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Returning Rejected Asylum Seekers: challenges and good practices

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Returning Rejected Asylum Seekers: challenges and good practices

EMN FOCUSED STUDY 2016 Approaches to rejected asylum seekers

Top-line "Factsheet"

In 2015, Hungary faced with an unprecedented migratory pressure. In this year, a total number of 391.384 illegal border-crossers were apprehended at the external borders, 204 523 at the Serbian border and 185 634 at the Croatian border. In addition, 177.135 persons applied for asylum, and only 146 of them were granted asylum and 6 of them were granted subsidiary protection status. In 152.260 cases the asylum procedure was terminated, and in 2.917 cases the asylum applications were rejected by the asylum authority.¹

These statistics proves that in most the cases the asylum procedures are terminated without decision (around 86-87%), due to the fact that the asylum-seekers leave the reception centres for unknown locations. Therefore, the Hungarian authorities do not have any possibilities to deliver an asylum decisions or reject the asylum application and deliver a return decisions, because third country nationals leave the country earlier than the relevant authority could terminate the asylum procedure.

The cases of rejected asylum seekers are very similar owing to the fact that Hungarian authorities support voluntary return, thus the Office of Immigration and Nationality, refuses the application for recognition, and as the refugee authority provides for the withdrawal of the foreigner's residence permit issued on humanitarian grounds and shall order his/her expulsion and deportation based on Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter: TCN Act) and shall determine the period of prohibition of entry and residence. This means that the asylum authority imposes a time limit for voluntary departure in its decision ordering expulsion that falls between the seventh and the thirtieth day following the date of delivery of the decision for expulsion of the third-country national, given that the third-country national concerned agrees to leave the territory of the Member States of the European Union on his/her own accord, except for cases defined by the Act. The period of time provided for the above mentioned measures shall not exclude the possibility for the third-country national concerned to leave earlier.

Nevertheless, in some cases, rejected asylum seekers leave for unknown locations from the reception centres before the voluntary departure.

Generally, the return decision can be executed if the rejected asylum seekers are detained by the immigration authority in order to secure their deportation. The immigration authority entitled to

¹ Source: Office of Immigration and Nationality

detain the person for one of the following 5 reasons: a) he/she is hiding from the authorities or is obstructing the enforcement of the deportation in some other way; b) he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion, or there is a risk of absconding of the third-country national; c) he/she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement; d) he/she has failed to appear before the authority as ordered despite of being so advised, by means of which to forestall conclusion of the pending immigration proceeding; or e) he/she is released from imprisonment as sentenced for a deliberate crime.

The immigration detention shall be ordered by a formal decision, and shall be carried out when it is communicated to the person concerned- It can be ordered for a maximum duration of seventy-two hours, and it may be extended by the district court by reference to the place of detention until the third-country national's deportation, but not exceeding sixty days at a time. However, the immigration detention may be extended by up to six additional months on the expiry of a period of six months, if carrying out the expulsion order takes more than six months, in spite of having taken all necessary measures, due to: a) the failure of the third-country national affected to cooperate with the competent authority, or b) delays in obtaining the documents required for deportation attributable to the authorities of the third-country national's country of origin, or another state liable for readmission under readmission agreement or which is otherwise liable to accept him/her.

Nevertheless, the third country nationals prefer voluntary return, but if they leave for unknown locations, the immigration authority cannot execute the return decision, and it is the most frequent case.

Based on the above mentioned reasons, it is clear that Hungary is a transit country and not a destination country for migrants. In most of the cases, third country nationals apply for asylum when the immigration authority apprehended them and they are abusing the asylum system because they are placed in open reception centre that they can easily leave and continue their way to the destination country.

Consequently, Hungary does not have any special regulations or system for rejected asylum seekers. The rejected asylum seekers undergo the same expulsion procedure as other irregular migrants. The most typical cases in Hungary are voluntary and forced return and in accordance with to the relevant EU legislation, Hungary supports voluntary return in the first place.

[Executive Summary](#)

The aim of the study is to examine the situation of rejected asylum seekers regarding asylum and return procedures in Hungary. For this reason, the study completely presents the asylum procedure, its main the elements and the consequences of rejected asylum applications. The study has 6 main parts: a) the overview of the Hungarian situation, b) Hungarian policies and measures vis-à-vis rejected asylum seekers at the point of rejection c) the challenges to the return of rejected asylum seekers and Hungarian policies to manage them d) Hungarian practices when the return is not immediately possible e) linking return policy to the asylum procedure: Hungary's policies and measures to ensure that unfounded claims lead to swift removal and to prepare asylum seekers for return and f) the final conclusions at the end.

The **first chapter** presents the Hungarian situation demonstrating that rejected asylum seekers are a priority in national policy given the fact that the most irregular migrants are applying for asylum in order to slow down their expulsion from the territory of EU and abusing the asylum system because they are placed in a reception centre which they can leave and continue their way

to Western Europe.

Although, Hungarian authorities do not collect statistical data regarding the number of rejected asylum seekers among the returnees due to the fact that in 2015 huge number of asylum applications were submitted, nevertheless 86% of the procedures were terminated (without decision) for the reason that the asylum seekers left for unknown locations during the procedure. Additionally, most of the rejected asylum seekers leave our country to the Schengen area during the time of voluntary departure, so the effectiveness of returning rejected asylum seekers is quite low.

The **second chapter** presents the entire Hungarian practice concerning the rejected asylum applications. The Office of Immigration and Nationality (the asylum authority) refusing the application for recognition in its decision and provides for the withdrawal of the foreigner's residence permit issued for humanitarian purposes and shall order their expulsion and deportation based on the TCN Act. It means that the authority imposes the time limit for voluntary departure in its decision ordering expulsion so that it falls between the seventh and the thirtieth day following the time of delivery of the decision for expulsion of the third-country national, given that the third-country national concerned agrees to leave the territory of the Member States of the European Union on their own accord, except for the cases defined by the Act.

Furthermore, this chapter presents the right to appeal of rejected asylum seekers against the decision refusing their application and decision imposing the time limit for voluntary departure.

Additionally, rejected asylum seekers can submit further applications for asylum in Hungary given the fact that there is no limit for the number of the subsequent applications. It means that if the asylum seeker submits more applications, the refugee authority registers them as different applications and examines them.

Moreover, this chapter highlights the rights and entitlements of the rejected asylum seekers for reviewing the decision rejecting their applications until their effective return. However, the alien-policing/immigration authority implements the expulsion and deportation ordered by the refugee authority, but the rejected asylum seekers take advantage of accommodation, employment, healthcare, welfare and education opportunities according to their former status until the return decision is enforced. Except for those hiding from the authorities or obstructing the enforcement of the deportation in some other way, because in these cases the immigration authority orders their detention to ensure the execution of the expulsion

The **third chapter** presents the Hungarian practice on the expulsion of the rejected asylum seekers. The tables show that there is no special procedure for them, so the TCN shall apply for their cases as for all returnees. The main challenges in the return procedure, especially in the rejected asylum cases where relevant foreign embassies are not cooperative during the identification procedure and in issuing of travel necessary documents if their citizens do not want to return. Given the fact that most irregular migrants do not possess any documents, the refugee authority can only expect the support of the embassies in the identification procedure and in issuing of travel documents. However, most embassies are not cooperative in these cases which leads to a long procedure and finally to the unenforceability of the decision.

The **fourth chapter** presents the procedure when the expulsion cannot be executed owing to the fact there is no safe country of origin or safe third country where rejected asylum seeker can be expelled to. In these cases, the asylum authority shall grant refugee status to the third-country national in question, shall issue a humanitarian residence permit, and the refugee authority or the alien-policing/immigration authority recognizes the foreigner as a person authorized to stay (person granted tolerated stay). The immigration authority may withdraw the status when its conditions no longer apply. The person granted tolerated stay has the same rights as a person who has a residence permit and the rights conferred by a separate Act.

The **fifth chapter** presents the connection between the return policy and the asylum procedure. In 2015 the number of submissions of asylum applications have drastically increased and in order to

handle this, the Hungarian authorities launched accelerated procedure and the application of the safe countries concept at the border that serve to quickly filter out unfounded requests.

The **final chapter** contains the final conclusions according to which Hungary does not tailor its return policies to rejected asylum seekers because most of the asylum procedures are not terminated due to its nature of being a transit country. Namely, the applicants leave to unknown locations during the procedure. However, according to the EU legislation, Hungary supports the voluntary return and provides adequate information about the voluntary return and the consequences, so it can be stated that Hungary has a good practice in this field.

Section 1: Overview of the national situation

Q1. To what extent is the non-return of rejected asylum seekers considered a major issue in your Member State? Is the return of rejected asylum seekers a national policy *priority*? Please provide qualitative evidence e.g. from reports, political debate and media reports (*quantitative evidence is requested in subsequent questions so should not be covered here*)

Since the migration crisis, it has been confirmed **that Hungary is a transit country**. Due to the fact that most irregular migrants applied for asylum in order to slow their expulsion from the EU or to abuse the asylum system therewith as a consequence of being placed in open reception centres that they can easily leave and continue their way to Western Europe.

