

*NATIONAL REPORT DONE BY THE ODYSSEUS
NETWORK FOR THE EUROPEAN COMMISSION ON
THE IMPLEMENTATION OF THE DIRECTIVE ON
RECEPTION CONDITIONS FOR ASYLUM SEEKERS
IN*

HUNGARY

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Table of content

ACKNOWLEDGEMENTS	3
ABBREVIATIONS:.....	3
1. NORMS OF TRANSPOSITION	4
2. BIBLIOGRAPHY	8
3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS .	9
4. GENERAL RULES ON RECEPTION CONDITIONS	11
5. PROCEDURAL ASPECTS	13
6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS.....	24
7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS	31
8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS	35
9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS	42
10. IMPACT OF THE DIRECTIVE.....	47
11. ANY OTHER INTERESTING ELEMENT	50

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It is greatly appreciated, as is are the remarks of the team compiling the synthesis report. Description of facts in this text refer to the state of affairs at the period of writing – summer 2006.

Abbreviations:

AA: Act on Asylum = Act No. CXXXIX of 1997

AESF: Act on Entry an Stay of Foreigners = Act No. XXXIX of 2001

GD: Government Decree 25/1998 (II.18.) on the care and maintenance of persons covered by the Asylum Law

GD 170/2001: Government Decree No 170/2001 (IX.26) on the implementation of the Act on Entry an Stay of Foreigners

GD 172/2001: Government Decree 172/2001 (IX.26) on the detailed rules of the asylum procedure and on the documents of the refugees

MD 24/2001: Decree of the Minister of the Interior No 24/2001 (XI.21) on the organisational structure of refugee affairs and the responsibilities of refugee reception centres

MD 27/2001: Joint Decree of the Minister of Interior and of the Minister of Justice No 27/2001 (XI.29) on the rules of implementation of detention ordered in an aliens police procedure

OIN: Office of Immigration and Nationality of the Ministry of the Interior (from June 2006: of the Ministry of Justice and Law Enforcement)

PAS: person authorised to stay

RD: Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Directive)

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Transposition in the sense of issuing new regulations with a view of transposing Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers¹ (henceforth: the directive, or the RD) has not taken place.

Transposition in the sense of correspondence between the goals of the directive and the norms of domestic law aimed at achieving them naturally exists.

The main source of law of law² on reception conditions is:

"Government Decree 25/1998 (II.18.) on the care and maintenance of persons covered by the Asylum Law" (henceforth GD 25/1998)

Promulgation: 18 February 1998, entry into force 1 March 1998; amended by Government Decree No. 171/2001 (IX.26.), (entry into force: 1 January 2002), Government Decree No 99/2002 (V. 5) (Entry into force: 13 May 2002), Government Decree No. 12/2004 (II.5) (entry into force: 10 February 2004) and by Government Decree No. 223/2005 (X.13),(entry into force: 1 November 2005)

That Decree implements the Act on Asylum (henceforth: AA) which is Act CXXXIX of 1997.

Promulgation: 15. December 1997, entry into force: 1 March 1998, amended by Act No XXVIII of 2001 (entry into force 1 January 2002), Act No XXIX of 2004 (entry into force: 1 May 2004)

The AA is the general Act dealing with refugee status determination, rights and duties of asylum seekers and refugees and the government agencies involved in the status determination and in the reception of refugees.

¹ OJ L 31/13, 6.2.2003.

² There exist no official translations of the Hungarian legal norms. This report usually will use translations provided by its author because translations provided for example at the homepage of the refugee authority frequently are unreliable or convey another message to the native speaker than intended by the Hungarian legislator.

The third major source of norms directly linked to the RD is the other government Decree implementing the AA, namely:

"Government Decree 172/2001 (IX.26) on the detailed rules of the asylum procedure and on the documents of the refugees" (Henceforth: GD 172/2001).

Promulgation: 26 November 2001, entry into force: 1 January 2002, amended by Government Decree 278/2004 (X.12) (entry into force: 20 October 2004) and by Government Decree 223/2005 (entry into force: 1 November 2005) The Hungarian title literally does not speak of refugees but of asylees.

