case despite the obligation in **Article 34** of the 1951 Convention relating to the Status of Refugees ("naturalization").
13. Thirdly, Hungary has not been fully complying with its responsibilities under **Article 35** of the Refugee Convention ("Co-operation of the national authorities with the United Nations"), in particular concerning the provision of statistics on asylum-seekers and refugees upon request by UNHCR (e.g., on the number of asylum seeking families with children held in detention, and on the number of refugee family reunification cases).

Consistency with  
1951 Convention

### Recommendations:

- introduce legal guarantees in the national law in order to fully implement Articles 31, 34 and 35 of the 1951 Convention.
- ensure procedures are in place to provide regular and *ad hoc* information and statistics to UNHCR, in line with relevant international obligations.

<sup>10</sup> Section 4 (4) and (5) of the Act LV of 1993 on Citizenship:

"(4) A non-Hungarian citizen who has resided in Hungary continuously for at least five years prior to the date of submission of the petition, and if the conditions set out in Paragraphs b)-e) of Subsection (1) are satisfied, may be naturalized on preferential terms if he/she:

- a) was born in the territory of Hungary;
- b) had established residence in Hungary before reaching legal age;
- c) is stateless.

(5) The criteria of continuous residence in Hungary, for the periods of time defined in Subsections (1)-(4), may be waived in the case of minors, if the minor's petition for naturalization is submitted together with that of the parent's or if the minor's parent was granted Hungarian citizenship."

## VI. Access to territory and treatment of asylum-seekers at points of entry

14. Hungary has demonstrated its commitment to cooperate with UNHCR on access to its territory, participating in tripartite cooperation between the National Border Police, the Hungarian Helsinki Committee and UNHCR. This cooperation began in 2006 when an agreement was put in place to jointly monitor external EU borders and ensure access to territory for persons in need of international protection.<sup>11</sup>
15. Nevertheless, UNHCR received credible complaints in 2010 (ten complaints) and 2011 (seven) from Somali and Afghan asylum-seekers, including separated children, alleging forced return to Ukraine and Serbia by Hungarian authorities. UNHCR has advised against the return of asylum-seekers to Ukraine<sup>12</sup> and Serbia.<sup>13</sup> Under current Hungarian legislation, there is no requirement for a personal interview before the refusal of entry (and forcible return) of a foreigner wishing to enter or entering Hungary unlawfully. This means that border officials have no opportunity in practice to determine whether a person wishes to apply for asylum, or whether there are other grounds not to return the person to certain countries.
16. The UN Committee against Torture recommended the following in its Conclusions and Recommendations to Hungary in 2006:

*The State party should ensure that it complies fully with Article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.*

*In this respect, the State party should ensure that the relevant alien policing authorities carry out a thorough examination in accordance with Section 43 (1) of the Aliens Act, prior to making an expulsion order, in all cases of foreign nationals who have entered or stayed in Hungary unlawfully, in order to ensure that the person concerned would not be subjected to torture, inhuman or degrading treatment or punishment in the country where he/she would be returned. The State party should expand and update its country of origin (COI) information database and take effective measures to certify that the internal regulation about the obligatory use of the COI system is respected.<sup>14</sup>*

<sup>11</sup> The framework agreement and cooperation has had a positive impact on the conclusion of similar agreements in other countries of the region and beyond. Annual reports are posted on [www.unhcr-centraleurope.org](http://www.unhcr-centraleurope.org) and [www.helsinki.hu](http://www.helsinki.hu).

<sup>12</sup> UN High Commissioner for Refugees, *UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers*, October 2007, Corr., available at: <http://www.unhcr.org/refworld/docid/472f43162.html>.

<sup>13</sup> Letter issued by UNHCR for a case before ECtHR: *Ghafori v Hungary*, 40773/11, 30 August 2011, see Hungarian Helsinki Committee, *Serbia As a Safe Third Country: A Wrong Presumption*, September 2011, <http://www.unhcr.org/refworld/docid/4e815dec2.html>.

<sup>14</sup> Conclusions and recommendations of the Committee against Torture: Hungary, 06/02/2007, CAT/C/HUN/CO/4, para. 10, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.HUN.CO.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.HUN.CO.4.En?Opendocument).

17. The Committee against Torture also addressed the need for training in its concluding observations in 2006:

*The State party should further develop educational programmes to ensure that law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All personnel should receive specific training on how to identify signs of torture and ill-treatment (...). Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.*<sup>15</sup>

18. As the Committee stated, there is a need for an effective, independent and impartial review of decisions on expulsion, return or extradition. However, these recommendations have not yet been reflected in Hungarian law or practice. While some training activities have been organized in the past by the Hungarian Helsinki Committee with EU funding, and despite UNHCR recommendations to address this gap, the Government has yet to establish a formal programme to ensure regular and systematic training for law enforcement officials and border police in the field of human rights and refugees. One positive development in this field is the interagency drafting of a textbook on human rights sensitive border management for the Police Academy in 2011.<sup>16</sup> However, more needs to be done to provide essential safeguards to prevent the risk of *refoulement*.

Access to  
territory

## Recommendations:

- ensure access to the country's territory for asylum-seekers in full respect of the principle of *non-refoulement* as established in international refugee and human rights law;
- require the authorities to conduct personal interviews before any return decision is made, in order to prevent potential *refoulement*;
- establish training programmes for law enforcement officials, prison staff and police and other concerned personnel concerning the 1951 Convention, and put in place mechanisms to ensure the sustainability of training programmes.

<sup>15</sup> Ibid footnote 14, para. 11.

<sup>16</sup> National Police, Hungarian Helsinki Committee and UNHCR.



## VII. Access to asylum procedures

(inclusive of transfer of asylum-seekers to Hungary in the Dublin II procedure)

19. Access to asylum procedures is generally available for applicants both in-country and at the airport. However, access has proven problematic for those in **detention**,<sup>17</sup> for Dublin II returnees and for those who enter Hungary via Serbia. Although a number of asylum applications have been recorded in detention, it has been reported that some asylum-seekers have been unable to submit their applications, or that their applications were not forwarded to the competent asylum authority. Such cases were documented by the Hungarian Helsinki Committee in 2010-11.<sup>18</sup> One of the reasons for this may lie in the insufficient arrangements in administrative detention facilities for registering and forwarding requests or applications for protection, or other submissions, to competent Hungarian authorities.
20. Access to procedure has proven to be problematic in the context of **Dublin II returns**.<sup>19</sup> Asylum-seekers returned to Hungary under the Dublin arrangement are not automatically considered by the Hungarian authorities as asylum-seekers. They must therefore re-apply for asylum once they have been returned to Hungary, even if they had previously sought protection in another European state, and irrespective of the fact that they have been transferred in accordance with the Dublin II Regulation. These applications are considered to be subsequent applications. In most cases, upon return to Hungary, the issuance of an expulsion order is automatically followed by placement in administrative detention.<sup>20</sup> Applicants are required to show new elements in support of their claims, which are additional to those raised in their initial applications. Following December 2010 legislative amendments, subsequent applications do not have automatic suspensive effect on expulsion measures in all cases.<sup>21</sup> As a result, asylum-seekers transferred to Hungary under the Dublin II Regulation are generally not protected against expulsion to third countries, even if the merits of their asylum claims have not yet been examined. In sum, applicants subject to Dublin II may not have access to protection.<sup>22</sup>

Access to  
procedures

<sup>17</sup> In 2011: 1,102 (2010: 832, 2009: 401, 2008: 387; in 2007: 762).

<sup>18</sup> See generally Hungarian Helsinki Committee, *Stuck in Jail: Immigration Detention in Hungary (2010)*, April 2011, <http://www.unhcr.org/refworld/docid/4ed77ea72.html>.

<sup>19</sup> Hungary is one of the five EU member states that returned most asylum-seekers to Greece in 2010 (120).

<sup>20</sup> It must be noted however that some 118 asylum-seekers returned under the Dublin arrangement were accommodated in open OIN reception facility in Debrecen in 2011 (number of asylum-seekers returned to Hungary in 2010: 742, in 2011: 448). One of the main problems of the current regime of accommodation and/or transfer of asylum-seekers in/to open facilities is the lack of transparency on the criteria applied.

<sup>21</sup> Section 54 of the Asylum Act provides that: "If the same applicant submits an application after the adoption of final and absolute decision of refusal or discontinuation with respect to his/her previous application and the Hungarian authority or court in its latest decision so decided that the prohibition of refoulement was not applicable, a) the submission of the application shall have no suspensive effect: aa) on the execution of the expulsion; ab) on the extradition of the foreign national." With regards to asylum-seekers transferred under the Dublin II Regulation, their asylum application upon their return is considered to be a subsequent application since the initial asylum application is (i) generally discontinued and not re-opened upon their return, or (ii) in cases where the asylum-seeker leaves Hungary after the interview process, a rejection decision on the merits is issued.