Therefore, since the abuse which is connected to migration encourages effective actions, the reduction of abusing asylum system and enhancing effective return of the rejected asylum seekers are a priority for Hungary.

The **Hungarian Migration Strategy**² lays down the objective that states the need for the measures taken in the asylum procedure in the framework of the Common European Asylum System for the reduction of the abuse of asylum system while respecting the human rights and human dignity of the person concerned. Additionally, the Action Plan aims to take effective action against the abuse of the asylum system through the improvement of the legal environment and to promote the humane, efficient, and sustainable return as well giving priority to voluntary return.

Currently, on the 15th April 2016, in order to handle the migration crisis the Hungarian prime minister announced the **Schengen 2.0 Action Plan**³ (10 points) which declared that the abuse of the asylum system shall result in more severe consequences (which already exist at national level). Furthermore, it stated that readmission agreements should be concluded with countries of origin and transit, should be enforced in closer cooperation with these countries, and irregular migrants should be returned to the safe third countries or to safe transit countries.

For these reasons, it can be stated that the return of the rejected asylum seekers is a policy priority for Hungary.

Q2. Please complete the Excel document in Annex 1 (providing information also on the metadata) if you have national statistics available on:

² Government Decision No. 1698/2018. (X. 4.) on the Migration Strategy and the seven-year strategic document related to Asylum and Migration Fund established by the European Union for the years 2014-20

³ Source: <http://www.kormany.hu/hu/miniszterelnoki-kabinetiroda/hirek/tizpontos-akcioterv-a-migracios-valsag-kezelesere> (Accessed: 06.06.2016).

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- The total number of rejected asylum seekers who were issued an enforceable return decision in 2011-2015 disaggregated by sex;⁴
- The number of rejected asylum seekers who were effectively returned from your Member State to third countries in 2011-2015 (if possible disaggregated by sex and by type of return (voluntary / assisted voluntary / forced).

Q3. Please provide national estimates, disaggregated by sex, of (a) the share of rejected asylum seekers out of the total number of TCNs issued a return decision in 2011-2015 and (b) the share of rejected asylum seekers issued a return decision who were effectively returned, by completing the table below and indicating whether the share is:

- a) Between 90 to 100%
- b) Between 51 to 90%
- c) Between 31 to 50%
- d) Less than 30%**

Year	% rejected asylum seekers out of total no. TCNs issued a return decision			% rejected asylum seekers out of total no. TCNs effectively returned			Source / method of the estimate
	Male	Female	Total	Male	Female	Total	
2011	N/A	N/A	Less than 30%	N/A	N/A	Less than 30%	The Office of Immigration and Nationality
2012	N/A	N/A	Less than 30%	N/A	N/A	Less than 30%	The Office of Immigration and Nationality
2013	N/A	N/A	Less than 30%	N/A	N/A	Less than 30%	The Office of Immigration and Nationality
2014	N/A	N/A	Less than 30%	N/A	N/A	Less than 30%	The Office of Immigration and Nationality
2015	N/A	N/A	Less than 30%	N/A	N/A	Less than 30%	The Office of Immigration and

⁴ As outlined in section 2.1 of this Common Template, this group includes rejected asylum seekers who may yet be able to appeal the decision on their asylum case, but who are nonetheless obliged to return under return legislation.

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							Nationality
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Q4a. If available, please provide any national estimates on the total number of rejected asylum seekers disaggregated by sex who, despite having been imposed a return decision, continue to reside in your Member State during the period 2011-2015 because they could not be returned (see also sections 3 and 4)?

Year	# rejected asylum seekers imposed an enforceable return decision who continue to reside in the Member State			Source / method of the estimate
	Male	Female	Total	
2011	N/A	N/A	Less than 30%	Not relevant.
2012	N/A	N/A	Less than 30%	Not relevant.
2013	N/A	N/A	Less than 30%	Not relevant.
2014	N/A	N/A	Less than 30%	Not relevant.
2015	N/A	N/A	Less than 30%	Not relevant.

Q4b. Please provide, if possible, a breakdown of the statistics described in 4a by reason for non-return. If statistics are not available disaggregated by reason, please describe any qualitative evidence of the main reasons in your Member State for the non-return of rejected asylum seekers described in 4a.

The main challenge regarding return procedure, in particular in cases of rejected asylum seekers is that the **relevant embassies are not cooperative in the identification procedure and in issuing the necessary travel documents if their citizens do not want to return back**. Given the fact, the most of irregular migrants do not possess any documents so the refugee authority can expect the support of the embassies during the identification procedure and in issuing travel documents. However, the most of the embassies are not cooperative in those cases.

Section 2: Member States' policies and measures vis-à-vis rejected asylum seekers at the point of rejection

SECTION 2.1: HOW ASYLUM DECISIONS TRIGGER THE ISSUANCE OF THE RETURN DECISION

Q5 At what stage in the asylum decision-making procedure can an enforceable return decision (i.e. one that can lead to the return of the asylum seeker) be *issued*? Please select one of the following options:

a) after the first instance decision (all applications for international protection);

b) after the first instance decision (only for applications for international protection considered unfounded – e.g. if they are lodged by an applicant from a safe country of origin);

c) after *some* appeals on the asylum decision have been lodged, but before *all* possibilities for appeal on the asylum decision have been exhausted;

d) only after *all* asylum appeals have been exhausted;

e) under other circumstances (*please describe*).

According to the Article 45 paragraph (5) point b) of the Act LXXX of 2007 on asylum (hereinafter: Asylum Act), **if the prohibition of refoulement does not apply, the refugee authority refuses the application for recognition in its decision** and provides for the withdrawal of the foreigner's residence permit issued for humanitarian purposes and – if the foreigner has no right to stay in the territory of Hungary on other grounds – shall order his/her expulsion and deportation based on the TCN Act. The return decision does not take- in relation to the Hungarian regulation- any difference between the legal basis of the applications for international protection.

Q6. If the return decision can enter into force *before* all asylum appeals have been exhausted, how often, in practice does this lead to the applicant being returned? (e.g. in all cases, most cases, some cases, rarely, never)?

According to the Article 45 paragraph (5) point b) of the Asylum Act, a **foreigner may appeal against the expulsion in the course of his/her appeal against the decisions of the refugee authority refusing the application for recognition and/or withdrawing the recognition.**⁵

Furthermore, when the applicant submits his/her subsequent application following a final termination or rejection decision on the former application, the refugee authority examines whether any new circumstance or fact occurred following the earlier decision that would allow for the recognition of the applicant as a refugee or as a beneficiary of subsidiary protection.

If the refugee authority establishes that the submission of a subsequent application took place directly before the implementation of the applicant's expulsion and rejects the application following the communication of the decision, the applicant shall not be entitled to the right to stay on the territory of Hungary. And if the same applicant submits an application following a final rejection decision of his/her earlier repeat application, which can no longer be challenged, the applicant shall also not be entitled to the right to stay. The request for court review and the application to suspend the enforcement submitted against the decisions have no suspensive effect on the enforcement of the decision.⁶ In other cases the appeal has suspensive effect on the enforcement.

In the practice the return decision ordered due to the rejected asylum application result the effective return of the applicant.

Regarding this question, the Office of Immigration and Nationality does not collect relevant data, so there is no information on how many cases lead to the expulsion of the applicant.

Q7a. Is the authority responsible for issuing the return decision in your Member State the same as the authority who is responsible for making decisions on the application for asylum?

Yes/ No

If no, how do these authorities coordinate and communicate to ensure that asylum decisions trigger the return procedure at the right time? *Please describe any coordination arrangements and how they work in practice.*

According Article 45 paragraph (5) point b) of the Asylum Act if the prohibition of refoulement does not apply, the asylum authority refuses the application for recognition in its decision and provides for the withdrawal of the foreigner's residence permit issued for humanitarian purposes and – if the

⁵ Article 53 paragraph (2) of the Asylum Act

⁶ Article 54 paragraph (1)-(4) of the Asylum Act

foreigner has no right to stay in the territory of Hungary on other grounds – shall order his/her expulsion and deportation based on TCN Act.