Important technical remarks:

- Entry into force refers to the date determined by the Act itself. However, many of the acts exempt certain articles from the general entry into force date and determine an earlier, later or conditional entry date. ("e.g. upon the entry into force of the Act promulgating the Accession Treaty /to the EU/") Dates given here relate to the general entry date.
- Amendments do not necessarily relate to reception conditions. List of amendments are meant to be exhaustive, referring to all acts amending the original text.
- In practical terms these lists are not of paramount importance as the Hungarian electronic databases contain the consolidated texts, but have a "time machine" enabling the tracing over time³.
- Promulgation date always refer to the date on which the given Act appeared in the Hungarian Official Journal which bears the name: *Magyar Közlöny*.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,...)

- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
- Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
- Provide the texts of any translation of the above norms into English if they are available.

The following list contains the designation of further rules playing a role at the moment, i.e. before formal transposition is accomplished.

³ This report was based on texts appearing in the Complex electronic database. It is a paid service, but in simplified form rules can be found online. See <http://www.complex.hu/> (only publishing the original text, without subsequent amendments) or at <http://www.fn.hu/index.php?id=55> which gives up-to date text, but without time machine. Both are in Hungarian.

1. "Act on Entry and Stay of Foreigners" (Act No. XXXIX of 2001) henceforth: AESF
Promulgation: 22 June 2001, entry into force: 1 January 2002, amended by Act No XXIX of 2004 (entry into force: 1 May 2004) and Act No XLVI of 2005 (entry into force: 1 January 2006.)
2. "Government Decree No 170/2001 (IX.26) on the implementation of the Act on Entry and Stay of Foreigners" (henceforth GD 170/2001) entry into force: 1 January 2002),
as amended by the Government Decree No 99/2002 (V.5) (entry into force: 13 May 2002),
Government Decree No 191/2004 (VI.12) (entry into force: 20 June 2004) and Government
Decree No 119/2005 (VI.28) (entry into force: 1 January 2006)
3. "Decree of the Minister of the Interior No 24/2001 (XI.21) on the organisational structure
of refugee affairs and the responsibilities of refugee reception centres" (henceforth: MD
24/2001.) Entry into force: 1 January 2002, as amended by Decree of the Minister of the
Interior 62/2004 (X. 25), (entry into force: 2 November 2004).
4. Joint Decree of the Minister of Interior and of the Minister of Justice No 27/2001 (XI.29)
on the rules of implementation of detention ordered in an aliens police procedure (Henceforth
MD 27/2001) Entry into force: 1 January 2002, as amended by their Joint Decree 28/2004
(VI. 12.).
5. Decree of the Minister of the Interior No 11/1998 (II.25) on the sum of allowance to be
provided to persons falling under the scope of the Act on Asylum CXXXIX of 1997.
Promulgated: 25 February 1998, entry into force: 5 March 1998.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Hungary is a unitary state. The competence to regulate matters affecting individual rights of natural persons primarily rests with the Parliament which adopts Acts.⁴ Acts may empower the government to adopt Decrees implementing the Acts, and the Government, in turn may entitle the Ministers to adopt decrees implementing the Decrees of the Government. In the asylum context the competent Minister until June 2006 was the Minister for the Interior.

Following the elections of April 2006 a new governmental structure has been adopted by the elected Parliament. The Government has been approved on 9 June 2006. Act LV. of 2 June 2006 on the listing of the ministries changes the former administrative structure. The former Ministry of the Interior is re-named as Ministry of Local Administration and Regional Development, losing competence in all police and asylum matters, whereas the former Ministry of Justice's competences are extended to include control over Police, Border Guards, as well as over aliens-policing and asylum. Accordingly the designation is also new: Ministry of Justice and Law Enforcement.

⁴ According to the Hungarian tradition Acts are numbered by Roman numbers, decrees by Arabic numbers.

Municipalities (Self-governments) do not have relevant competencies in terms of legislation but may have control over institutions (schools, health service) which affects the conditions provided to asylum seekers.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

As already indicated in answer to Q. 1 no formal transposition has taken place (yet). In general, transposition does rarely take the form of a single Act or Decree transposing a directive into Hungarian law. Usually the main elements of a directive become incorporated into the relevant Act (in our case: AA and AESF or in the Act on Public Education) and other norms appear as rules in amendments to the implementing decrees. If a directive reflects the law already in force, no action is taken.

However, since the entry into force of the Europe Agreement with the European Communities in 1991 each new legislative document must include a so-called "harmonisation clause" which lists those community rules with which the given Hungarian Act or Decree establishes conformity. That practice has been continued even after accession.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

There is no such tendency. In the field of asylum law and the law related to foreigners the major technique is – as mentioned under response to Question 4 – the amendment of the relevant Act or Decree, which assumes that the new rules – while achieving harmonisation – should also follow the logic (and terminology) of the existing law.