<sup>22</sup> Hungarian Helsinki Committee, "Access to Protection Jeopardized: Information note on the treatment of Dublin returnees in Hungary," December 2011, (hereinafter "Dublin Returnees Report"), <http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf>.



21. OIN treats most asylum-seekers returned to Hungary under the Dublin II Regulation as irregular migrants. They are generally issued with an expulsion order upon arrival in Hungary, automatically followed by placement in administrative detention.<sup>23</sup> The Hungarian Helsinki Committee has challenged this practice in five cases involving the expulsion of asylum-seekers returned to Hungary under the Dublin II Regulation. The Metropolitan Court of Budapest has issued three judgments<sup>24</sup> stating that the expulsion orders issued by the OIN were not lawful, that the OIN should have suspended the entire expulsion procedure until final determination of the asylum claims, and that there exists no lawful ground for expulsion of an individual returned pursuant to the Dublin II Regulation where that individual requests asylum.<sup>25</sup>
22. Under applicable EU law, there are clear legal obligations on the part of the State responsible for examining the asylum application pursuant to the provisions of the Dublin II Regulation to “take back” an applicant transferred under the Dublin II Regulation by readmitting him/her to their territory, to complete the examination of the application for asylum,<sup>26</sup> to guarantee the applicant for asylum the right to remain until the determining authority has made a decision on his/her claim,<sup>27</sup> and to ensure that he/she is provided with a document certifying his/her status as an asylum-seeker, or testifying that he/she is allowed to stay in the territory of the Member State while his/her application is pending or being examined.<sup>28</sup>

## Recommendation:

- ensure full access to the asylum procedure in all contexts as envisaged by applicable international standards.

Access to  
procedures

<sup>23</sup> It must be noted however that some 118 asylum-seekers returned under the Dublin arrangement were accommodated in open OIN reception facility in Debrecen in 2011 (number of asylum-seekers returned to Hungary in 2010: 742, in 2011: 448). One of the main problems of the current regime of accommodation and/or transfer of asylum-seekers in/to open facilities is the lack of transparency on the criteria applied.

<sup>24</sup> *W. G. v. Office of Immigration and Nationality*, Metropolitan Court, 5.K.34.146/2010/4., 4 January 2011; *A. R. v. Office of Immigration and Nationality*, Metropolitan Court, 15.K.34.907/2010/5., 31 March 2011; *H. W. v. Office of Immigration and Nationality*, Metropolitan Court, 21.K.32.365/2011, 21 September 2011, as cited in Dublin Returnees Report, see footnote 22, p. 2.

<sup>25</sup> Dublin Returnees Report, see footnote 22, p. 2.

<sup>26</sup> Articles 16(1)(a), (b) and (c) and 20(1)(d) of the Dublin II Regulation. See also the *2007 EC Evaluation Report of the Dublin System* which states: “The Dublin Regulation places on the Member State determined as responsible an obligation to examine the asylum application. While most Member States correctly interpret this provision as an obligation to proceed to the full assessment of the protection needs of the asylum applicant, to the knowledge of the Commission, one Member State does not carry out, under certain circumstances, such an assessment when taking back asylum seekers from other Member States. It should be reminded that the notion of an “examination of an asylum application” as defined in the Dublin Regulation should be interpreted, without any exceptions, as implying the assessment whether the applicant in question qualifies as a refugee in accordance with the Qualification directive.”  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0299:FIN:EN:PDF>, p. 6.

<sup>27</sup> *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*, OJ L 326/13 of 13.12.2005, Article 7(1) (hereinafter “Asylum Procedures Directive”).

<sup>28</sup> *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, OJ L 31 of 6.2.2003, Article 6 (hereinafter “Reception Conditions Directive”).

## VIII. Quality of asylum procedure

23. The asylum procedure, administered by the Office of Immigration and Nationality (Refugee Directorate), combines the determination of refugee status and of eligibility for subsidiary protection into one procedure. The length of the procedure is generally 90 days, as OIN normally complies with the deadlines foreseen by law. The applicant may request the court to review the decision of OIN. Thus, the Hungarian asylum system consists of two instances: administrative and judicial. Judges typically are not asylum specialists, nor are they specifically trained in asylum law.
24. OIN has undertaken to introduce and ensure quality control in its asylum procedures. For example, OIN and UNHCR have worked closely to promote and implement quality in the asylum procedures, as evidenced by their partnership in the UNHCR-run Asylum Systems Quality Evaluation and Assurance Monitoring (ASQAEM) and the Further Developing Asylum Quality in the EU (FDQ) Projects.<sup>29</sup> Furthermore, a manual containing quality audit parameters for interviews, interview transcripts and decisions developed by OIN in conjunction with the UK Border Agency and UNHCR is used for monthly audits of RSD documents (interview records and decisions) by OIN. UNHCR audits three out of 10 documents and the results are compared and discussed, before the jointly-agreed findings are followed up with the individual adjudicators by OIN.
25. Areas for further improvement include the application of the safe third country notion,<sup>30</sup> the application of the concept of internal flight (or relocation) alternative,<sup>31</sup> the handling of LGBTI<sup>32</sup> cases and the quality of interpretation services.
26. Concerning judicial review, the Metropolitan Court of Budapest (MCB) for a number of years had by law exclusive jurisdiction over asylum appeals. Although judges working in the Administrative Panel of the Court were not specialised exclusively in refugee law, some have developed expertise in national and international refugee law. Recently, the MCB referred two cases to the Court of Justice for preliminary ruling in the context of Article 12(1)(a) of EU Directive 2004/83/EC (and Article 1D of the Geneva Convention) in 2010<sup>33</sup> and 2011.<sup>34</sup>

<sup>29</sup> These projects were carried out in the Central Europe region, covered by the European Refugee Fund community action. Quality achievements realized in the field of the Hungarian asylum procedure have been well received and recognized, not only within the OIN Refugee Directorate, but also in other OIN Directorates. This spurred the demand for quality assurance mechanisms in other areas, such as the Statelessness Determination Procedure conducted by the OIN Aliens Police Directorate, as well as country information services. Sustainability has been ensured through incorporating quality control into the organigram and statute of OIN. OIN auditors and managers remain dedicated to the cause of quality and run the process in a responsible manner with full ownership.

<sup>30</sup> See paragraph 6, above.

<sup>31</sup> A UNHCR RRCE Research Study on “The Practice of the Internal Flight Alternative in Central European Countries”, March 2012.

<sup>32</sup> Lesbian, Gay, Bisexual, Transsexual, Intersex.

<sup>33</sup> *Bolbol v Hungary*, C-31/09, 17 June 2010.

<sup>34</sup> *El Kott v Hungary*, C-364/11.

27. Since April 2011, however, the MCB no longer has exclusive authority over asylum matters. In addition to the MCB, four county courts were assigned to review OIN asylum decisions.<sup>35</sup> The newly-competent courts, namely the Debrecen-based court and courts covering the locations of the administrative detention facilities hosting asylum-seekers, have no previous experience with asylum cases. Interpretations of important asylum and refugee law concepts (such as the “safe third country” concept and “internal relocation/flight alternative”) differ significantly among courts and judges, with the widely varying outcomes suggesting a lack of knowledge regarding these specialised rules.<sup>36</sup>

## Recommendation:

- dedicate the resources necessary to ensure the newly-competent courts have the requisite knowledge and reference materials to make properly informed asylum decisions.

## IX. Reception conditions for asylum-seekers

28. Historically, the reception system in Hungary has been camp-based. Asylum-seekers and refugees were in the past hosted in OIN open-reception facilities and provided in-kind material assistance. By 2010, this practice was superseded by a policy of extensive detention of asylum-seekers unlawfully entering or staying in Hungary. Among the three OIN open-reception facilities, one was fully handed over to the police (with OIN retaining legal ownership of the facility) in April 2011 and has been converted into a “temporary” detention facility (Békéscsaba), while one large building in another open facility in Debrecen has also been transferred to the police to serve as a temporary detention facility.
29. Most asylum-seekers enter the country in an irregular manner and are accommodated in one of the four permanent administrative detention facilities run by the police in Budapest, Győr, Kiskunhalas, and Nyirbátor. Families with children, married couples and single women are accommodated in the temporary detention facility in Békéscsaba. Where Hungary is directly responsible for the assessment of the asylum claim, asylum-seekers enter the regular asylum procedure and are accommodated either in the open reception centre in Debrecen, or remain in detention facilities. Unaccompanied children seeking asylum in Hungary are hosted in the Home for Separated Children run by the Ministry of National Resources in Fót. Recognized refugees and beneficiaries of subsidiary protection are accommodated in the open OIN integration facility in Bicske. Asylum-seekers who have spent 12 months in detention and submitted repeat applications have been placed in the OIN open community shelter in Balassagyarmat since June 2011.