The **alien-policing/immigration authority implements the expulsion and deportation** ordered by the refugee authority.⁷

If the immigration authority finds that a third-country national who has lawfully resided in the territory of Hungary no longer has the right of residence, shall adopt a decision to refuse his/her application for a residence permit or to withdraw the document evidencing right of residence of the third-country national in question, and order him/her to leave the territory of the Member States of the European Union. The third-country nationals may seek remedy against the expulsion order in the appeal submitted to challenge the resolution adopted to refuse the application for residence permit or to withdraw the document evidencing right of residence. If the court's decision is for expulsion or the immigration authority considers that the conditions for the third-country national's expulsion under this Act do exist, the immigration authority shall - with the exceptions set out in this Act - adopt a decision ordering the third-country national in question to leave the territory of the Member States of the European Union.⁸

The immigration authority **imposes the time limit for voluntary departure** in its decision ordering expulsion, or in its ruling adopted for carrying out the expulsion ordered by the court so that it falls between the seventh and the thirtieth day following the time of delivery of the resolution for expulsion to the third-country national, if the third-country national affected agrees to leave the territory of the Member States of the European Union on his/her own accord, except where the cases defined by this Act apply. The time period provided for above shall not exclude the possibility for the third-country national concerned to leave earlier.⁹

Where justified by the personal circumstances of the person expelled - such as the length of stay in the territory of Hungary, on account of which more time is required for making preparations for departure, or the existence of other family and social links -, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period of up to thirty days. If the child who is in the parental custody of an expelled third-country national pursues studies in a public education institution, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period up to the end of the running semester. Extension of the time limit for voluntary departure shall be ordered by way of a ruling.¹⁰

Q7b. When a decision on an asylum application triggers a return decision, how soon after the rejection is the return decision issued? Please select among the following options:

- a) **The return decision is issued at the same time the decision rejecting the asylum application enters into force/becomes executable.**
- b) The return decision is issued within 24 hours of the rejection decision entering into force/becoming executable.
- c) The return decision is issued within a week of the rejection decision entering into force/becoming executable.

⁷ Article 45 paragraph (8) of the TCN Act

⁸ Article 42 paragraph (2) of the TCN Act

⁹ Article 42 paragraph (3) of the TCN Act

¹⁰ Article 42 paragraph (4) of the TCN Act

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d) The return decision is issued within a month of the rejection decision entering into force/becoming executable.

Please provide further details on current practice in your Member State, in particular if not covered under the options above.

If the prohibition of refoulement does not apply, the refugee authority refuses the application for recognition in its decision and orders expulsion and deportation of the person concerned based on the TCN Act.¹¹

Q8. In your Member State, is it possible to use the information that is obtained from the applicant in the course of the asylum procedure for the purposes of facilitating return?

Yes / No

If yes, is such information regularly used?

Yes. The **closely managed data acquired during the asylum procedure** (e.g. during the interview) **can be used** during the return procedure, but only if it **does not have negative effect on the third-country nationals**. Thus, the identity established during the asylum procedure will facilitate the return of third-country nationals.

SECTION 2.2: IMMEDIATE CONSEQUENCES FOR REJECTED ASYLUM SEEKERS REQUIRED TO RETURN

Q9. What are the immediate consequences for the rejected asylum seeker of the return decision entering into force? *Please answer this question by completing the table below.*

¹¹ Article 45 paragraph (5)

*Returning Rejected Asylum Seekers: obstacles challenges and good practices***Table 2.1: The immediate consequences for the rejected asylum seeker of the return decision entering into force**

Questions	... according to law	... as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
Accommodation			
<i>Can the applicant stay in reception centres once rejected? Yes/no</i>	Yes. Until the return decision is not enforced	No. The applicants stay in detention centre for the return purpose in the most of cases.	N/I
<i>If you stated yes above, please indicate for how long after receiving the return decision they can stay in the reception centre (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	Not relevant.	Not relevant.	N/I
<i>If you stated no above, are they accommodated elsewhere (e.g. special open return centres) or elsewhere? Yes/no and – for yes, briefly describe accommodation service provided</i>	<p>Yes. He/she stay in the alien policing detention centre if there is a real risk the hiding from the authorities or obstructing the enforcement of the deportation in some other way.</p> <p>Article 61 paragraph (3) of the TCN Act states that detained third-country nationals shall have the right to:</p> <p>a) housing and nourishment, have the right to wear their own clothes or shall be provided with seasonal clothing if necessary, and emergency and basic medical care as specified in</p>	<p>Yes.</p> <p>The applicants stay in detention centres for the purpose of return in the most of cases (or at designated place of residence, that can be community accommodation/private accommodation).</p>	N/I

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	<p>specific other legislation;</p> <p>b) consult their legal representative or a member of the consular representation of their host country without any censorship, and to be visited by relatives under censorship;</p> <p>c) send and receive packages and letters as specified in specific other legislation, and to receive visitors;</p> <p>d) supplement their diet at their own expense;</p> <p>e) practice their religion, including the provision of food suitable for their religion;</p> <p>f) use the educational and cultural facilities of the institution;</p> <p>g) make complaints and present any requests, protests or notifications of common interest;</p> <p>h) spend at least one hour each day outdoors.</p> <p>i) minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age;</p> <p>j) minors in detention shall have, depending on the length of their stay, access to education.</p>		
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Employment			
<i>Are rejected applicants entitled to access / continue accessing the labour market? Yes/No</i>	Article 64 paragraph (2) of the TCN Act states that any third-country national who has been ordered by the immigration authority to remain in an assigned place and simultaneously issued a residence permit on humanitarian grounds shall be entitled to engage in gainful employment - subject to the immigration authority's consent - in due compliance with the provisions on taking up employment in Hungary.	N/A	N/I
<i>If yes, please indicate for how long after receiving the return decision they can continue to work (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	Yes. Until the return decision is not enforced or until the conditions for the assignment of designated place do not change.	Yes. Until the return decision is not enforced or until the assigned place conditions do not change.	
<i>If yes, please describe any specific conditions attached to their employment</i>	Not relevant.	Not relevant.	Not relevant.
Welfare			
<i>Are rejected applicants entitled to receive any social benefits?</i>	No financial support is provided, however rejected applicants receive accommodation described above and catering. Article 130 paragraph (1) point f) the of Government Decree No. 114/2007 (V. 24) implementation of Act II of	No financial support is provided, however rejected applicants receive accommodation described above and catering.	N/I

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	2007. In the case of third country nationals complies other relevant legal conditions, the social institutions are providing personal care (if designated).		
<i>If yes, please briefly describe what these benefits are</i>	Not relevant.	Not relevant.	
<i>If yes, please indicate for how long after receiving the return decision they can continue to receive the benefits (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	No financial support is provided, however rejected applicants receive accommodation described above and catering.	No financial support is provided, however rejected applicants receive accommodation described above and catering.	N/I
Healthcare			
<i>Are rejected applicants still entitled to healthcare? Yes /no</i>	Yes. According to Article 138 paragraph (1) of the Government Decree No. 114/2007 (V. 24) health care services for detained foreigner should be provided in detention centre. Healthcare services provided free of charge: healthcare services defined in Article 142 paragraph (2) and (3) points e) and i) of the Act CLIV of 1997 on health care that includes: 1. Epidemiological care: - mandatory vaccination (except for vaccination necessary for travelling abroad), - mandatory health screening	Yes.	N/I

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	<p>for epidemiological purposes,</p> <ul style="list-style-type: none"> - mandatory medical examination, - epidemiological separation, - transfer of patients with infectious diseases, <p>2. Emergency health care</p> <p>3. Other services defined in law for emergency health</p> <p>4. Medical services and procedures related to death on the territory of Hungary</p> <p>5. Disaster/emergency health care.¹²</p>		
<i>Does it include all healthcare or only emergency healthcare?</i>	It does include all necessary health care at the place of accommodation or if necessary in hospital.	It does include all necessary health care at the place of accommodation or if necessary in hospital.	
Education			
<i>Are rejected applicants still entitled to participate in educational programmes and/or training? Yes / no</i>	No. Only childcare and basic education is provided at the accommodation by way of private teachers. According to	NO, only childcare and basic education is provided at the accommodation by way of private teachers	N/I

¹² Source: http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=471&Itemid=1229&lang=hu (Accessed: 05.06.2016)

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	Article 129 paragraph (1a) of the TCN Act if the duration of detention justifies the minor detainees should be provided with the appropriate level education for the age and maturity at the detention centre.		
<i>If yes, please indicate for how long after receiving the return decision they can continue to participate in educational activities (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	Until the return decision is not enforced.	Until the return decision is not enforced	
Other?			
<i>Are any other measures taken which are relevant to mention here? Please describe</i>	Not relevant.	Not relevant.	Not relevant.

Q10. When a rejected asylum seeker receives an enforceable return decision, what measures does the Member State take to enforce the return decision and prevent absconding (e.g. regular reporting)?

Measures

In order to ensure the implementation of the immigration procedures or the expulsion of third-country nationals (not asylum seekers) staying illegally on the territory of Hungary, they can be detained by immigration authority according to TCN Act. Taking away of travel documents or imposing a designated place to stay for the foreigner can be applied as alternative measures.