Awkward results do emerge. For example the AA has two types of temporary protection: the one originally incorporated (which gives temporary protection based on the independent decision of the Hungarian Government) and that derived from the directive on temporary protection. The “national” rule was adopted long before the directive. After transposition of Council Directive 2001/55/EC different triggering conditions, duration, termination conditions remained in the Act- (See §§ 8-12 and 22 of the AA).

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Not at all. The new Government (formed by the coalition which gave the previous Government) continues its predecessor's work on transposing three directives (reception conditions, qualification, procedures) together. That is envisaged by a fundamental overhaul of the AA, incorporating changes induced by purely domestic practical experiences (e.g. delays in the court procedure, repeat applications.)

The amendment has not taken a text form yet, at the moment of writing it was in the form of an unpublished "Concept paper" for the legislative review of the AA (and other related Acts, including the AESF)

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (*please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration*).

No such study exists in the public domain. NGO documents are available, but they do not qualify as in-depth studies and do not deal with the actual transposition but with the required changes of the law in force.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There are no such studies available. Not only published studies are non-existent, but a detailed internet search among Hungarian pages brought no significant results, except for university notes for students passing exams on social policy and the like.

There are studies dealing with reception and integration of refugees. not specifically targeting the directive and its implementation but covering partial aspects of the field. E.g. Szilassy, Eszter and Árendás, Zsuzsa: "Mi már a cigány gyerekek kapcsán megtanultuk a másságot" – menekült gyerekek és az őket tanító pedagógusok diskurzusai" (We have already learnt

otherness in connection with the Roma children – refugee children and discourses of their teachers), in: Nem kívánt gyerekek? Külföldi gyerekek magyar iskolákban (Undesired children? Foreign children in Hungarian schools) Feischmidt, Margit and Nyíri, Pál, eds, MTA Nemzeti-etnikai Kisebbségkutató Intézet, Budapest, 2006, 173 – 204.p. (The volume is the 15th in a series to appear since 1992 under the general editorship of Endre Sík dealing with migration and asylum seeking affecting Hungary.)

Upon request this reporter can produce a general bibliography on Hungarian asylum related literature published after 2003, but thought that it would go beyond the purpose of this question, therefore only showed an example, which in fact comes closest to an analysis of the reception conditions in a small subfield, namely schooling

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There exists no directly related and reported court decisions.
(Bear in mind that no formal transposition has occurred yet and the present system on withdrawal of benefits is not subject to court review.)

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

In reality the reception conditions of the asylum seeker depend largely on the circumstances in which she applied for asylum.

The ideal-type asylum seeker, who voluntarily and early on communicates her intention of seeking the protection of Hungary as a rule will receive accommodation and subsistence in one of the open reception centers operated by the refugee directorate of the Office of Immigration and Nationality of the Ministry of the Interior (henceforth: OIN⁵) (located in towns of Bicske, Békéscsaba and Debrecen.) The exception is if the asylum seeker has accommodation provided by other actors (family, friends, churches etc.) Practically there have been hardly any such cases until recently, but in the very few instances the asylum seeker is entitled to stay there (even without undergoing a medical screening in a quarantine). According to most recent data the number of such (mostly Chinese and Vietnamese) applicants is rising, but the widespread perception is that these are applicants who already

⁵ Bear in mind that at the time of writing this report the re-organization of the asylum system is taking place. It is already visible that the system's control will transfer to the Ministry of Justice and Law Enforcement, but it remains to be seen whether the office with its three branches (nationality, immigration, refugees) will remain. For the present structure check: www.bmbah.hu

lived and worked in Budapest and exploit the refugee status determination procedure to legalise their stay.

Most of the asylum seekers in reality are apprehended while violating aliens law, either trying to cross the border without the necessary prerequisites or stopped as persons without a right to stay or work. In their case the aliens police procedure aimed at sanctioning the violation starts first. During the aliens police procedure the persons may express their need for protection and apply for refugee status. Alternatively in the process threatening with expulsion they may reveal that the return to their country of origin would entail a threat of inhuman or degrading treatment or punishment or a breach of any other norm which must not even indirectly (by refoulement) be violated. If this happens the aliens police procedure or – more frequently – the implementation of the already adopted expulsion order - is suspended. If the persons applied for refugee status the determination procedure – in front of another branch of the OIN – is started. If the person claims the threat of torture, inhuman or degrading treatment or death penalty (without applying for refugee status) then that will be investigated by the aliens policing authority. In fact the latter scrutiny is an *ex officio* obligation of the expelling authority, even without a claim being made by the “illegal foreigner”. (§ 43 AESF)

Nevertheless the "illegal alien" character defeats the "asylum seeker" character of the individual and circumstances of her stay correspond to those, who have never sought protection and simply await an aliens police decision. This usually amounts to a stay in closed detention centers run independently of OIN by the Border Guards.

