

Hungary

PROGRESS UNDER THE GLOBAL STRATEGY BEYOND DETENTION 2014-2019, MID-2016

IN HUNGARY, the increasing number of arrivals in 2015 led to the adoption of a number of severely restrictive measures, including criminalization of irregular entry and the erection of fences along Hungary's borders with Serbia and Croatia; which, in UNHCR's view, had the combined effect of restricting and deterring access to asylum in the country, and shrinking the protection space for people fleeing conflict and persecution. As of 15 September 2015, all those entering Hungary without authorization through the border control fence are considered to have committed a criminal offence, which is punishable by an actual or suspended term of imprisonment of up to three years and mandatory expulsion. Asylum-seekers are not exempted from criminal procedure. The law further criminalizes "damaging of the border fence" and "hampering of the construction work of the border fence". The closing down of the biggest reception centre in the country has had the effect of further reducing access to proper accommodation with protection-sensitive arrangements. In 2015, 8,562 persons were detained for immigration-related purposes, including 2,393 asylum-seekers.



KEY DEVELOPMENTS

- Introduction of a maximum period of time for the Guardianship Agency to appoint a legal guardian for UASC in the *Asylum Law*,¹ which contributed to shortening the appointment process in practice.
- Decision not to detain families in the Debrecen asylum detention centre following a report by the Parliamentary Commissioner for Human Rights revealing systemic issues in the detention practice.
- Increasing concerns in relation to detention of children practices, in particular regarding the age assessment process² and poor detention conditions.
- Continued concerns over the detention decision process, with less coercive means (ATDs) rarely considered prior to resort to detention and individualised assessments lacking consideration for vulnerability factors or other specific needs.

¹ *Hungary: Act LXXX of 2007 on Asylum (2016)* [Hungary], January 2008, available at: <http://www.refworld.org/docid/4979cc072.html>. Para. 35 (6) of the *Asylum Act*: "(6) If the person seeking recognition is an unaccompanied minor, the refugee authority shall, without delay, initiate the temporary placement of the child and request the guardianship authority to appoint a child protection guardian, who serves to represent the minor. The child protection guardian shall be appointed within eight days of the arrival of the refugee authority's request."

² Age assessment is only initiated by the Office of Immigration and Nationality (OIN) if it has any doubts concerning the minor status of the applicant. Age assessment is confined in law to medical examination (physical inspection) generally conducted by a GP, no multi-disciplinary approach is applied, thus there is no investigation into the psychological maturity of the applicant and the relevant ethnic and cultural facts/components in accordance with *General Comment No. 6* of the Committee on the Rights of the Child. A shift in practice is observed by UNHCR whereby applicants disputing the age registered in the asylum procedure are regularly required by the OIN to advance the costs of the medical age assessment procedure. Due to lack of sufficient financial resources many applicants are unable to advance such costs. Determination of age is all the more important in the context of applicants facing detention and with the termination of the State integration support as child-specific support and entitlement to after-care service is dependent on the age assessed by the OIN administrative authority.

The National Action Plan (NAP) for Hungary was developed by UNHCR in consultation with various stakeholders, including the Parliamentary Commissioner for Fundamental Rights acting as a National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention Against Torture (OPCAT)* and NGOs working on human rights and refugees. UNHCR has briefed the Ministry of Interior, the Office of Immigration and Nationality (OIN) as well as the Hungarian Police on the Global Strategy and on the envisaged activities within the NAP.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

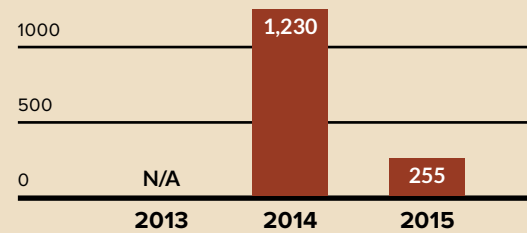
During the initial roll-out phase of the Global Strategy, UNHCR Hungary engaged in awareness-raising activities on international standards regarding detention conditions and the detention situation in Hungary. In February 2015, the office, together with the Council of Europe organised a seminar and training on detention and alternatives to detention (ATDs), where a hundred legal practitioners, including members of the judiciary, developed their knowledge on EU law and relevant international standards, including European Court of Human Rights case law related to detention. UNHCR also contributed to the trainings held by the Hungarian Helsinki Committee within their EU funded project 'Made Real' on the legislative framework and implementation of ATDs, and participated in a thematic conference organised by the Debrecen Administrative and Labour Law Court concerning adjudication in asylum cases, with special emphasis on detention cases.