Reception  
conditions

<sup>35</sup> Section 123 of Act CXXXV on the amendments to migration related legislation (7 December 2010).

<sup>36</sup> E.g., in cases where applicants were represented by the HHC before the Szeged and Debrecen courts in 2011, it was found that Serbia was a “safe third country” for asylum-seekers in 12 out of 14 cases in the Szeged court; and in 2 out of 6 cases before the court in Debrecen.

30. The government actively cooperates with UNHCR in annual participatory field assessment processes<sup>37</sup> conducted with specific regard to age, gender and diversity (AGD)<sup>38</sup> and implemented through the application of a rights- and community-based approach.<sup>39</sup> In these joint activities, a number of issues and shortcomings are identified by the authorities, UNHCR and participating NGOs. This process provides at once a detailed picture of the reception conditions, and a basis to identify priorities for improvement of the reception conditions for asylum-seekers.
31. Nevertheless, the reception conditions and services that are currently in place in Hungary continue to fall short of international and EU reception standards. Persons of concern are kept in isolation in the OIN reception facilities during the often lengthy asylum procedures. Limited access to language learning and the isolation of the facilities prevent them from establishing contact with the host society. Free movement is hindered in practice, as asylum-seekers are not able to pay for the local bus tickets. The restricted opportunities to work – only within the premises of the facility – render it almost impossible to become self-sufficient.
32. The facility in Debrecen hosts a mixture of residents with significantly different legal statuses, such as asylum-seekers, aliens awaiting deportation, beneficiaries of tolerated stay, stateless persons, and others. As the entitlements differ according to legal status, it is not unusual, for example, for children placed in two neighbouring rooms to have different standards of meals. In the repeat application procedure, asylum-seekers are not entitled to the same services as those lodging initial applications, even if the merits of their cases have not yet been examined. This differentiation of legal statuses and entitlements is not clearly explained to the residents, and UNHCR has encountered residents whose legal statuses and thus entitlements differed even within one family.
33. Persons of concern in both Debrecen and Balassagyarmat complain of insufficient medical services, citing superficial medical examinations, the lack of specialized services (e.g., dermatologists), difficulties repairing or replacing broken glasses, and prohibitively expensive dental treatment. Different health problems are often treated with the same generic medication, and there are reports that medical problems are often not fully addressed. Heavily medicated in detention, by the time they arrive in Balassagyarmat, some have become practically dependent on tranquilizers. There have been reported cases of hepatitis and drug addiction, and many suffer from psychological problems that are inadequately addressed. No interpretation is provided to facilitate communication with medical staff, which significantly reduces the effectiveness of the medical care which is provided.
34. The facility in Debrecen is particularly problematic, with residents reporting toilets and bathrooms in poor condition, buildings infested by cockroaches despite regular fumigation, frequent shortages of hot water in the building housing vulnerable persons, insufficient quality and quantity of hygiene packages. There is insufficient attention to dietary needs, lack of flexibility in the provision of meals, and no money provided for those days when the camp residents are outside the camp in Debrecen. Detainees have also cited the low quality of meals provided in Balassagyarmat.

<sup>37</sup> See The UNHCR Tool for Participatory Assessment in Operations, <http://www.unhcr.org/450e963f2.html>.

<sup>38</sup> See UNHCR, Age, Gender and Diversity Mainstreaming Forward Plan 2011-2016, <http://www.unhcr.org/4e7762f19.pdf>.

<sup>39</sup> See UNHCR, A Community-based Approach in UNHCR Operations, Legal publications, 1 January 2008, <http://www.unhcr.org/47ed0e212.html>. The AGD is an on-going process undertaken in support of the planning and implementation of activities and programmes carried out by representatives from the Government, NGOs and UNHCR, with the direct participation of refugees and asylum-seekers. The team visits accommodation facilities, including administrative detention facilities and prepares recommendations to address shortcomings identified. The findings are discussed with the management of the facilities and OIN/Police and actions are agreed upon and implemented, followed by monitoring missions to assess the improvement. As a result of such recommendations over the years and after vociferous complaints, asylum-seekers in Debrecen, for example, may now choose cash over ready-made meals and hygienic packages.

35. Tensions between different groups of asylum-seekers are often high. Fights break out between residents of different ethnic groups on a daily basis, posing serious security threats, especially for women and children in Balassagyarmat. As well, in Debrecen there are tensions between ethnic Albanians and Roma from Kosovo.
36. Part of the reason for increased tensions may be that the reception system today lacks flexibility.<sup>40</sup> Previously, camp residents could be moved from one facility to another to separate different ethnic groups or problematic individuals to avoid the risk of tensions or violence. This has not been possible since 1 January 2008, as each OIN facility has a specific function (Békéscsaba: detention for pre-screening of special groups, Debrecen: processing, Bicske: integration, Balassagyarmat: ex-detainees with or without repeat applications).
37. Residents in Debrecen report that regular night checks organized by the police are often conducted in a harsh manner without respect to privacy and dignity. The atmosphere in Balassagyarmat is tense, with many verbal conflicts reported. Security checks have had a particularly negative impact on patients treated for Post-Traumatic Stress Disorder.
38. The current reception system does not fully respect the principle of the best interests of the child.<sup>41</sup> Families with school age children are required to move from Békéscsaba to Debrecen, and if recognized, from Debrecen to Bicske, or are otherwise sent to Balassagyarmat with other asylum-seekers without consideration of the best interest of the child.
39. Due to the limited daily activities available to asylum-seekers in reception centres, especially in Balassagyarmat, passivity and frustration place residents at a heightened risk of hospitalization and dependency. In Balassagyarmat, as a consequence of the general idleness, or “being at the end of the road,”<sup>42</sup> the tense atmosphere often cannot be adequately addressed either by staff or the residents.
40. Asylum-seekers in Debrecen report that they are not given sufficient information about the asylum procedures or their individual cases. In Balassagyarmat, residents similarly report that neither the grounds for their placement nor the next steps in their procedure are adequately explained.
41. Currently there are no external oversight or quality control monitoring mechanisms in place with regard to reception conditions. A complaints procedure exists but is reportedly ineffective. Independent mediation as a “bridge function” between management and residents in such cases is lacking, and this is particularly felt in Balassagyarmat.

<sup>40</sup> See the report by the Parliamentary Commissioner for Human Rights, 18 December 2008, [www.obh.hu](http://www.obh.hu).

<sup>41</sup> Article 3, Convention on the Rights of the Child; Section 4 (1) of the Act on Asylum.

<sup>42</sup> A quote from a resident who was interviewed by UNHCR and who had spent 12 months in detention and still cannot be returned to any country due to mainly technical reasons and who has not received any form of protection.

42. Generally, reception arrangements in Hungary would require urgent review, as conditions appear to be largely determined by available funding, rather than needs. With shrinking financial resources allocated to the asylum system, more and more basic services have been outsourced without proper quality control. External funds such as the European Refugee Fund (ERF) have been used to cover basic services, but the projects/services are often not sustainable, as the requisite complementary national resources are not allocated. The same holds true for the rehabilitation and treatment of torture victims. Such services for asylum-seekers and refugees, who are victims of torture or suffer from Post-Traumatic Stress Disorder, are not provided for by law. The Cordelia Foundation, a local NGO and UNHCR implementing partner, does provide such services, although also subject to available funding.

## Recommendations:

The authorities should take an approach towards reception that is:

- needs-based: flexible to respond to individual special needs as well as group dynamics;
- solution-oriented: guided by the potential long-term outcomes of the asylum process, including the integration of persons who are recognised in need of international protection or sustainable return and reintegration of those whose claims are unsuccessful; in that context the camp-based system should be re-considered;
- quality-assured: in full compliance with independently agreed, transparent service standards and relevant legal provisions of the Asylum Act and other relevant legal norms.

## X. Detention of asylum-seekers

43. UNHCR is concerned that asylum-seekers face serious challenges in accessing protection in Hungary in line with international and European standards, including because of the increasing use of administrative detention. Since April 2010, asylum detention has become the rule rather than the exception. Some 1,102 asylum-seekers were reported to have applied for asylum while in detention in 2011, representing two-thirds of the total number of asylum applicants.<sup>43</sup> On average, 93 asylum-seekers were held in detention on any given day in Hungary in 2011. In the largest detention facility in Nyirbátor, the majority of the detainees spend 4-5 months in detention. Moreover, as of 24 December 2010, amendments to the legislation relevant to asylum-seekers and refugees entered into force,<sup>44</sup> making it possible to detain asylum-seekers while their cases are in the “in-merit” procedure,<sup>45</sup> increasing the maximum length of administrative detention to 12 months, and authorizing the detention of families with children for up to 30 days.
44. In addition to the lack of a clearly applicable legal basis for the detention of asylum-seekers, the previous detention practice from 2008 until the amendment of the asylum law in 2010 was unlawful and arbitrary, as it did not comply with the procedures prescribed by Hungarian law, notably Section 55(3) of the Asylum Law.<sup>46</sup> Asylum-seekers were kept in administrative detention beyond the legal limit of 15 days and were not released, even after their case was referred to the regular status determination procedure. The Hungarian practice of detaining asylum-seekers was the subject of a ruling by the European Court of Human Rights (ECtHR).<sup>47</sup> The US Department of State’s annual human rights report (released on 12 March 2010)<sup>48</sup> explicitly referred to the unlawful detention of asylum-seekers in Hungary.<sup>49</sup>

<sup>43</sup> Compared with 832 in 2010, 401 in 2009, 387 in 2008, and 762 in 2007.