Exceptions do exist, couples with a child or more, or single mother families are usually transferred from the closed detention centers to the open reception centers, but there is neither a written public rule nor a clear policy on when and to whom this happens.

The absolute time limit for continuous detention is 12 months. After that – independently of the state of the aliens police procedure and the refugee status determination procedure – the person must be released from detention. If her case is not decided with a final decision or if she is protected by the broad non-refoulement rule prohibiting torture, inhuman or degrading treatment or punishment (as phrased in § 43 of the AESF) the person is released from detention and transferred to an open institution. It may be a so called "community shelter" or simply one of the reception centers. That means therefore that asylum seekers, who are treated as "illegal aliens" at the same time may be accommodated in those community shelters as well, if their detention with a view of expulsion (§ 46 of the AESF) has expired, but expulsion was not realised because of the still pending status determination procedure. In recent practice, however asylum seekers were transferred to one of the reception centers after 12 months in detention. Consequently community shelters nowadays only host “persons authorized to stay” and foreigners who for technical reasons⁶ could not be removed within the 12 months of detention but who are neither asylum seekers nor refugees.

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- Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis

⁶ Lack of travel document, unwillingness of the country to take them back, unsuccessful effort to identify the person etc.

of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

- B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

In general reception conditions do not depend on the "stages" of the procedure, as in essence there are no such stages which would influence the place or conditions of reception, except for the differences described in response to Question 10.

There is one more factor which in principle could (and in the past did) influence the actual reception conditions. This is the so-called airport procedure (AA § 42, and GD 172/2001, § 24.) Asylum seekers arriving without papers or with falsified documents (in general not meeting entry conditions at the international airport) may be subjected to the airport procedure, which - if accelerated – has to be completed in eight days. In case of an airport procedure the OIN's refugee directorate is informed about the presence of the asylum seeker and the interview is conducted before admittance to Hungary. Entry may be denied and if so, then during the airport procedure the asylum seeker is accommodated at the so-called transit centre where other persons without the right to enter or awaiting removal stay. However, upon appeal the asylum seeker is admitted to the country. Since appeal has suspensive effect, therefore admittance is virtually granted, in practice the airport procedure is not used. The non-use of the airport procedure is further caused by the fact that the fingerprint checking with Eurodac still entails a phase when the digitally recorded but then physically printed fingerprints travel by surface mail from the reception center (or the airport) to the central authority in Budapest forwarding the data to Eurodac. The procedure in fact usually is longer than eight days.

According to unpublished data available to the author out of the 8 million arrivals at Ferihegy Airport, Budapest in 2005 only in a single case did someone apply for asylum. (There is no information on whether that case went to the normal procedure or not.)

No other specific procedure (border, eligibility etc.) is used. The Dublin II procedure is perceived as part of the full procedure and GD 172/2001 as amended expressly confirms that during the determination of the responsible state the asylum seeker enjoys all the rights of the beneficiaries of the applicant. (§1 B (6))

4. GENERAL RULES ON RECEPTION CONDITIONS

- Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,...). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

In general material reception conditions are only provided if the applicant has no means to sustain herself.

Material conditions are provided in kind. Neither vouchers, nor money is used, except for the monthly allowance of the applicant and for the reimbursement of justified travel costs (e.g. attending the court hearing) or the travel costs of voluntarily returning home. Since 2003 travel on train in second class is free by the force of Government Decree 287/1997 § 2 (1) g). One travel on a long distance coach is also free, but only with a special certificate of OIN. (same decree, § 10 82.) The monthly allowance is due "from the third month" of staying at the reception centre, and is provided to asylum seekers above the age of 14. Its sum has been determined in 1998 and never changed: 2500 HUF which is the equivalent of 9 euros. (See Decree of the Minister of the Interior No 11/1998 (II.25), § 1.) The regulation is really counterproductive in case of large families with several children under 14. They would need money to supply the children with fresh fruit, etc, but the allowance is only provided to those above 14.