Ordering detention:

In order to **ensure the expulsion of a third-country national** the immigration authority shall have powers to detain the person if:

- a) he/she is hiding from the authorities or is obstructing the enforcement of the deportation in some other way;
- b) he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion, or there is a risk of absconding of the third-country national;
- c) he/she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement;
- d) he/she has failed to appear before the authority as ordered despite of being so advised, by means of which to forestall conclusion of the pending immigration proceeding; or
- e) he/she is released from imprisonment as sentenced for a deliberate crime.

Before ordering detention on the basis of points a) or b), the immigration authority shall consider whether the expulsion can be ensured by taking away of travel documents or imposing a designated place to stay.

Detention shall be ordered by way of a formal resolution, and shall be carried out when communicated. The detention may be ordered for a maximum duration of seventy-two hours, and it may be extended by the district court of jurisdiction by reference to the place of detention until the third-country national's deportation, not exceeding sixty days at a time.

It may be extended by up to six additional months on the expiry of a period of six months, if carrying out the expulsion order takes more than six months, in spite of having taken all necessary measures, due to the failure of the third-country national affected to cooperate with the competent authority, or delays in obtaining the documents required for deportation attributable to the authorities of the third-country national's country of origin, or another state liable for readmission under readmission agreement or which is otherwise liable to accept him/her.¹³

In addition, the immigration authority may order the detention of the third-country national **prior to expulsion in order to ensure the conclusion of the immigration procedure pending:**

- a) if his/her identity or the legal grounds of his/her residence is not conclusively established, or
- b) if the return of the third-country national under the bilateral readmission agreement to another Member State of the European Union is pending.

Detention prior to expulsion shall be ordered by way of a formal resolution, and shall be carried out when communicated. It may be ordered for a maximum duration of seventy-two hours, and it may be

¹³ Article 54 paragraph (1)-(5) of the TCN Act

extended by the district court of jurisdiction by reference to the place of detention until the third-country national's identity or the legal grounds of his/her residence is conclusively established, or for maximum thirty days.¹⁴

The detention shall be terminated:

- a) when the conditions for carrying out the expulsion are provided for;
- b) when it becomes evident that the expulsion cannot be executed;
- c) after six months from the date when ordered, or twelve months
- d) the third-country national is entitled to reside in the territory of Hungary in accordance with the relevant legislation based on his/her application for international protection; or
- e) detention of the third-country national is ordered in asylum proceedings.¹⁵

During the application of point c), the duration of detention prior to expulsion shall be included in the duration of detention. The duration of detention in asylum proceedings shall not be included in the duration of detention in immigration proceedings nor in the duration of detention prior to expulsion. Regarding the termination of detention under points b) and c) the detention shall order the third-country national affected to stay at a designated place.

Guarantees:

The detention may not be ordered for the sole reason that the third-country national is an applicant for asylum.

The detention of a third-country national who is a minor may not be ordered. Families with minors can only be detained as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration, if the immigration authority is of the opinion that the objective of detention cannot be ensured by other ways. Moreover, it has to be terminated immediately when the grounds therefor no longer exist.¹⁶

Taking away of the travel document

In order to ensure the enforcement of an expulsion measure the immigration authority is authorized to take away the travel document of the third-country national concerned.¹⁷

Assignment of a designated place to stay

The immigration authority has the power to assign designated place to stay for a third-country national in a, if the third-country national concerned

- a) cannot be returned or expelled due to commitments of Hungary conferred upon it in international treaties and conventions;
- b) is a minor who should be placed under detention;
- c) should be placed under detention, in consequence of which his/her minor child residing in the territory of Hungary would be left unattended if he/she was to be detained;

¹⁴ Article 55 of the TCN Act

¹⁵ Article 54 paragraph (6) of the TCN Act

¹⁶ Article 56 of the TCN Act

¹⁷ Article 48 paragraph (2) of the TCN Act

- d) is released from detention, however, there are still grounds for his/her detention;
- e) has a residence permit granted on humanitarian grounds;
- f) has been expelled, and is lacking adequate financial resources to support himself and/or does not have adequate dwelling.
- g) should be placed under detention and detention would result in a disproportionate punishment taking into account the state of health and age of the third-country national concerned.

The decision shall specify the place of compulsory confinement, the code of conduct to be observed and the obligation to appear at specific intervals before the authority if the place is not a community shelter or a reception centre.

The code of conduct has to also state that the third-country national is not authorized to move outside the territory of the county specified in the decision except if the third-country national holds a humanitarian residence permit issued or if so authorized by the immigration authority at the third-country national's request. The designated place is a community shelter or a reception centre, if the third-country national is not able to support himself, and has no adequate accommodation, financial resources, income, or host or relative who can be compelled to provide support.¹⁸

SECTION 2.3 POSSIBILITIES FOR APPEALING THE RETURN DECISION

Q11. Are asylum seekers who have received an enforceable return decision able to lodge an appeal on the decision, before being returned?

Yes / No

If yes, under what conditions can the appeal be lodged?

According to Article 45 paragraph (7) of the Asylum Act the **foreigner may appeal against the expulsion in the course of his/her appeal against the decisions of the refugee authority refusing the application for recognition and/or withdrawing the recognition.**

Based on the above mentioned regulation, **a decision rejecting the application may be subjected to court review.** The request for review shall be submitted to the refugee authority within eight days of the communication of the decision. The refugee authority forward the request for review, together with the documents of the case and its counter-application, to the court without delay.

The court decides on the request for review in a litigious (adversarial) procedure within sixty days of receipt of the statement of claim. If the applicant is under the effect of a forced measures, measure restricting personal freedom or subject to a criminal sanction or under the effect of a previously ordered aliens policing measure restricting personal freedom, the court shall proceed as a matter of priority. The court's review shall include a complete examination of both the facts and the legal aspects as they exist at the date when the court's decision is made. If necessary, there shall be a hearing in the procedure.

The personal hearing of the applicant shall be mandatory in the court procedure if the applicant is in asylum detention. The place of the personal hearing shall be the place where the detention is being performed. The personal hearing may be dispensed with if the applicant cannot be summoned from his/her place of accommodation, the applicant has departed for an unknown destination, or the

¹⁸ Article 62 paragraph (1)-(3) of the Asylum Act

subsequent application is based on the same factual grounds as the previous one.

The court may not alter the decision of the refugee authority, it annuls any administrative decision found to be against the law - with the exception of the breach of a procedural rule not affecting the merits of the case - and it shall order the refugee authority to conduct a new procedure if necessary. No legal remedy shall lie against the court's decision concluding the procedure.¹⁹

Furthermore, Article 53 paragraph (2) of the Asylum Act states that a **court review may be requested against decision rejecting the application due to inadmissibility or made in an accelerated procedure.**

In the judicial review request submitted against the rejection decision new facts or new circumstances cannot be referred to, in accordance with Section 339/A of Act III of 1952 on Civil Procedure. The request for review have to be submitted to the asylum authority within seven days of the communication of the decision. The asylum authority forwards the request for review, together with the documents of the case and its counter-application, to the court without delay. The court decides on the request for review in a non-litigious procedure within eight days of receipt of the request for review, on the basis of the available documents. The court's review shall include a complete examination of both the facts and the legal aspects as they exist at the date when the authority's decision is made. If necessary, there shall be a personal hearing in the procedure.

The court may not alter the decision of the refugee authority, it annuls any administrative decision found to be against the law - with the exception of the breach of a procedural rule not affecting the merits of the case - and it obliges the asylum authority to conduct a new procedure. No legal remedy shall lie against the court's decision concluding the procedure.²⁰

Q12. How frequently does an appeal on the return decision prevent the return of rejected asylum seekers (e.g. in all cases, most cases, some cases, rarely, never)? Do rejected asylum seekers appealing their return have a better chance of a positive decision on their return appeal than other third-country nationals required to return appealing the return decision?

Yes / **No** (and please explain your response)

As a general rule, the submission of a claim for judicial review has a suspensive effect on the implementation of the expulsion order, however there are some **exceptions.**

A court review may be requested on a **decision rejecting the application due to inadmissibility** or made in an accelerated procedure. The submission of a request for review have no suspensive effect on the enforcement of the decision, with the exception if there is a third country qualifying as a safe third country for him/her, or the applicant entered into the territory of Hungary unlawfully or extended his/her period of residence unlawfully and failed to submit an application for recognition within a reasonable time although he/she would have been able to submit it earlier and has no reasonable excuse for the delay.²¹

Moreover, if the asylum authority establishes that the **submission of a subsequent application took place directly before the implementation of the applicant's expulsion** and rejects the application on the basis of the application is repeated and no new circumstance or fact occurred that would suggest that the applicant's recognition as a refugee or beneficiary of subsidiary protection is justified, following the communication of the decision, the applicant is not be entitled to the right to remain. Furthermore, the same applies if same applicant submits an application following a final

¹⁹ Article 68 paragraph (1)-(6) of the Asylum Act

²⁰ Article 53 paragraph (2a)-(5) of the Asylum Act

²¹ Article 53 paragraph (2) of the Asylum Act

rejection decision of his/her earlier repeat application, which can no longer be challenged. In these cases the request for court review and the application to suspend the enforcement submitted against the decisions have no suspensive effect on the enforcement of the decision.²²

Article 46 paragraph (2) of the TCN Act states that expulsion orders may not be appealed, however, a petition for judicial review may be lodged within eight days of the date when the resolution was delivered. The court shall adopt a decision within fifteen days upon receipt of the petition.