UNHCR launched a **billboard campaign** in the Budapest underground on World Refugee Day 2015, portraying four refugees living in Hungary, and organised three very popular media events with them. The media coverage was outstanding with an outreach of about 4 million people.

With regard to detention monitoring, UNHCR Hungary and its partner, the Hungarian Helsinki Committee, conducted **regular monitoring visits** to detention centres, open reception centres and shelters specialised in the reception of UASC. In cooperation with the Hungarian Helsinki Committee, UNHCR provided training for human rights monitors and volunteers on the use of the Monitoring

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED



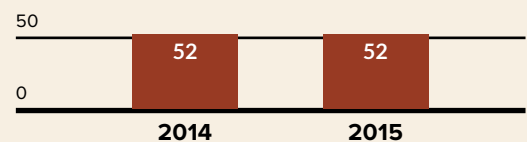
In 2014, government authorities only provided UNHCR with the number of families with children in detention without disaggregated data on the number of children detained out of total 1,230 families. In 2015, 190 children were detained with families (official data provided by the Office of Immigration and Nationality), in addition to this, UNHCR identified 65 age-disputed children in detention in the period of October-December 2015.

Source: In the absence of systematic data gathering and publication on the number of children detained in Hungary, figures are based on UNHCR regular monitoring of detention and *ad hoc* exchanges of information with the authorities.

- ✔ The legal framework ensures that children are not detained.

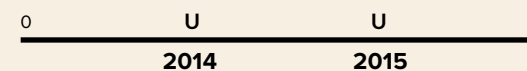
GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



Source: Unaccompanied Children's Home in Fót, Hungary.

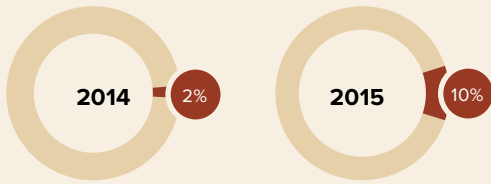
NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES (families released on bail)



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	✔	✔	✔
Directed residence	✔	✔	✔
Residence at open/semi-open reception/asylum centres	✔	✔	✔
Release on bail/bond	✔	✔	✔
Provision of a guarantor/surety			
Community supervision arrangements			

✔ available in legislation ✔ used in practice

**PERCENTAGE OF PERSONS IN ATDs
(out of total number of persons detained)**

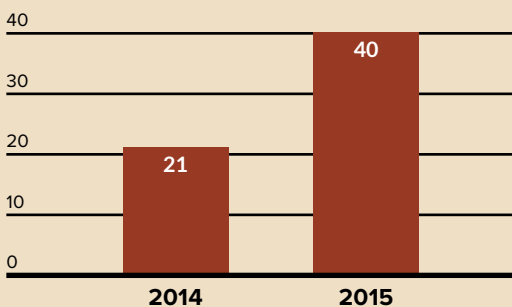


Source: Office of Immigration and Nationality.

- ✔ Mechanism allowing asylum-seekers to stay legally in the community.
- ✔ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical assistance, education). Psychological assistance and legal assistance are provided by UNHCR partners.
- ⊘ No case management* provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



- ✔ Hungary is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ✔ Yes ⊘ No ⊙ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR’s partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

Immigration Detention: Practical Manual.³ A **Field Unit** was established in Szeged (in Southern Hungary) to increase UNHCR’s monitoring capacity of the border areas and transit zones. Persons of concern had also better access to protection information via group counselling organised by UNHCR and individual counselling organised by the partners Hungarian Helsinki Committee and *Menedék* – Hungarian Association for Migrants. In addition, UNHCR enhanced coordination with refugee organizations and new interlocutors (volunteers, faith-based organizations, schools, international organizations) with a view to regularly exchanging information on current practices and developments, including in relation to detention of asylum-seekers.