The experience of the Southern Slav wars has an imprint on GD 25/1998: it envisages that camps and other accommodation may operate on the basis of contracts. Should that occur they are supposed to provide the same in kind provision as the presently operative reception centers. (§7 (3))

In fact recently in all reception centers self-catering units were created in order to change material reception into self-maintenance. These cooking kitchens are often used, but the basic care remained the full board provision. As no money is earmarked for self catering, those who want to use this opportunity must do it from their own wealth or income.

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- B. **Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)?** In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Opinions on the appropriate answer to this question would show a certain spread. Observers would fully agree that basic needs are met, subsistence in any condition is guaranteed, shelter, food, medical care, education - according to the domestic rules in force – is assured.

However, asylum seekers who are detained in fact experience a very low standard of living, essentially adequate to a prison life, with minor differences. (The recent refurbishment of the detention facilities led to a tighter regime: whereas earlier the access to the yard and movement within the building/corridor was unhindered, nowadays persons are essentially limited to their room, and only the one hour guaranteed and guarded presence in open air brings variety.)

Life in the open reception centers normally offers an adequate standard of living, however when it comes to details, shortcomings show themselves. (Limited social assistance, limited leisure activity offers, difficulties for groups with special needs.)

5. PROCEDURAL ASPECTS

Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

Applications by definition are made for Geneva Convention status as the "person authorised to stay status" (which at present is a kind of status between subsidiary protection and mere non-refoulement) can not be applied for. It is granted *ex officio* if the relevant authority (refugee directorate, aliens police directorate) notes that return or refusal of the person would violate the broad non-refoulement rule enshrined in § 43 of AESF.

B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

As explained under Q 13 A, applications always aim at Geneva Convention status, therefore all applicants fall under the RD. If the decision of the refugee directorate denies both the Convention status and the person authorised to stay status (henceforth: PAS), - or if in a normal expulsion procedure the authority does not find the application of the non-refoulement rule applicable, then appeal may be submitted aimed at invoking § 43 of the AESF only. If that is done in the refugee status determination procedure the applicant status - and therefore the applicability of RD – remains. If appeal is submitted by someone who has not applied for

refugee status but nevertheless opposes expulsion in an aliens police procedure RD would not be applied.

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- C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are no such rules as there is no possibility to apply at representations.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

As indicated above there are two typical ways of "making an application for asylum" (RD §13 (1)). The proactive behaviour of the asylum seeker contacting the authority and the passive in which an aliens police measure leads to the expression of the wish to get international protection.

In the first case (the asylum seeker contacting the Border Guards, the Police, the alien policing civilian authority or the refugee authority itself) the asylum seeker is directed to the reception center within a day, where she will be subject to a medical quarantine, but otherwise (and after its termination) material conditions are granted. According to §30 (2) of the AA "in respect of a foreigner who declares his intention of seeking asylum" the Police or the Border Guards have to "record his statement ... [and] send it to the refugee authority without delay". They also must "provide for accommodation or direct him, or in justified cases, transport him, to the nearest reception center without delay"

In the second case (usually detention for the violation of the rules on entry and stay in Hungary) the asylum applicant is subject to the rules applicable in these detention centres. (See the other questions, especially Q. 33, dealing with those conditions on the details.)

Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Reception conditions end with the final decision refusing recognition as a refugee or as PAS.

If status is denied, but PAS granted the rules on care and support of PAS apply, which are different from RD. (See §§ 81-96 of GD 170/2001)

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

At the moment there are none. It is envisaged that the amendment of the AA will deal with the issue of repeat application and will have repercussions on reception conditions to be granted to applicants, who submit a successive application without proving a thorough change of circumstances at home.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are asylum seekers informed, and if yes about what precisely?

According to § 8 (1) and (2) of MD 24/2001 the Annex of the MD containing the House Rules of the reception center in 13 points have to be made available in five languages and "foreigners hosted in the reception center must be informed in a language he understands about his rights and duties." The House Rules mainly contain simple disciplinary rules (no threatening objects may be held, items /bed clothes and the like/ received at arrival have to be accounted for, rules on smoking places, etc). In terms of relevant conditions the Rules contain a general obligation to observe the rules of the reception center and command respect for the rights and tranquillity of others. It assures the right to leave the center between 8 a.m. and 22 p.m. Longer than 24 hours absences are subject to previous notice and approval. The Rules refer to the possibility of visiting the doctor and guarantee the freedom to individually or collectively exercise one's religion as long as it does not interfere with the operational order of the reception center.