Article 48 paragraph (5) of the TCN Act and Article 49 paragraph (8) of the Act on Asylum set out the same conditions, namely the Court shall decide on the request for review in a non-litigious procedure within eight days of receipt of the request for review on the basis of the available documents. There is no personal hearing in the procedure and no legal remedy shall lie against the decision of the court

SECTION 2.4 POSSIBILITIES FOR LODGING SUBSEQUENT ASYLUM APPLICATIONS

Q13. Are asylum seekers who have received an enforceable return decision able to lodge a subsequent application in your Member State, before being returned?

Yes / No

If yes, under what conditions can the subsequent application be lodged.

In Hungary, there is **no limit for applying for asylum** a person can make/lodge any asylum application. If a person makes an application for international protection twice or more, these requests are registered as subsequent applications by the asylum authority.

Q14. Is the fact that the application was lodged *after* a return decision was issued taken into account in assessing the *credibility* of the subsequent application? *Yes / No* If yes, does the issuance of the return decision make a negative decision on the subsequent application more likely? *Please refer to studies or governmental documents that provide evidence of these effects.*

Article 48 paragraph (4) of the TCN Act states that where expulsion is ordered before the application for asylum is submitted, the **immigration authority shall suspend the execution** of such measure until the binding conclusion of the asylum procedure conducted under specific other legislation, if the third-country national has the right of residence within the territory of Hungary. The decision ordering suspension cannot be contested.

According to Article 54 of the Asylum Act²³ where the applicant submits his/her subsequent application following a final termination or rejection decision on the former application, the refugee authority shall examine whether any new circumstance or fact occurred following the earlier decision that would allow for the recognition of the applicant as a refugee or as a beneficiary of subsidiary protection.

If the asylum authority establishes that the submission of a subsequent application took place directly before the implementation of the applicant's expulsion and rejects the application following the communication of the decision, or if the same applicant submits an application following a final rejection decision of his/her earlier repeat application, which can no longer be challenged, the applicant shall not be entitled to right to remain on the territory, benefits and accommodation, work in the reception centre within nine months of the submission of the application for recognition, or at a

²² Article 54 paragraph ... of the Asylum Act

²³ Article 54 paragraph (1)-(3) of the Asylum Act

workplace determined by the public employer, and beyond according to the general rules applicable to foreigners.

Section 3: Challenges to the return of rejected asylum seekers and Member States' policies to manage these

Main challenges to return

The Ad-Hoc Queries as listed in section 5 of the background to this Common Template requested information on the main challenges to return as under the Return Directive. National responses indicate that Member States consider the main challenges to both voluntary and forced return to include:

★ **Resistance** of the **third-country national** to return, which can take the form of:

- > Physical resistance and restraint
- > Self-injury (including hunger striking)
- > Absconding

Note that third-country nationals may resist return for a variety of reasons including poor employment prospects on return, poverty and poor infrastructure in the country of return, levels of corruption in the country of return etc. and it may be relevant to address these drivers in trying to mitigate the challenge, as well as trying to address the challenge itself;

★ **Refusal** by the **authorities** in **countries of return** to readmit their citizens, particularly when they have been returned forcibly (*inter alia* Afghanistan, Eritrea, Ethiopia, Rwanda and South-Central Somalia refuse to accept their nationals returned forcibly against their will);

★ **Refusal** by the **authorities** in **countries of return** to issue travel documents;

★ **Refusal** by the **authorities** in **countries of return** to issue identity documents;

★ Problems in the **acquisition of travel documents** – especially when no copies of the originals are available (and e.g. identification can only be verified through fingerprints) or when citizenship is complex (e.g. involving married couples from different countries or citizens who were born in another country);

★ **Administrative and organisational challenges** due to e.g. a lack of Member State diplomatic representation in the country of return, which can slow down administrative procedures (e.g. make any obligatory consular interviews costly and challenging to arrange) and make negotiations more difficult.

Additionally, in preparing this Common Template, members of the Advisory Group have indicated that the following is a challenge to return:

★ **Medical reasons** – i.e. If the returnee has a medical problem rendering travel difficult or impossible.

Q15. Are there any other challenges to return that your Member State experiences which are not mentioned in the box above?

Yes /**No**

If yes, please describe them by completing the table below.

Challenge	Description of how this impedes	State whether the challenge is:
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	return in your Member State	general to return / more common to the return of rejected asylum seekers / exclusive to the return of asylum seekers
Not relevant.	Not relevant.	Not relevant.

Q16. In general, Member States undertake a broad range of measures to manage challenges to implementing return. Examples of measures that are undertaken, matched to the challenges, are mapped in the table below.

Please indicate with yes/no which measures your Member State implements and, if necessary, include other measures not (yet) listed in the table. If relevant, add comments to further explain your Member States' policy related to a specific measure.

Challenges to return	Measures to manage challenges	Implemented?	Does the measure specifically target the return of rejected asylum seekers?
Resistance of the returnee to return	Development AVRR programmes	<u>Yes/No</u>	Yes/ <u>No</u>
	Detaining rejected asylum seekers to prevent absconding	<u>Yes/No</u>	Yes/ <u>No</u>
	Physical force	<u>Yes/No</u>	Yes/ <u>No</u>
	Surprise raids to enforce removal	<u>Yes/No</u>	Yes/ <u>No</u>
	Delay or cancellation of the return procedure	<u>Yes/No</u>	Yes/ <u>No</u>
	Other?	No.	Not relevant.
Refusal of authorities in countries of return to readmit citizens	Readmission Agreements (EU and/or national)	<u>Yes/No</u>	Yes/ <u>No</u>
Refusal by the authorities in countries of return to issue travel documents	Bilateral cooperation with third countries/ establishment of diplomatic relations	<u>Yes/No</u>	Yes/ <u>No</u>
Refusal by the authorities in countries of return to issue identity documents	Establishment of representations in third countries	<u>Yes/No</u>	Yes/ <u>No</u>

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	Offering positive incentives, e.g. aid packages, to third countries' authorities	Yes/ No	Yes/ No
	Applying political pressure on third countries' authorities	Yes/ No	Yes/ No
	Delay or cancellation of the return procedure	Yes/No	Yes/ No
	Other?	No.	Not relevant.
Problems in the acquisition of travel docs	Repeating fingerprint capture attempts/using special software to capture damaged fingerprints	Yes/ No	Yes/ No
	Using interpreters to detect cases of assumed nationalities	Yes/No	Yes/ No
	Detention	Yes/No	Yes/ No
	Offering positive incentives, e.g. aid packages to third countries' authorities	Yes/ No	Yes/ No
	Applying political pressure on third countries' authorities	Yes/ No	Yes/ No
	Delay or cancellation of the return procedure	Yes/No	Yes/ No
	Other?	No.	Not relevant.
	Administrative/organisational challenges	Budget flexibility	Yes/ No
	Coordination arrangements between authorities	Yes/ No	Yes/ No

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	Designation of a Service Provider in third countries	Yes/ No	Yes/ No
	Establishment of a diplomatic representation in third countries	Yes/No	Yes/ No
	Delay or cancellation of the return procedure	Yes/No	Yes/ No
	Other?	No.	Not relevant.
Medical reasons	Organising medical transfer	Yes/ No	Yes/ No
	Facilitating medical support in the country of destination	Yes/ No	Yes/ No
	Medical supervision during travel	Yes/No	Yes/ No
	Delay or cancellation of the return procedure	Yes/No	Yes/ No
	Other?	No.	Not relevant.
Other challenges? <i>Please describe and add rows if necessary</i>	No.	No.	Not relevant.

Q17. From your experience, can you indicate if there are any challenges which affect the return of *rejected asylum seekers* more greatly than third-country nationals in general? *If there is no difference in the efficacy of returning rejected asylum seekers vis-à-vis third-country nationals in general please specify "no difference".*

According to the experience of the Office of Immigration and Nationality, in some cases the rejected asylum seekers are **less cooperative than in average** that complicates more obtaining travel documents at embassies, as most embassies do not to issue travel documents to persons who do not want to return voluntarily to their country of origin.

Furthermore, they often **make subsequent asylum applications** in order to prevent the implementation of the expulsion decision.

Q18. Has your Member State recently introduced any new measures/policies to ensure the return of third-country nationals (e.g. following the exceptional flows of asylum seekers arriving in the EU since 2014)?

Hungary has not introduced any new measures facilitate to the return of third-country nationals

recently.