<sup>44</sup> Act No. CXXXV of 2010 (adopted by Parliament on 22 November 2010); Government Decree 290/2010 (XII.21.).

<sup>45</sup> Act No. LXXX of 2007 on Asylum (hereinafter “Asylum Act”), Section 55(1) provides that: “If the refugee authority establishes the admissibility of an application, and the application is not manifestly unfounded, the refugee authority shall refer the application to the detailed procedure.” This “detailed procedure” is commonly referred to as the “in-merit procedure” in Hungary.

<sup>46</sup> Section 55 (3) of the Asylum Law: “If the refugee authority refers the application to the in-merit procedure and the applicant is in alien policing detention, the alien police authority shall, at the initiative of the refugee authority, terminate his/her detention.”

<sup>47</sup> *Lokpo et Touré v. Hungary*, Application no. 10816/10, Council of Europe: European Court of Human Rights, 20 September 2011, <http://www.unhcr.org/refworld/docid/4e8ac6652.html>. The Court was not persuaded that the applicants’ detention, which lasted five months purportedly with a view to their expulsion that never materialised, was a measure proportionate to the aim pursued by the alien administration policy. The applicants’ detention could, therefore, not be considered “lawful” for the purposes of Article 5 § 1 (f) of the Convention and had to be declared a violation of Article 5 § 1 of the Convention. The government appeal to the Grand Chamber was rejected, and so the judgment is final and Hungary will be required within three months of the 8th of March 2012 to pay each of the applicants 10,000 euros in respect of non-pecuniary damage and 3,000 euros to the applicants jointly in respect of costs and expenses.

<sup>48</sup> US Department of State, Bureau of Democracy, Human Rights, and Labor, *Human Rights Reports, 2009 Country Reports on Human Rights Practices, Europe and Eurasia, Hungary*, <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136035.htm>.

<sup>49</sup> On April 21, the Prosecutor General determined that the Office of Immigration and Nationality was unlawfully detaining certain asylum seekers. The Prosecutor General sent a notice to the OIN demanding that it immediately enforce the law by releasing all asylum seekers whose applications had been admitted into the final asylum procedure. The OIN challenged this notice at the Ministry of Justice and Law Enforcement, suggesting an amendment to the law. The HHC reported that the unlawful practice continued at the end of the year despite the Prosecutor General’s intervention. The full report is available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136035.htm>.



45. The detention of asylum-seeking families with children has been heavily criticized. According to Hungarian officials, at least 77 families have been detained under the new legal provision.<sup>50</sup> The relevant provision<sup>51</sup> stipulates that families can only be detained as “*a measure of last resort.*” UNHCR has requested statistics on the number of families with children seeking asylum in Hungary, those whose detention was ordered, those who were detained, and the duration of the detention. This information was not provided by OIN despite Article 35 of the 1951 Geneva Convention.<sup>52</sup> UNHCR therefore cannot confirm that the law is in practice applied as a measure of last resort.<sup>53</sup>
46. Hungary imposes prolonged periods of administrative detention upon asylum-seekers without providing avenues to effectively challenge the detention once ordered or considering alternatives to detention.<sup>54</sup> Judicial review of administrative detention of asylum-seekers is ineffective in Hungary in many instances, as courts fail to address the lawfulness of detention in individual cases, or to provide individualized reasoning based upon the specific facts and circumstances of the applicant.<sup>55</sup> Administrative decisions imposing detention on foreigners for unlawful entry or stay are subject to review conducted by first instance courts. Such reviews are conducted mostly by criminal law judges in a manner normally applied in criminal cases. It is common practice for the court to issue decisions for a group of five, 10, or 15 detainees within 30 minutes, thus significantly decreasing the likelihood of a fair and individualized review.<sup>56</sup>
47. In case of asylum-seekers, a particular concern is that the legal aim of administrative detention – to ensure that the person concerned is physically available for expulsion – cannot be met. This is because asylum-seekers cannot be expelled before the final closure of their asylum cases, which together with the legal review, may take a year or more. Hungarian detention cases currently pending with the ECtHR<sup>57</sup> are illustrative in this respect, raising the question of the ineffectiveness of the legal remedy in law and practice for detained asylum-seekers, as in the decision of the ECtHR in *Lokpo et Touré v Hungary*.<sup>58</sup>

<sup>50</sup> According to information provided by the Hungarian Government delegation at a side-meeting of the UNHCR Ministerial Conference in Geneva in December 2011, “only” 77 families with children were detained under the new legal provisions. The same information was provided by the Hungarian Government to the Austrian Asylum Office in December 2011.

<sup>51</sup> Section 56 (3) of the Act II of 2007 on Third Country Nationals’ Entry and Stay reads: “With respect to the best interest of the child primarily, detention can only be ordered in respect of a family with minor children as *an ultimate measure* for a *maximum* term of thirty days provided that the alien control authority has ascertained that the purpose of ordering the detention may not be accomplished by way of the application of the provisions of Section 48 (2) or Section 62 (1) of this Act.”

<sup>52</sup> Letter of 106-Nef-21277/1/2011, 30 November 2011.

<sup>53</sup> The recent decision of the ECtHR in the case of *Popov v France* is relevant to this issue. In that case, the Court concluded that the detention of children with their parents was an unjustified violation of the right to enjoyment of private and family life under Article 8 of the ECHR, and was contrary to the best interests of the child. The Court in that judgment stated that in order to fulfil its obligations under Article 8, it was not sufficient for the State merely to refrain from separating the children and their parents, but that further efforts should be made to respect family life. The case concerned a detention of 15 days, which is shorter than the detention period for many families in Hungary. *Popov c. France*, Requêtes nos 39472/07 et 39474/07, Council of Europe: European Court of Human Rights, 19 January 2012, <http://www.unhcr.org/refworld/docid/4f1990b22.html>.

<sup>54</sup> See also *Yoh-Ekale Mwanje v. Belgium*, ECtHR, App. No. 10486/10, 20 December 2011, where the ECtHR held that failing to consider alternatives to detention may implicate rights under Article 5(1) ECHR.

<sup>55</sup> See Dublin Returnees Report, footnote 22; Council of Europe Committee for the Prevention of Torture and Inhuman Degrading Treatment or Punishment, *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009*, April 2009, at pages 26-27.

<sup>56</sup> Dublin Returnees Report, footnote 22, p. 5.

<sup>57</sup> Alaa AL-TAYYAR ABDELHAKIM v Hungary (13058/11), Hendrin Ali SAID and Aras Ali SAID v Hungary (13457/11).

<sup>58</sup> See footnote 47.

48. Management of detention is inconsistent (e.g., centres open and close with little notice for lawyers), and the system fails to respond adequately to the changing numbers and shifting detention arrangements. Besides the already-mentioned four permanent detention facilities and the “temporary” detention facility in Békéscsaba, other temporary facilities are opened from time to time according to needs. The temporary facilities (except for the one in Békéscsaba), are generally small makeshift detention facilities that were used extensively in 2010 and are unfit for accommodation of a period longer than 72 hours. Among the more serious reported shortcomings was lack of access to open air. Although these facilities were closed by 2011 due to a decreasing number of applicants, they may be re-opened according to future needs.<sup>59</sup> A new temporary administrative detention facility was opened in April 2012 in Csongrad and another one is to be opened in Debrecen in the middle of the otherwise open OIN reception facility. The combination of open and closed regimes in one facility may stigmatize asylum-seekers generally.
49. Furthermore, it is generally unclear when and why some asylum-seekers are transferred from detention facilities to the open centre in Debrecen, if at all, before the expiration of the twelve-month time limit. Different OIN Directorates appear to follow different policies in the absence of a publicly-available standard operating procedure.
50. Permanent detention facilities have been renovated and apply a strict prison regime, even where residents have only committed the minor offence of irregular entry or stay. Detained asylum-seekers vehemently complained about the violent behaviour of the guards.<sup>60</sup> While not every guard behaves in an inappropriate manner, some particular guards and indeed entire shifts allegedly harass detainees verbally and even physically. Detained asylum-seekers also complain about having been systematically given drugs/tranquillizers, resulting in some of them becoming addicted by the end of their detention term.<sup>61</sup> When escorted from the facility to the court for hearings, or on other outings (such as to visit a bank or post office), detained asylum-seekers are handcuffed and escorted on leashes, which are normally used for the accused in criminal proceedings.<sup>62</sup> Treating asylum-seekers as criminal suspects (see also section 46 on court review) is neither in compliance with the standards articulated by ECtHR in *Saadi v UK*,<sup>63</sup> nor with Recital 9 of the EU Returns Directive.<sup>64</sup> Detention facilities also lack proper complaint mechanisms to address such concerns.
51. Partly as a consequence of the transposition of the EU Returns Directive, administrative detention facilities are now equipped with limited internet access (some five minutes per day is available to detainees), and social workers engage in case work and community activities during normal working hours.