UNHCR and its partners also initiated activities related to the **identification of asylum-seekers with specific needs** in detention and their referral to the authorities, in order to facilitate their access to medical services, legal aid, psychological support and family reunification. UNHCR identified 65 age-disputed children during the regular monitoring visits conducted between 19 October 2015 and 31 December 2015 and referred them to the relevant government authorities in order to release them from detention and/or to initiate the necessary age assessment procedure in detention. As a result, in 2015, 352 persons benefitted from psycho-social assistance by *Menedék* Association, and 988 persons identified as particularly vulnerable were provided with psychotherapy, medication and somatic rehabilitation by the Cordelia Foundation, which also challenged the detention orders of 65 asylum-seekers with specific needs and supported their refugee status determination procedure, with the provision of medico-legal reports. Access to legal assistance also increased by 34% in 2015 with 1,893 asylum-seekers who benefitted of free legal assistance and 331 of free legal representation. 68 clients represented by the Hungarian Helsinki Committee were granted international protection.

Finally, UNHCR Hungary successfully advocated with OIN to **share more detailed statistical information** on the application of ATDs. The office also developed standardized monitoring and reporting tools, including an electronic database compiling data gathered during monitoring visits.

³ UN High Commissioner for Refugees (UNHCR), *Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), Monitoring Immigration Detention: Practical Manual, 2014*, available at: <http://www.refworld.org/docid/53706e354.html>.



TRAININGS ORGANIZED IN HUNGARY DURING THE REPORTING PERIOD

3 on Asylum Law, including
UNHCR *Detention Guidelines*

1 on Detention monitoring
methodology

NUMBER OF PERSONS TRAINED IN HUNGARY DURING THE REPORTING PERIOD

265 on Asylum Law, including
UNHCR *Detention Guidelines*

15 on Detention monitoring
methodology

Gaps and challenges

The unfolding refugee crisis in Hungary resulted in an increasingly hostile protection environment and shrinking protection space. Detention became a key element in the Government's policy of deterrence. The situation of detention of children deteriorated over the reporting period: although the law provides for non-detention of children, in 2014 and 2015 age-disputed children were, in practice, systematically detained and their asylum applications were not prioritized. The age-assessment procedures were often delayed, leaving age-disputed children at risk of longer detention.

A lack of improvement is observed, as well, in the implementation of ATDs. Examination of ATDs by the authorities prior to resorting to detention, though being conducted in most cases, remains superficial. In practice, bail is almost exclusively applied. This ATD is increasingly seen by detained asylum-seekers as a form of bribe due to inadequate information provision by the authorities.

Concerns are also raised in relation to deteriorating detention conditions. Persons of concern who are under aliens' procedures or facing criminal charges related to the border fence are now also held in penitentiaries. Specific needs are not taken into due account in detention, abuses by guards have been reported and the lack of meaningful social work and communication with the outside world have remained issues of concern.

Next steps

UNHCR is advocating with relevant government authorities for the re-establishment of the consultative forum for NGOs on the protection of unaccompanied or separated children (UASC) in Hungary. In this context, UNHCR continues to conduct structured consultations with NGOs specialized in the field of child protection and child protection agencies with the objective to prepare consultations with government authorities on putting in place a national BIA and BID assessment system for UASC. Further, UNHCR and its partners will be working on facilitating information provision to detained persons of concern on their rights via distributing user-friendly information leaflets. UNHCR in coordination with Cordelia Foundation plans to conduct a training on the PROTECT tool,⁴ a tool to identify asylum-seekers who have suffered traumatic experience, which has been developed by six European NGOs coordinated by the NGO *Parcours d'Exil*. Lastly, UNHCR continues to advocate with the asylum and the immigration authority to collect and share detailed statistical information on detained persons of concern, including disaggregated data on age and length of detention.

For more information, please contact Agnes Ambrus, ambrus@unhcr.org.

UNHCR Budapest, August 2016.

⁴ *Protect – Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment*, BZFO, Germany; ACET, Bulgaria; Cordelia Foundation, Hungary; FTDA, France; IRCT, Denmark; *Parcours d'Exil*, France; PHAROS, The Netherlands, (revised version), September 2011, available at: http://cordelia.hu/documents/PROTECT%20Document-v1_Oct%202011.pdf