Q19. Are you able to identify, from the measures as set out in the table above, any good practices, i.e. measures that have proven particularly effective in overcoming challenges to return of rejected asylum seekers specifically?

If so please describe these measures in more detail by completing the table below and referring to any evidence (studies/evaluations/statistics on return trends) which demonstrate that these are effective practices in returning rejected asylum seekers.

Measure	Evidence of effectiveness / why the measure can be considered a 'good practice'	State whether the measure is effective in supporting the return of <u>rejected asylum seekers</u>
No.	Not relevant.	Not relevant.

Q20. Are there any challenges to return which your Member State has so far been unable to address effectively through any counter-measures?

Yes / No

If yes, please describe the most pressing challenges here and explain why they are so challenging in practice, elaborating on why the counter-measures implemented have not proven effective.

One of the main challenges in this field is that **embassies do not cooperate in the process of identification and issuance of travel documents**. In almost all cases, the irregular migrants do not have any official document, so the Office of Immigration and Nationality can only count on the support of the embassies regarding the identification, acquisition of travel documents. However, the majority of embassies are less cooperative (not respond to written requests, denies personal interviews etc.) in cases when the returnee does not want to voluntarily return that leads to delay in proceedings, and as a consequence - for many reasons - the return is not enforceable.

Section 4: What happens when return is not immediately possible?

Q21. If it becomes clear that a rejected asylum seeker cannot return / be returned, does a national authority official acknowledge this?

Yes / No

If no, what happens? Can the rejected asylum seeker continue to be issued return orders even though it has been established that they cannot be immediately returned, or is it communicated to the police / enforcement authorities that the person should be left to remain temporarily?

If there is no safe third country offering refuge to the third-country national affected, if assisted return or expulsion is not an option, the immigration authority **grants tolerated stay status** to the third-country national concerned and issue a humanitarian residence permit.

According to Article 51 paragraph (2) of the TCN Act in connection with any third-country national whose application for asylum is pending, prohibition against refoulement and/or expulsion applies and such person may not be returned or expelled if the person concerned has the right of residence within the territory of Hungary under specific other legislation.

Q22a. If it is formally acknowledged that a person cannot be (immediately) returned, who makes this formal decision? On the basis of which criteria is the decision made?

The **Fundamental Law** states that no one shall be expelled or extradited to a State where he or she would be in danger of being sentenced to death, being tortured or being subjected to other inhuman treatment or punishment. And Hungary shall, upon request, grant asylum to non-Hungarian citizens being persecuted or having a well-founded fear of persecution in their native country or in the country of their usual residence for reasons of race, nationality, membership of a particular social group, religious or political belief, if they do not receive protection from their country of origin or from any other country.²⁴

Article 45 of the **Asylum Act** lays down that the prohibition of refoulement prevails if the person seeking recognition were exposed to the risk of persecution due to reasons of race, religion, ethnicity, membership of a particular social group or political opinion or to treatment/behaviour determined in Article XIV (2) of the Fundamental Law and there is no safe third country which would receive him/her. In the case of an unaccompanied minor, the prohibition of refoulement also prevails if the unification of the family or any state or other institutional care is not possible either in his/her country of origin or in another state accepting him/her.

The asylum authority establishes whether the prohibition of refoulement prevails or not in its decision relating to the refusal of an application for recognition or the revocation of recognition. If the prohibition exists, the immigration authority recognises the foreigner as a person authorised to stay based on the proposal of the asylum authority.

These rules cannot be applied if the applicant's country of origin is not confirmed or substantiated.²⁵

Q22b. Is an official status granted to individuals who cannot be (immediately) returned? (if no status is granted, please write "no status granted"). In what circumstances may this be granted?

Based on the above, if there is no safe country to receive the third-country national concerned, in case of prohibition of implementation return or expulsion the immigration authority recognizes the third-country national as **person granted tolerated stay** and issues **residence permit on humanitarian grounds** for them.

According to Article 29 paragraph (1) point b) of the TCN Act in the absence of the requirements for a residence permit specified in this Act the following persons shall be granted a residence permit on humanitarian grounds

a person who has been granted tolerated status in Hungary. The validity period of a residence permit is one year that may be extended by maximum one year at a time.²⁶

When the grounds for this status cease to apply, the immigration authority withdraws the status. It also has to be withdrawn if the third-country national was granted the right of residence on other grounds or he/she failed to appear before the competent authority in the course of the review of his/her refugee status upon receipt of notice from the immigration authority, within three months from the date of the notice.²⁷

²⁴ Fundamental Law of Hungary Section XIV paragraph (2) and (3)

²⁵ Article 45 paragraph (1)-(4) and (10)

²⁶ Article 29 paragraph (2) point b)

²⁷ Article 52/A paragraph (2) and (3) point a) and b) of the TCN Act

In addition, in case of withdrawal of expulsion and exclusion orders the immigration authority - in the absence of the requirements specified in this Act for residence - issues a residence permit to the third-country national

affected on humanitarian grounds if the third-country national:

- a) cooperated with the immigration authority in the process of carrying out the expulsion;
- b) complied with the prescribed rules of conduct and with the obligation to report on a regular basis; and
- c) is not implicated in a criminal proceeding and does not have a criminal record.²⁸

The validity period of a residence permit is also one year that may be extended by maximum one year at a time.

A residence permit granted on humanitarian grounds may not be extended, or it shall be withdrawn if:

- a) any requirement for issue is no longer satisfied;
- b) the third-country national in question has disclosed false information or untrue facts to the competent authority in the interest of obtaining the right of residence;
- c) withdrawal is requested by the authority or body on whose initiative it was issued.²⁹

Q22c. If a status is granted, what advantages and disadvantages does the granting of such status to those who cannot return / be returned bring to the authorities of your Member State? (*e.g. advantages may include the possibility to maintain contact with the non-returnee in case return becomes viable in the future, the possibility for the non-returnee to contribute to society in the Member State, etc. and disadvantages may include the increased pressure on resources and the threat to the credibility of the asylum system*)

The situation of those foreigners who are subjected to expulsion, but cannot be deported (e. g. for practical reasons) and detained is uncertain and their reception is a **huge burden for the immigration authorities**.

Persons granted tolerates stay entitled to the rights afforded to persons with residence permits and to the rights granted to them in specific other legislation. He/she have to provide assistance for having his identity established, however, failure to establish his identity shall not justify refusal of a residence permit. They should be provided aid and support specified under specific other legislation.³⁰

Q23. What rights are available to rejected asylum seekers who are not able to return immediately? *Please answer this question by completing the table below.*

²⁸ Article 29 paragraph (1a)

²⁹ Article 29 paragraph (3)

³⁰ Article 29 paragraph (6) and (7) of the TCN Act

*Returning Rejected Asylum Seekers: challenges and good practices***Table 2.1: Rights and services available to rejected asylum seekers who cannot be immediately returned**

Questions	... according to law	... as carried out in practice	Provide evidence here suggesting this contributes to encouraging or deterring return
Accommodation			
<i>Is the rejected asylum seekers who cannot be immediately returned provided with accommodation? Yes/no</i>	Yes.	Yes.	N/I
<i>If you stated yes above, please describe the circumstances under which the accommodation can be provided</i>	<p>Article 74 paragraph (1) point a) of the Government Decree No. 114/2007 (V. 24.) states that persons granted tolerated stay are entitled to personal care benefits, including accommodating in community shelters or in other equivalent accommodation (Article 74 paragraph (2)). In addition, Article 77 paragraph (1) sets out that persons granted tolerated stay can be accommodated in community shelters or in reception centres for refugees.</p> <p>Person granted tolerated stay does not have to pay compensation for the accommodation, if his/her monthly income does not exceed the prevailing minimum amount of the old-age pension</p>	In practice, rejected asylum seekers who cannot be immediately returned are placed in community shelters.	N/I

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	<p>(currently 28.500 Ft, about 92 EUR). If his/her income exceeds this amount, he/she have to reimburse the cost of the services subsequently until 5th day of each month. The amount of reimbursement is determined by the head of community shelters.</p> <p>The organization responsible for maintaining the community shelter, defined by legislation, provides for the third-country nationals the following things</p> <ul style="list-style-type: none"> - accommodation, - meals 3 times a day, - personal equipment.³¹ 		
Employment			
<i>Are rejected asylum seekers who cannot be immediately returned authorised to access the labour market? Yes/No</i>	Yes.	Yes.	N/I
<i>If you stated yes above, please describe the circumstances under which they can access the labour market</i>	According to Article 20 paragraph (2) of the TCN Act - unless otherwise prescribed in this Act, those third-country nationals who have a residence permit granted on humanitarian	N/I	N/I

³¹ Source: http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=471&Itemid=1229&lang=hu
(Accessed: 05.06.2016)