<sup>59</sup> “Stuck in Jail (2010)”, Hungarian Helsinki Committee, April 2011, [www.helsinki.hu](http://www.helsinki.hu).

<sup>60</sup> Such information was obtained in AGD participatory assessments, and was also registered by UNHCR offices throughout Europe who received complaints by migrants voluntarily repatriated or deported back from Hungary to their home countries. Also, IOM confirmed complaints about guard brutality through its telephone line available for those wishing to repatriate voluntarily.

<sup>61</sup> Following UNHCR intervention with the Police in October 2011, significantly fewer reports have been received on this issue.

<sup>62</sup> See the Chapter on Hungary in UNHCR’s regional AGDM report 2010: “Being a refugee”, available at <http://www.unhcr-centraleurope.org/en/what-we-do/age-gender-and-diversity-mainstreaming.html>.

<sup>63</sup> In *Saadi v UK*, para. 74, the ECtHR stipulated that

*To avoid being branded as arbitrary, therefore, such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that “the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country” (see Amuur, § 43); and the length of the detention should not exceed that reasonably required for the purpose pursued.*

Council of Europe: European Court of Human Rights, *Saadi v. United Kingdom*, 13229/03, 29 January 2008, <http://www.unhcr.org/refworld/docid/47a074302.html>.

<sup>64</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>.

52. Systematic external monitoring and civil oversight of detention conditions are conducted by the Hungarian Helsinki Committee, only upon advance notice, and with a limited number of lawyers. The Parliamentary Commissioner for Fundamental Rights<sup>65</sup> in 2012 will conduct an *ex officio* inquiry on administrative detention as a result of the many problems reported, and also in anticipation of its reporting requirements under the UN OPCAT as of January 2015.
53. UNHCR intervened in five individual cases of citizens from Kosovo/Serbia who complained about injuries suffered as a result of violence on the part of the guards while in administrative detention in Hungary between September 2010 and August 2011. Medical evidence upon return to Serbia supported their statements in some cases.<sup>66</sup> The Hungarian police conducted inquiries in each case and found that no ill-treatment took place, and apparently no disciplinary or other measures were taken. However, the police initiated an interagency consultative process in December 2011 with IOM, UNHCR, the Hungarian Helsinki Committee and Menedék Hungarian Association for Migrants, in order to map the main shortcomings of the detention system and produce an Action Plan to address the gaps.
54. The UN Committee Against Torture recommended in 2007 that:
- detention of asylum-seekers is used only in exceptional circumstances or as a last resort and then for the shortest possible time, and that the rules of maximum-severity penitentiaries do not apply to these detention facilities.*<sup>67</sup>
55. Regrettably, the detention policy as applied to asylum-seekers in Hungary falls short of this standard. In fact, over time, the detention practice has become increasingly restrictive and widespread, despite the CAT recommendation and various interventions by UNHCR, NGOs and other actors.

## Recommendation

Develop a new approach to the use and standards of detention with the cooperation of OIN, the police, UNHCR and the civil society organizations. Such an approach should seek to ensure that when used, detention meets the following principles:

- **Lawfulness:** detention must be in full compliance with international and European human rights instruments, standards and related jurisprudence and in line with Hungarian law. The applicable national law needs to meet the requirements stipulated by the ECtHR in the sense that “where the national law authorizes deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness.” (Lokpo and Toure v Hungary, para. 18);
- **Necessity and proportionality:** detention should only be used as a measure of last resort if other less coercive measures would not be sufficient or if it is justified for serious security reasons. Asylum-seekers should not be detained merely on the basis of submitting an asylum claim. Children and persons with special needs, including pregnant women, torture and trauma victims, unaccompanied elderly persons and persons with mental and physical disabilities should not be detained;
- **Effective, automatic and periodical judicial review** is required to ensure the regular in-merit examination of the legal basis for and the conditions of detention in an individualized manner. Such review should be carried out by a court specialized in reviewing administrative decision and not by a criminal court;
- **Humane conditions in detention:** detention conditions should be proportionate to the legal basis for detention and take into account individual detainees’ status, needs and dignity;
- **Alternatives to detention** should be explored and positively considered.

Detention

<sup>65</sup> Before 1 January 2012: Parliamentary Commissioner for Human Rights, Act CXI of 2011, [www.obh.hu](http://www.obh.hu).

<sup>66</sup> UNHCR interview, 28 October 2011.

<sup>67</sup> *Conclusions and recommendations of the Committee against Torture: Hungary*, 06/02/2007, CAT/C/HUN/CO/4, para. 9, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/403/45/PDF/G0740345.pdf?OpenElement>.

## XI. Treatment of unaccompanied and separated children and other groups with special needs

56. While the Hungarian Act on Asylum stipulates that they should receive preferential treatment,<sup>68</sup> there is no formal mechanism to identify asylum-seekers with special needs at an early stage.
57. **Unaccompanied and separated children** (UASC) benefit by law from differentiated treatment that, *inter alia*, provides for a guardian to be assigned, prohibits their detention, and requires priority handling of their cases. Following the recommendation of the Hungarian Parliamentary Commissioner for Human Rights, UASC seeking asylum or enjoying international protection have been included in the mainstream Hungarian child protection regime as of May 2011.<sup>69</sup> Children are now placed in a child care institution in Fót run by the Ministry of National Resources since September 2011.
58. Both to prevent and respond to abuse by adult asylum-seekers, **age assessment** has increasingly been applied in cases where age is disputed. Age assessment is usually initiated either by the national police at the time of apprehension, where the age of the UASC is relevant but disputed in context of alleged unlawful entry; during the stay in order to assign appropriate accommodation; and/or by OIN in the asylum procedure. Prior to any examinations, the informed consent of the asylum-seeker is required, and in practice usually obtained. However, the examinations do not fully comply with the requirements of a multi-disciplinary and least-invasive approach.<sup>70</sup> While they include dental examination, sexual maturity assessment, physical development assessment, and the increasing use of x-rays, tests do not touch upon cognitive and/or behavioural elements or on psychological maturity. Doctors, including paediatricians, family doctors and radiologists perform age assessments, but social workers and cultural mediators are not involved. Generally, professionals involved in the process are in an independent position, but they are seldom familiar with the child's cultural and environmental background, and generally lack specific training to conduct age assessment.<sup>71</sup>
59. The Parliamentary Commissioner of Human Rights<sup>72</sup> classified the manner in which age assessment is conducted in Hungary as highly problematic. The Commissioner suggested an amendment of the relevant law (Section 44 of the Asylum Law) to ensure that the examination is conducted in a child- and gender-sensitive manner and to include investigation into the psychological maturity of the applicant and the relevant ethnic and cultural facts/components as stipulated by General Comment No. 6 of the Committee on the Rights of the Child. Any uncertainty should result in a decision in favour of the person claiming to be a child. In addition, the examination should be carried out by an independent paediatrician with appropriate expertise. Persons claiming to be children shall be treated as such, until an age determination has been completed. The Commissioner emphasized the utmost importance of the recommended measures as age is an integral part of one's identity, as reflected by Article 8 of the Convention on the Rights of the Child and as such protected by international human rights instruments.<sup>73</sup>

<sup>68</sup> Section 4 (3) of the Asylum Act; Section 2 k) defines the term "person with special needs" as an: "unaccompanied minor or a vulnerable person, in particular, a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has suffered from torture, rape or any other grave form of psychological, physical or sexual violence, found, after proper individual evaluation, to have special needs because of his/her individual situation."

<sup>69</sup> Report A/B 7120/2009 (January 2010), <http://www.obh.hu/allam/eng/pdf/200907120.pdf>.

<sup>70</sup> See Separated Children in Europe Programme, Statement of Good Practice, 2009, [http://www.separated-children-europe-programme.org/separated\\_children/good\\_practice/index.html](http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html).

<sup>71</sup> Menedék Association for Migrants, "Review of current laws, policies and practices relating to age assessment in sixteen European countries" May 2011, Separated Children in Europe Programme, Thematic Group on Age Assessment, available at [www.separated-children-europe-programme.org](http://www.separated-children-europe-programme.org).