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	grounds can engage in gainful employment. In addition Article 64 paragraph (2) of the TCN Act states that any third-country national who has been ordered by the immigration authority to remain in an assigned place and simultaneously issued a residence permit on humanitarian grounds shall be entitled to engage in gainful employment - subject to the immigration authority's consent - in due compliance with the provisions on taking up employment in Hungary.		
Welfare			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to receive any social benefits? Yes / no</i>	No.	No.	Not relevant.
<i>If you stated yes above, please briefly describe what these benefits are</i>	Not relevant.	Not relevant.	Not relevant.
<i>If you stated yes above, please briefly describe under what conditions these benefits can be provided</i>	Not relevant.	Not relevant.	Not relevant.
Healthcare			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to healthcare? Yes /no</i>	Yes.	Yes.	N/I
<i>Does it include all healthcare or only emergency healthcare?</i>	Article 139 paragraph (1a) of the Government Decree No. 114/2007 (V. 24.) if the person granted tolerated status do not	N/I	N/I

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	<p>have the social security status then in case of his/her sickness is entitled to use free of charge health services as defined in Article 138.</p> <p>Person granted tolerated stay status staying at the community shelter receives GP medical care in the community shelter. In addition, persons who live outside of the community shelter is entitled to medical care by the GP responsible for the medical care in his/her residential the area.³²</p> <p>Specialized health care is provided by the responsible health provider operating in the area (Article 79 paragraph (4)).</p> <p>Healthcare services provided free of charge: healthcare services defined in Article 142 paragraph (2) and (3) points e) and i) of the Act CLIV of 1997 on health care that includes:</p> <p>1. Epidemiological care:</p> <ul style="list-style-type: none"> - mandatory vaccination (except for vaccination necessary for travelling abroad), - mandatory health screening for epidemiological purposes, - mandatory medical 		
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³² Government Decree No. 114/2007 (V. 24.) Article 139 paragraph (2)-(3)

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	<p>examination, - epidemiological separation, - transfer of patients with infectious diseases, 2. Emergency health care 3. Other services defined in law for emergency health 4. Medical services and procedures related to death on the territory of Hungary 5. Disaster/emergency health care</p> <p>Fees of health care services not defined in Article 138 of the TCN Act can be reimbursed to the health care provider if Hungary undertook this obligation it in an international treaty.</p> <p>Persons granted tolerated stay can use health care services with their resident permit on humanitarian grounds.³³</p> <p>Consequently, it includes all kinds of services free of charge or for payment.</p>		
Education			
<i>Are rejected asylum seekers who cannot be immediately returned still entitled to</i>	Yes.	Yes.	N/I

³³ Source: http://www.bmbah.hu/jomla/index.php?option=com_k2&view=item&layout=item&id=534&Itemid=1283&lang=hu (2016. 06. 05.)

Returning Rejected Asylum Seekers: challenges and good practices

<i>participate in educational programmes and/or training? Yes / no</i>			
<i>If you stated yes above, please briefly describe under what conditions they can participate in educational programmes and training</i>	<p>Children:</p> <p>Article 45 paragraph (1) of the Act CXC of 2011 on national public education stipulates that In Hungary every child is required to participate in institutional education, to fulfil his/her obligations for education, children granted tolerated stay status as well.</p> <p>Adults:</p> <p>Article 39 paragraph (1) point b) of the Act CCIV of 2011 on national higher education every persons granted tolerated stay shall have the right to undertake studies in programmes fully or partially financed through scholarships granted by the Hungarian state or pay full tuition.</p> <p>In addition, according to Article 23 paragraph (3) point b) of Act LXXVII of 2013 on adult education states that adult education support can be provided for persons granted tolerated stay status against financial sources defined in law.</p>	N/I	N/I
Other?			
<i>Are any other measures taken which are relevant to mention here? Please describe</i>	No.	Not relevant.	Not relevant.

Q24. In terms of status and/or rights, does your Member State make a difference between those who cannot return / be returned through no fault of their own and those who are considered to have hampered their own return?

Yes / **No**

If yes, (i.e. if you differentiate between these two groups), please describe the reasons for this differentiation and the method used to distinguish the two.

Not relevant.

Q25. Can persons who are not immediately returnable also be eligible for regularisations?

Yes/ No If so, under what circumstances?

Article 54/A of the TCN Act states **that tolerated status shall also have to be withdrawn if the third-country national was granted the right of residence on other grounds** for example for the purpose of study or work (residence permit may be issued for the purpose of gainful employment).³⁴

A **residence permit** may be issued for the **purpose of gainful employment** to third-country nationals whose nature of stay is to perform work for or under the direction and/or supervision of others, for remuneration, under contract for employment relationship, to lawfully perform work in a self-employed capacity for remuneration or to engage in any gainful activity in the capacity of being the owner or director of a business association, cooperative or some other legal entity formed to engage in gainful employment, or is a member of the executive, representative or supervisory board of such entity.³⁵

In addition, in long-term, they have the possibility to **become Hungarian citizens**.

According to Article 4 paragraph (1) of the Act LV of 1993 on Hungarian Citizenship a non-Hungarian citizen may be naturalized upon request if:

- a) the petitioner has resided in Hungary continuously over a period of eight years prior to the submission of the petition;
- b) according to Hungarian laws, the applicant has a clean criminal record and is not being indicted in any criminal proceedings before the Hungarian court;
- c) the applicant has sufficient means of subsistence and a place of abode in Hungary;
- d)10 his/her naturalization is not considered to be a threat to public policy or to the national security of Hungary; and
- e) 11 the applicant provides proof that he/she has passed the examination in basic constitutional studies in the Hungarian language, or that of being exempted by virtue of this Act.

³⁴ Article 54/A paragraph (3) point a) of the TCN Act

³⁵ Article 20 paragraph (1)

Q26. Does your Member State regularly assess the possibilities of return for rejected asylum seekers who could not immediately return / be returned? If so:

- a. What are the mechanisms for this assessment?
- b. How regularly is it undertaken?
- c. Which types of persons does it cover (i.e. does it cover all persons who cannot return / be returned or only those not granted a status)?
- d. Is there a point at which an alternative to return (e.g. regularisation) becomes possible? If so, on what criteria is it decided that the alternative to return should apply?

Yes. The **immigration authority regularly assess the possibilities of return** for rejected asylum seekers who could not immediately return / be returned

The immigration authority issues residence permit on humanitarian grounds for persons granted tolerated status. The validity of the residence permit issued is one year, which may be extended by one year at a time. At the date of expiry immigration authorities examine that the conditions for granting the status are still met and if the conditions are not met, the status and humanitarian residence permit is withdrawn.³⁶

Obviously, the **person concerned has the opportunity to obtain a residence permit on other grounds** (e.g. purpose of study or work) under the general rules for third-country nationals during the stay in Hungary.

Q27. Do you have any evidence that rejected asylum seekers who could not be immediately returned were eventually returned during the period 2011-2015? *Evidence may include government reports, studies conducted by research institutes or migrant rights groups or testimonies of returned individuals.*

No information available.

[Section 5: Linking return policy to the asylum procedure: Member States' policies and measures to ensure that unfounded claims lead to swift removal and to prepare asylum seekers for return](#)

SECTION 5.1 ACCELERATED PROCEDURES

Q28. Did your Member State make use of accelerated asylum procedures, as stipulated in Art. 31 (8) of the recast Asylum Procedures Directive 2011-2015?

Yes / No

If yes, for what reasons/in what circumstances does your Member State make use of such accelerated procedures? Please complete the table below *Please indicate in the "comments" column if the measure is no longer applied, describing, if possible, why the measure was discontinued.*

³⁶ Article 29 paragraph (2) point b) and paragraph (3) point a) and b) of the TCN Act

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Grounds for the accelerating examination procedure	Is it policy to accelerate the examination procedure when the application presents these characteristics? Yes/No	If policy, is the policy applied in practice to date? Yes/No	How often does this happen in practice? in all cases, most cases, some cases, rarely, never	What was the Member State experience of accelerating the examination procedure in these circumstances – has it helped to ensure swift removal?
Applicant only raised issues not relevant to the examination	Yes.	Yes.	In some cases.	It helped to ensure swift removal.
Applicant is from a safe country of origin	Yes.	Yes.	In some cases.	It helped to ensure swift removal.
Applicant can return / be returned to a safe third country in line with Art. 38 of the Asylum Procedures Directive or equivalent national law	Yes.	Yes.	N/I	It did not help to ensure swift removal.
Applicant misled the authorities by presenting false documents/information, withholding of info/docs	Yes.	Yes.	Rarely.	It helped to ensure swift removal.
Applicant destroyed documents intentionally to make assessment difficult	Yes.	Yes.	N/I	N/I
Applicant made inconsistent, contradictory, false representations which contradict country of origin information (COI)	Yes.	Yes.	In some case.	It helped to ensure swift removal.
Applicant lodged an inadmissible subsequent application	Yes.	Yes.	In some cases.	It helped to ensure swift removal.
Applicant lodged an application to delay or frustrate enforcement	Yes.	No.	N/I	N/I

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of removal				
Applicant irregularly entered the territory and did not present him/herself to the authorities	No.	No,	N/I	N/I
Applicant refuses to comply with the obligation to have his/her fingerprints taken	Yes.	No.	N/I	N/I
Applicant poses danger to national security or public order	Yes.	Yes.	Rarely.	It helped to ensure swift removal.
Other? (please specify and add rows if necessary)	Not relevant.	Not relevant.	Not relevant.	Not relevant.

Q29. Does your Member State have a list of safe countries of origin / safe third countries?

Yes / No

If yes, when was this introduced and which countries are included?

On the **21th of July 2015** the Hungarian Government established the **lists of safe countries of origin and safe third countries** at the national level.

In accordance with Article 2 point h) of the Asylum Act member states of the European Union and – with the exception of Turkey – candidate countries of the European Union, countries of the European Economic Area, and the states of the United States which do not implement capital punishment, moreover Switzerland, Bosnia-Herzegovina, Kosovo, Canada, Australia, New Zealand shall be deemed safe countries of origin.

In addition, in accordance with Article 2 point i) of the Asylum A member states of the European Union and – with the exception of Turkey – candidate countries of the European Union, countries of the European Economic Area, and the states of the United States which do not implement capital punishment, moreover Switzerland, Bosnia-Herzegovina, Kosovo, Canada, Australia, New Zealand shall be deemed safe third countries.³⁷

Q30. Does your Member State implement any other measures to ensure that unfounded claims lead to the swift removal of concerned persons? *Please describe such measures.*

³⁷ Article 1 and 2 of the Government Decree No. 191/2015. (VII.21.) on establishing the safe countries of origin and safe third countries on the national level

The fast-track procedure, the introduction of national lists of safe countries, as well as the new rules of the border procedure³⁸ serve the rapid detection of unfounded claims.

Q31. Have there been any recent changes to policy or practice **to ensure that claims considered unfounded lead to swift removal** (e.g. these may include changes to policy or practices with regard to accelerated procedures and the use of a list of safe countries of origin and/or other measures)?

Yes/ No

If yes, what are these changes? Why were they introduced (please specify if in response to the exceptional increase in asylum applications since 2014)? What are the likely effect of these changes (in particular to what extent will they contribute to ensuring the swift removal of applicants with unfounded claims)?

In the summer of 2015, in order to deal with the drastic increase in the number of asylum seekers fast-track procedure, national lists of safe countries, as well as the new rules of the **border procedure** were introduced.

Article 71/A of the Asylum Act states that if a foreigner submits his/her application before entering the territory of Hungary, in the transit zone specified in the Act on the State Border (hereinafter: "transit zone"), the provisions of this Chapter shall apply with the derogations specified in this Section.

The applicant is not entitled to the right to remain on the territory. The refugee authority shall decide on the admissibility of the application with priority but not later than within 8 days. The refugee authority shall provide for the immediate communication of the decision made in the procedure. After the expiry of 4 weeks from filing the application, the alien police authority shall authorise entry on the basis of the law.

If the application is not inadmissible, the alien police authority shall authorise entry on the basis of the law. If the applicant's entry to the territory of Hungary has been authorised, the refugee authority shall proceed with the procedure according to the general rules.³⁹

The procedure was introduced to the rapid detection of unfounded applications, and to return applicants quickly to a safe third country (Serbia). This method has proven effective, as only those applicants are subjected to normal asylum procedure, whose application really requires so.

SECTION 5.2 PREPARING ASYLUM SEEKERS FOR RETURN

Q32. Is it part of your Member State's policy on return to, early on and throughout different stages in the asylum procedure, prepare asylum seekers for return should their application be rejected? *Yes / No*
If yes, is this policy formalised in:

- a) official communications,
- b) soft law or is it

c) standard practice of the authorities?

³⁸ Article 74/A of the Asylum Act

³⁹ Article 71/A paragraph (1)-(5) of the Asylum Act

Please describe the main features of this policy / what it involves (e.g. informing asylum applicants of voluntary return opportunities, making AVR available to all asylum seekers).

Act CXL of 2004 on the General Rules of Administrative Proceedings and Services stipulates that administrative authorities shall ascertain that the client and other parties to the proceeding are properly informed of their rights and obligations, and shall promote the exercise of clients' rights. In addition, authorities shall inform the clients without legal representation concerning the relevant legal provisions pertaining to the case, the rights to which they are entitled and the obligations to which they are committed, and on the consequences for any breach of obligation, and on the availability of legal aid if the client is a natural person. Moreover, where it is required, due to the complexity of a case the clients with legal representation may be compelled under the relevant legislation to meet disclosure obligations.⁴⁰

Therefore, it is **the duty of the asylum authority give general information to applicant on the consequences of refusal of his/her application, including the possibility of return.**

Q33a. Have any recent changes taken place in your Member State policies with regard to *the preparation of asylum seekers for return* during the asylum procedure (notably following the exceptional flows of asylum seekers arriving in the EU since 2014)?

Yes / **No**. If yes, please describe such changes

Not relevant.

Q34. If no specific approaches/measures are currently implemented, is your Member State planning to introduce a specific approach/measures to prepare asylum seekers for return whilst they are still in the asylum procedure?

Please specify when these will be implemented, explain what they will entail and further elaborate on their main drivers?

Hungary is not planning to introduce such measures in the near future.

Section 6: Conclusions

Q35. Based on your answers provided, does your Member State tailor its return policies to rejected asylum seekers, and if so, how?

No. **Hungary does not tailor its return policies to rejected asylum seekers because the most of asylum procedure are not terminated due to the nature of the transit country** namely the applicants leave to unknown locations during the procedure. This derives from the fact that in the most cases, third country nationals apply for asylum only when the immigration authority apprehended them and they abuse the asylum system there with because they are placed in a reception centre which they can leave and continue their way to the destination country (in the Schengen area).

For this reasons, the Hungarian authorities do not have any possibilities for issuing the asylum decisions or reject the asylum application with the return decisions because the third country nationals leave the country earlier than the relevant authority could terminate the asylum procedure.

⁴⁰ Article 5 paragraph (1)-(3)

However, the refugee authority can, in order to conduct the asylum procedure and to secure the Dublin transfer, take the person seeking asylum into asylum detention but the most of applicants disappeared during the asylum procedure. (In 2015, 1,5 of the whole applicants were in the asylum detention)

Though, in accordance with the EU legislation, Hungary supports the voluntary return and provides adequate information about the voluntary return and its consequences.

Q36. Based on the evidence provided, which practices or policies in your Member State can be described as good practice approaches to return rejected asylum seekers?

Yes. However Hungary does not tailor its return policies to rejected asylum seekers because the most of asylum procedure are not terminated due to the nature of the transit country namely the applicants leave to unknown locations during the procedure. **In accordance with the relevant EU legislation, Hungary supports the voluntary return** and provides adequate information about the voluntary return and its consequences.

Sources:

Legal sources:

1. Fundamental Law of Hungary
2. Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
3. Act LXXX of 2007 on Asylum
4. Act CXL of 2004 on the General Rules of Administrative Proceedings and Services
5. Act LV of 1993 on Hungarian Citizenship
6. Act CLIV of 1997 on health care
7. Act CXC of 2011 on national public education
8. Act LXXVII of 2013 on adult education
9. Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
10. Government Decree No. 191/2015. (VII.21.) on establishing the safe countries of origin and safe third countries on the national level
11. Government Decision No. 1698/2018. (X. 4.) on the Migration Strategy and the seven-year strategic document related to Asylum and Migration Fund established by the European Union for the years 2014-20

Internet websites:

1. <http://www.kormany.hu/hu/miniszterelnoki-kabinetiroda/hirek/tizpontos-akcioterv-a-migracios-valsag-kezelesere> (Accessed: 06.06.2016).
2. http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=471&Itemid=1229&lang=hu(2016. 06. 05.)

Annex 1

Q37. With reference to Question 2, please complete the following table with national statistics on the (estimated) number of rejected asylum seekers, if available.

Please provide here a brief explanation of the metadata, describing for example the population covered, the method used to reach the estimates, any caveats as to their likely accuracy etc. It should be noted, given the differences in methods used to make the estimates, that it will not be possible to synthesise this information to produce a 'total EU estimate' for the Study.

No information.

Please provide your answer by completing the Excel document inserted as an object below and sent separately with this Common Template. The top ten nationalities for each year should be indicated by replacing the word "citizenship 1, 2, 3, etc." in the first column of the table with the name of the nationality. For example, if Serbia was the third-country producing the largest number of rejected asylum seekers in 2015, then this would be listed in place of "citizenship 1" in the table for 2015.

Please do not here include Eurostat information on third-country nationals returned, as this information is available publically and can therefore be analysed centrally for the Synthesis Report.