<sup>72</sup> *Ibid.*, footnote 69.

<sup>73</sup> See UNHCR comments to Article 21 (2)(b) of the recast Asylum Procedure Directive, 21 October 2009.

60. Age assessment is apparently only applied when the age-disputed person appears to be older than claimed. However, UNHCR has information on cases when UASC recognized in Hungary as adults were able to apply for special assistance as children in other European states.
61. UNHCR AGD assessments have found many age-disputed foreigners, including asylum-seekers, in administrative detention. Interestingly, if such UASC are returned by other EU Member States to Hungary with documents stating that they are children, based on those States' own age assessment procedures, such documents are reportedly not taken into consideration in Hungary. Instead, a new age assessment is conducted and in most of the cases, the persons concerned are considered adults.<sup>74</sup>
62. No centrally-issued standard operating procedure is in place either for the police or OIN regarding how or when to conduct an age assessment, and how to assess documents that contain age-relevant information issued by other EU and Dublin II participating States.
63. Although the Hungarian Law on Asylum specifically refers to the principle of the best interests of the child,<sup>75</sup> practice differs from law in many respects. The **current reception system** requires families to move from Békéscsaba (a screening facility) to Debrecen (a processing facility), and if recognized, from Debrecen to Bicske (a pre-integration facility), or otherwise sent to Balassagyarmat. This is disruptive for families with children, especially those of school age, as the best interests of the child<sup>76</sup> would require a stable environment for the child's growth and well-being.

## Recommendations:

- adapt the current three-phase reception procedure to take fully into account the need of children to live in a stable environment;
- reform domestic legislation concerning age assessment to meet the standards set in the Statement of Good Practice, the General Comment No. 6 of the Committee on the Rights of the Child, and the Hungarian Parliamentary Commissioner for Human Rights;
- develop and issue a standard operating procedure on age assessment;
- adhere in practice to the principle of the best interest of the child.

Special  
needs

<sup>74</sup> Hungarian Helsinki Committee, *Stuck in Jail: Immigration Detention in Hungary (2010)*, April 2011, <http://www.unhcr.org/refworld/docid/4ed77ea72.html>, p. 11.

<sup>75</sup> Section 4 (1): "When implementing the provisions of the present Act, the best interests and rights of the child shall be a primary consideration."

<sup>76</sup> Separated Children in Europe Programme, *Statement of Good Practice*, 2009, [http://www.separated-children-europe-programme.org/separated\\_children/good\\_practice/index.html](http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html). See also UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, <http://www.unhcr.org/refworld/docid/42dd174b4.html>.



## XII. Education

64. Hungary falls short of assuring the full and effective participation of foreign children, including asylum-seeking children and beneficiaries of international protection, in mainstream education.<sup>77</sup>
65. Intercultural education in Hungary scores as “unfavourable zero,” according to the Migrant Integration Policy Index III.<sup>78</sup> Authorities provide limited and outdated information regarding educational programmes. Schools are not required to address newcomers’ specific needs and opportunities, or to teach pupils about living in a diverse society. An Intercultural Education Programme was introduced in 2006; however, as it imposes no binding requirements, it is left to the discretion of schools to establish an intercultural education programme including induction and language, and to apply for the limited available funding. The 2006 initiative is neither well-known nor well-implemented, and evaluations show that the sporadic, voluntary and project-based actions have little impact or sustainability.
66. Accordingly, significant improvement is needed to ensure actual effective participation of non-Hungarian children in education. Although the Act on Public Education<sup>79</sup> provides for compulsory education for all children staying or residing in Hungary, the reality is that the schools, teachers, the children, and their parents, are not prepared for this. Schools in towns hosting refugee reception centres, especially in Bicske, and to some extent in Debrecen, tend to resist the enrolment of asylum-seeking and refugee children, as they do not have the funds to provide the necessary extra-tutoring for Hungarian language and cultural orientation, and they lack the skills to raise additional funding as the regulations for obtaining so-called ‘migrant-norm’ funding are complicated. It would appear they also fear that local Hungarian parents would take their children out of school if refugee or asylum-seeking children are admitted.
67. As a consequence, such children may need to go to school in remote towns in Hungary, far from their parents’ place of residence. Even if they are accepted in local schools, their participation in education is limited without proper assistance. They may not obtain any certificate regarding their education, limiting their further educational prospects. Parents are also unable to contribute to the education of their children, as they often do not speak Hungarian and cannot communicate with the teachers in the absence of interpreters. Teachers are not trained in intercultural needs and skills, or in the specific needs and conditions of refugees and asylum-seekers. Mostly due to a cumbersome bureaucracy, school management is reportedly rarely prepared or willing to apply for funds to carry out projects to meet the particular needs of foreign students. UNHCR has observed that local municipalities in charge of schools do not necessarily take responsibility for providing support to the schools. Pupils complain that they are often confronted with intolerance and xenophobia by school-mates and teachers in public areas. They report that bus drivers may not stop in front of the refugee reception centre in the morning. There is also a lack of trauma-therapy and psychological support for refugee children to enable them to manage learning difficulties more effectively.

<sup>77</sup> UN High Commissioner for Refugees, *Improving Access to Education for Asylum-seeker, Refugee Children and Adolescents in Central Europe*, July 2011, available at: <http://www.unhcr.org/refworld/docid/4e9bf50615.html>.

<sup>78</sup> British Council and the Migration Policy Group, February 2011, [www.mipex.eu](http://www.mipex.eu), page 101.

<sup>79</sup> Act of LXXIX of 1993 on Public Education.

68. Furthermore, since May 2010, the Government has discontinued the operation of a Migrant Education Working Group under the auspices of the Ministry of Education. This working group served as an extremely useful forum for Governmental and non-governmental agencies as well as researchers and the academia to consult, share experiences and raise concerns. In September 2011, however, OIN launched a much-needed consultative process on education for asylum-seeker children and adults with all interlocutors. The first meeting was held in January 2012.

## Recommendations:

- ensure full access and meaningful participation of refugee and asylum-seeking school age children in education in Hungary;
- provide professional support to parents and teachers;
- provide for proper statistical data collection, as currently no statistical information is collected or maintained on the enrolment and retention rates of school-aged asylum-seeker and refugee children.

## XIII. Durable solutions: Local integration of beneficiaries of international protection

69. Hungary is confronted with high unemployment<sup>80</sup> and poverty rates.<sup>81</sup> Beneficiaries of international protection therefore face additional challenges in pursuit of self-sufficiency and integration.

70. UNHCR notes that Hungary has no legal or policy framework for the integration of beneficiaries of international protection. In this context, UNHCR wishes to draw the attention to the European Agenda for the Integration of Third Country Nationals:<sup>82</sup>

*The integration of beneficiaries of international protection requires particular attention. They have often had traumatic experiences, which require specific social and psychological care. Policies should, therefore, be designed to minimize isolation of beneficiaries of international protection and restrictions to their rights, and provide for effective language learning, access to accommodation, access to health care in health systems that promote integration and culturally adapted health promotion programmes. Access to vocational training and assistance in seeking employment should also be targeted.*

<sup>80</sup> Unemployment rate in 2011: 10.9%; the forecast for 2012: 10.8%, Central Statistical Office, [www.ksh.hu](http://www.ksh.hu).

<sup>81</sup> "Every third person (approximately 3 million individuals) lives below the poverty line in Hungary today, 1.2 million of them in extreme poverty. The risk of poverty particularly afflicts children and those living in disadvantaged regions. Most of the Roma, some 500,000 to 600,000 of them (based on estimates, their total number is approximately 750,000) belong to the latter group." Zoltan Balog, Secretary of State for Social Inclusion, Ministry of Public Administration and Justice, available at: <http://romagov.kormany.hu/download/5/58/20000/Strategy%20-%20HU%20-%20EN.PDF>, <http://romagov.kormany.hu/download/7/58/20000/Annex%201.PDF>.

<sup>82</sup> Article 1.4, European Commission's Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2011) 455, 20 July 2011, SEC(2011) 957, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0455:FIN:EN:PDF>.



71. Under the Asylum Law, beneficiaries have the same rights and obligations as Hungarian nationals. They are furthermore entitled to six months' accommodation, meals and limited integration services provided at the OIN-run<sup>83</sup> Bicske Integration Centre. This period can be extended another six months in justified cases, and for another 12 months in exceptional cases.
72. UNHCR has observed that the present integration system has proven to be ineffective in equipping beneficiaries of international protection with the skills and support required for integration. As a result, recognized refugees may soon move on to other EU Member States. If returned to Hungary, they often become homeless. Homeless refugees reportedly face threats and physical violence, with single women and vulnerable persons particularly at risk.<sup>84</sup>
73. The Parliamentary Commissioner for Human Rights found in an inquiry conducted on refugee homelessness<sup>85</sup> that refugees often face obstacles accessing and exercising their rights as enshrined in Hungarian law: their exclusion from the support system upon return to Hungary was found against the law; the denial of their access to homeless services is contrary to the rights to life and dignity; and by being excluded from the social support system and not having a legal address/residence, they have no access to citizenship. Moreover, in 2011 the Municipality of Budapest passed legislation imposing fines<sup>86</sup> on homeless people for "living rough". The UN Special Rapporteurs on Extreme Poverty and on Adequate Housing called on Hungary to reconsider this legislation<sup>87</sup> criminalizing homelessness.<sup>88</sup> The Parliamentary Commissioner for Human Rights' inquiry called for actions by the Minister of National Resources, Minister of Interior, the Mayor of Budapest and OIN. As a follow-up, OIN has established contacts and cooperation with two Budapest-based homeless service providers to ensure that homeless refugees are provided for during the winter of 2011-2012.
74. UNHCR has been informed about cases when homeless Somali refugees chose to return to their country of origin, despite the risk of persecution, torture and other forms of serious human rights violations upon return, stating that their living conditions were deficient and their life and dignity at immediate risk in Hungary.<sup>89</sup>
75. Even recognised refugees who stay in Hungary are not necessarily provided with the financial allowance granted to those who move out from Bicske into independent housing. The distribution of financial entitlements is inconsistent.
76. Language training is offered only after people have been granted international protection. For those persons, the lengthy process of learning the Hungarian language competes with efforts needed to find a job or receive training. An inquiry by the Parliamentary Commissioner found that no study has

<sup>83</sup> Section 41 (1)-(3): "(1) Refugees and beneficiaries of subsidiary protection are entitled to free accommodation and provisions at a reception centre for a period of six months counted from the date of the final document recognizing their status, given that no other lodgings are provided for them. (2) The period specified in Subsection (1) can be prolonged by the refugee authority once for six more months. (3) The refugee authority may grant accommodation and provisions to a refugee or a beneficiary of subsidiary protection at the reception centre beyond the time limits specified in Subsection (2) if the refugee or beneficiary of subsidiary protection is at least 60 year old and/or is not suitable for integration in the society, to carry on an autonomous life due to his/her long-term and irreversible health deterioration, psychic/body deficit, or illness resulting from a serious trauma, given that such health deterioration or deficit does not necessitate specialized institutional care of the refugee or beneficiary of subsidiary protection."

<sup>84</sup> UN High Commissioner for Refugees, *Refugee Homelessness in Hungary*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bb4b9ac2.html>.

<sup>85</sup> A/B-1692/2010, August 2011, at [www.obh.hu](http://www.obh.hu).

<sup>86</sup> HUF 50,000 (the equivalent of ca. 180 euro).

<sup>87</sup> A fine up to HUF150,000 (ca. euro 500) can be imposed on homeless people found twice in a six month period living rough (Section 146/A of Act LXIX of 1999 on minor offences, in force since 1 December 2011).

<sup>88</sup> OHCHR, "Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing", 15 February 2012, <http://www.ohchr.org/EN/Issues/Poverty/Pages/AnnualReports.aspx>.

<sup>89</sup> Ibid, footnote 84.

examined the effectiveness of state-funded language training over the past few years, and no measures were taken to improve its effectiveness. Differentiated courses, tailored to gender, language level, reading and writing skills, education and daily activities of persons with international protection, have not been made available.

77. After living in Bicske for six months, most refugees do not manage to find employment, lacking any detailed knowledge of employment conditions. Many are also unable to access health services, being without their own financial possibilities. Many lack the ability to speak or communicate effectively in Hungarian. There is little support to further develop skills refugees already possess and to help them find their way into the job market.<sup>90</sup>
78. In the absence of a governmental agency with specific responsibility for promoting refugee integration at community level, many refugees have **no effective opportunity to exercise their rights as provided for under the 1951 Convention** and in other international and regional human rights treaties, including the right to adequate housing. They rely mostly on fragmented, under-funded and project-based refugee support services in Budapest, which cannot provide solutions to what constitutes a structural problem, requiring a strategic and cross-departmental response. Whether sleeping rough or having found accommodation, refugees have reported suffering discrimination and physical and verbal harassment in all areas of their lives. Refugees who are visibly different (as well as Roma and LBGTI people) often face various manifestations of xenophobia and discrimination.

## Recommendations:

- develop a strategy on the integration of beneficiaries of international protection, especially homeless refugees, in co-operation with all relevant stakeholders, in order to prevent refugees from becoming destitute, remaining or becoming increasingly marginalised, living in abject poverty and exposed to discrimination and racial attacks. This could also remove incentives for spontaneous onward secondary movements to other countries or return without safeguards to their country of origin, where they may be at risk of torture and/or cruel, inhuman or degrading treatment.
- Such a strategy should be participatory, community-based, needs-based and quality-assured.

In addition, camp-based integration services should become:

- participatory: involving refugees and social workers working together to solve problems and develop strategies to address integration challenges;
- community-based: supporting refugees in making early connections with local communities, public services and local employment opportunities upon status recognition;
- needs-based: building upon and responding to identified needs through the provision of specialist services that complement mainstream support regarding employment, housing, education or medical/psychological care;
- quality-assured: in full compliance with independently agreed, transparent integration service standards, and relevant legal provisions of social welfare, equality and anti-discrimination legislation in Hungary.<sup>91</sup>

<sup>90</sup> Two pilot labour market orientation and vocational training initiatives were carried out by OIN in conjunction with mainstream labour centres in Szekesfehervar and Budapest in 2010 and 2011 with little success partly due to the deteriorating economic situation. Lessons learnt need to be analysed.

<sup>91</sup> On 7 October 2011, UNHCR requested an appointment with the Secretary of State for Social Inclusion to discuss matters related to insufficient integration opportunities of beneficiaries of international protection in Hungary. However, of the time of writing this report, no appointment has been received despite frequent reminders. This is yet another concern in terms of cooperation and support foreseen in Article 35 of the 1951 Geneva Convention.

79. A contributing factor to the onward irregular movement of beneficiaries of international protection recognized in Hungary is the **insufficiency of access to family reunification**.<sup>92</sup> While the Asylum Law<sup>93</sup> and the Aliens Act<sup>94</sup> specifically foresee and allow for the family reunification of refugees, in practice, this is often beyond their reach, especially for Somalis whose national passports are not accepted by the European Union and therefore cannot be issued a Hungarian visa. In addition, ICRC travel documents are not recognized under Hungarian law.<sup>95</sup> From 2011, persons with subsidiary protection no longer have access to family reunification under the more favourable clauses covering refugees. Refugees and beneficiaries of subsidiary protection who are unable to reunite with their family members face extreme integration difficulties.<sup>96</sup>

80. In 2007, the UN Committee on Economic, Social and Cultural Rights recommended that:

*the State party review its regulations on family reunification of refugees, with a view to broadening the concept of family members, simplifying and expediting reunification procedures, and protecting the right to family life of all refugees, including persons authorized to stay on the basis of subsidiary protection.*<sup>97</sup>

81. Moreover, since 24 December 2010, the concept of family has been restricted to the most immediate relatives, and in case of spouses, is restricted to family links established before flight from the country of origin.<sup>98</sup> UNHCR has urged Hungary to apply broader criteria in identifying those family members who can reside in the country as a unit or, if separated, be admitted into the country for purposes of family reunification. Accordingly, UNHCR advocates that consideration should be given to permitting a liberal interpretation of the family unit concept,<sup>99</sup> including at a minimum those who are economically, psychologically and socially dependent upon the other members of the family.

In UNHCR's view,<sup>100</sup> respect for family unity should not be conditional on family links having been established before flight from the country of origin. Families and marriages established or occurring during flight or upon arrival in a transit country or country of asylum also need to be taken into account. This principle has been underlined by UNHCR's Executive Committee.<sup>101</sup> In addition, Article

<sup>92</sup> No statistical information is available on the number a family reunifications actually carried out by beneficiaries of international protection in Hungary (UNHCR requested such information from OIN, however, no information was shared. OIN letter 106-Ji-116/7/2012 of 12 January 2012 applies).

<sup>93</sup> Sections 2 (j) and 7 (2) of the Asylum Law.

<sup>94</sup> Section 13 (1) e-g) of the Aliens Act (Act II of 2007) and Section 57 of Government Decree 114/2007.(V.24.) on the implementation of the Aliens Act.

<sup>95</sup> See "Family Reunification of Somali Refugees – Good Practices of Several EU Member States", Hungarian Helsinki Committee, August 2010, available:

[http://helsinki.hu/wp-content/uploads/Joint-submission-UPR-HHC\\_Menedek-07Nov2010\\_FINAL1.pdf](http://helsinki.hu/wp-content/uploads/Joint-submission-UPR-HHC_Menedek-07Nov2010_FINAL1.pdf).

<sup>96</sup> On family reunification and the definition of family please consult the Council of Europe documents: Recommendation 1686 (2004) on human mobility and the right to family reunion and Position paper on family reunification, adopted by the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly, 24 January 2012, AS/Mig(2012) 01, <http://www.assembly.coe.int/Communication/amdoc012012FamilyReunificationFinalE.pdf>.

<sup>97</sup> Conclusions and recommendations of the Committee on Economic, Social and Cultural Rights: Hungary, 16/01/2008, E/C.12/HUN/CO/3, para. 44, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/401/75/PDF/G0840175.pdf?OpenElement>.

<sup>98</sup> See Section 2 (j) of the Asylum Act.

<sup>99</sup> In this respect, ExCom Conclusions No. 24 (XXXII) paragraph 5 and No. 88 (L) paragraph (b)(ii) recommend "the consideration of liberal criteria in identifying those family members who can be admitted, with a view to promoting a comprehensive reunification of the family". UN High Commissioner for Refugees, *Family Reunification*, 21 October 1981, No. 24 (XXXII) - 1981, available at: <http://www.unhcr.org/refworld/docid/3ae68c43a4.html>.

<sup>100</sup> UN High Commissioner for Refugees, *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted* (OJ L 304/12 of 30.9.2004), 28 January 2005, available at: <http://www.unhcr.org/refworld/docid/4200d8354.html>.

<sup>101</sup> UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>, paragraph 5 and No. 88 (L) paragraph (b) (ii).

4(a) of the EU's Family Reunification Directive<sup>102</sup> authorizes entry and residence for the spouse of a third country national residing lawfully in a Member State, and does not require the marriage to have already existed in the country of origin.<sup>103</sup> Similarly, Article 8 of the European Convention on Human Rights protects the right to respect for private and family life with no restriction as to the timing of the marriage.

## Recommendation:

- ensure that all beneficiaries of international protection have effective and full enjoyment of their right to family reunification.

## XIV. Resettlement and relocation

82. The Hungarian Government announced its decision to become a resettlement country in October 2010, confirming its commitment through a pledge submitted to the Ministerial Conference organized by UNHCR in Geneva in December 2011. While government officials have participated in several study visits, there has been no movement towards establishing a comprehensive resettlement framework, selection methodology or integration arrangements. The Hungarian Government was part of the EUREMA<sup>104</sup> project and offered places for a family from Malta in 2011.<sup>105</sup>

## Recommendations:

- establish the necessary conditions for refugee integration in Hungary;
- establish an adequate mechanism for integrating those resettled or relocated from other countries, prioritizing essential reception and integration arrangements.

<sup>102</sup> European Union: Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, 2003/86/EC, available at: <http://www.unhcr.org/refworld/docid/3f8bb4a10.html>.

<sup>103</sup> See footnote 105. According to the Directive, Article 4: "1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members: (a) the sponsor's spouse; ..."

<sup>104</sup> The EUREMA project (the European Union's Reallocation Project for Malta) is a burden sharing instrument of the European Union to provide support to Malta, an EU Member State that has faced several influxes of a mixed population flow (asylum-seekers and migrants). The voluntary reallocation of refugees and persons with subsidiary protection out of Malta into other EU member states is financially supported by the European Refugee Fund.

<sup>105</sup> One couple was relocated but chose to return to Malta after three days in Hungary, as they were concerned about their integration prospects, and in particular the cost of living and their employment opportunities in Hungary.

## XV. Xenophobia

83. Overall, Hungary is considered to have adequate **anti-discrimination** laws, an effective government complaint agency, and a well-developed civil society.<sup>106</sup> However, UNHCR considers that gaps remain in certain areas, including for victims of hate crimes and hate speech, and for those facing multiple forms of discrimination in Hungary.
84. In 2004, the **Act on Equal Treatment and Enhancement of Equal Opportunities** entered into force.<sup>107</sup> The law was drafted along the lines of the UN Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation against Racial Discrimination and in line with seven relevant EU Directives (inclusive of 2000/43/EC; 2000/78/EC). On 1 January 2004,<sup>108</sup> the Government created an **Office for Equal Opportunities**. The role of this office is to enhance equal opportunities for different social groups, to respond to crisis situations, strengthen the solidarity/social cohesion and to eliminate social marginalization. Certain social groups are specifically stipulated as beneficiaries, such as the Roma, women, children, older people, the physically disabled, inhabitants of underdeveloped areas and victims of certain economic decisions/measures.
85. The relevant legal provisions also leave room for other non-specified groups to benefit from the activities of the office. The Office for Equal Opportunities has been closely working with NGOs, scholars, academics and research institutes. It has set up programmes to address prejudice, violence – especially domestic violence – as well as disadvantages related to health, age and/or other social, economic, geographic, cultural, educational, or demographics factors. Generally, the Equal Treatment Authority of Hungary<sup>109</sup> is well-regarded, and has powers sufficient to offer victims independent advice and issue binding reviewable decisions. The authority can also investigate complaints and impose sanctions. It has the legal standing to intervene on behalf of the complainant, and to initiate its own proceedings against certain public bodies.
86. Despite legislative advances, such as the Act on Equal Treatment and the Promotion of Equal Opportunities, and several measures and programmes aimed at the elimination of discrimination, xenophobia and discrimination remain prevalent in Hungarian society, particularly towards the domestic Roma population. Roma children in particular are reported to suffer from stigmatization, exclusion and socio-economic disparities, notably related to housing, unemployment, access to health services, adoption and educational facilities because of their ethnic status.
87. Political measures and practices to counter xenophobia are still in an embryonic state in Hungary. According to a public opinion poll carried out by the TARKI<sup>110</sup> polling agency from April to June 2011, 32 per cent of the adult population is “openly xenophobic” and would not allow any refugees in the country; 60% are “implicitly xenophobic” and would allow some refugees, but exclude others and only eight per cent of the population is “tolerant” (i.e., would accept all refugees).<sup>111</sup>

<sup>106</sup> See Migrant Integration Index III (page 103), February 2011, British Council and Migration Policy Group, [www.mipex.eu](http://www.mipex.eu).

<sup>107</sup> Act CXXV of 2003, adopted: 22.12.2003, publication in the Official Journal: 28.12.2003, in force since: 27.01.2004.

<sup>108</sup> Government Decree 222/2003(XII.12.), publication in the Official Journal: 22.12.2003, in force since: 01.01.2004.

<sup>109</sup> See [www.egyenlobanasmod.hu](http://www.egyenlobanasmod.hu).

<sup>110</sup> See [www.tarki.hu](http://www.tarki.hu).

<sup>111</sup> The TARKI company included a fictitious nationality, the “Piresians,” who were also rejected by 62 per cent of the adult population in Hungary, illustrating that xenophobia is widespread and targets all foreign nationalities – even those that do not exist and about whom respondents could not possibly have had any knowledge.

88. Although there are relatively few foreigners living in Hungary, studies show that xenophobia is often exacerbated by the Hungarian popular media. The study “Migrants in the Media” conducted by the Hungarian Helsinki Committee<sup>112</sup> in 2011, shows that xenophobia in the Hungarian society is reinforced through the negative images in the media which – when reporting about migration, migrants and refugees – play on stereotypes. Terminology like “criminals,” “parasites,” “danger,” and “mass influx” is common in reporting on the issue. The Hungarian press mostly covers the issue from the perspective of policing foreigners, portraying migrants and refugees as criminals and a threat to national security. On the other hand, there is a lack of reports showing personal stories, the “human side” of migration, success stories and the difficulties refugees face with integration. There have been very few media reports on asylum issues, although many reports use the word “refugees” as a synonym for migrants and there is little clear differentiation of refugees as a group who flee their homes to escape violence or persecution.
89. Asylum-seekers and refugees report encountering xenophobia, racism and intolerance on a daily basis in Hungary. Over several years, UNHCR has found that the local hospital is often not willing to send an ambulance for patients in the reception centre, forcing management to provide transportation for the patient with its own vehicles. In one of the localities hosting refugees, the local dentist is not willing to treat refugees, forcing them to travel approximately 100 km to see a dentist in another town (Székesfehérvár). The Menedék Association, a local NGO providing social and integration assistance to refugees, reports that it regularly encounters racist attitudes when seeking employment and accommodation for refugees.

## Recommendation:

- Take effective measures while ensuring sufficient funding to address discrimination and xenophobia in a meaningful and measurable manner, including in the context of asylum-seekers and beneficiaries of international protection.

<sup>112</sup> [http://helsinki.hu/wp-content/uploads/Migrantsok\\_a\\_magyar\\_mediaban\\_HelsinkiBiz\\_2011.pdf](http://helsinki.hu/wp-content/uploads/Migrantsok_a_magyar_mediaban_HelsinkiBiz_2011.pdf).