B. Is the information provided in writing or, when appropriate, orally?

See answer to subquestion A. Additional information is imparted by the social workers. In detention centers rules of the facility are made available in writing.

The reception center in Bicske has an unusual tool for sharing information: it is a video film, shown to every newcomer, in which an amateur actor goes through all the relevant steps of the expected procedure. The video exists in the following languages: Arabic, English, French, Farsi, Georgian, Hungarian, Russian, Somali.

B bis. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

According to the available information in two of the reception centers the House Rules are available in five languages. (Bicske: Arabic, English, French, Georgian, Persian, and Somali; Debrecen: Arabic, English, French, Persian, Russian and Serbian.) In the third reception center, in Békéscsaba House Rules are available in English and French.

C. Is the deadline of maximum 15 days respected?

Written law or the House Rules do not regulate this issue. According to OIN House Rules are handed over on the very first day, together with the food card and the hygiene pack. According to NGO reports it does occur that no detailed information on rights and duties related to reception conditions is provided to the asylum seeker.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

There is no official list of such organisations, whether comprehensive or partial. NGO-s themselves visit the relevant institutions and their existence is revealed to the applicants by word of mouth and by the leaflets left in the reception and detention centers. Leaflets usually are produced in different languages. In the reception centers applicants do have access to internet and therefore may learn about relevant NGOs that way as well.

B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

See response to subquestion A.

C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

See response to subquestion A.

D. How many organisations are active in that field in your Member State?

The major players are:

Hungarian Helsinki Committee Refugee Program (www.helsinki.hu) It provides free legal counselling and representation in the refugee status determination procedures. HHC is also instrumental in running refugee legal clinics – a special cooperation of law students, lawyers and academia.

Menedek Association for Migrants (www.menedek.hu) engaged in individual social counselling, occasionally providing that service on behalf of OIN on contractual basis and running community programs (clubs for women, children);

Cordelia Foundation for the Rehabilitation of Torture Victims (www.cordelia.hu) offers psychological treatment and rehabilitation.

There are approximately half a dozen other NGO-s which are involved in refugee-related activities, including sports, culture, intercultural education, community development. some of their activities may involve applicants.

Q.19. Documentation of asylum seekers (see article 6):

- A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)**

According to §14 (1) of the AA applicants "have a right to stay on the territory of the Hungarian Republic". § 15 states that they are entitled to "a document - to be determined by a separate legal rule-, which certifies the lawfulness of [their] stay in Hungary". The separate legal rule is § 15 (b) of the AESF according to which OIN will provide the applicant "out of humanitarian consideration" with residence permit. De facto it occurs upon the suggestion of the refugee branch and is executed by the aliens policing branch. (See §17 of GD 172/2001)

Applicants in detention do not get a residence permit. According to § 24 of the AESF they should be provided with a certificate entitling to temporary stay (permission to stay), valid for a month, but in most of the cases that document - although formally issued – is not handed over to them but attached to the file.

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- B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?**

See response to subquestion A.

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- C. For how long is this document in principle valid and is it necessary to renew it after a certain period?**

The residence permit issued to the applicant is valid for 3 months. There is no firm rule, practice shows this duration.

D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected?

There is no such deadline. According to the homepage of OIN the document is issued when the applicant is “after the first hearing”. As in two of the three reception centers the documents (the humanitarian residence permits, which physically are the standard sized plastic cards) can not be issued, it can take days or during summer even longer until the competent body of the aliens police authority delivers them.

E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Not. Whereas detailed rules regulate the issuance of the Convention Travel Document to recognised refugees, and § 35 GD also gives details on how a temporarily protected person may get a specific travel document described in the annex of the GD, there is no rule on how applicants could get access to a travel document.

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Registration is carried out by the refugee authority. Data are stored centrally at OIN in an electronic database including data on name, date of birth, sex, marital status, family links, country of origin. It also contains nationality or religion if referred to among the grounds of persecution. The asylum seeker's statement of her financial position (made in connection with proving the entitlement to receiving benefits) and the benefits given her are also included. (§§ 51-51 AA and OIN-s information) Fingerprints of those above 14 years of age are not yet stored in that database. the database is separate from that of the aliens police authority's info system.

Q.20. Residence of asylum seekers:

A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Asylum seekers are free to move around if they are not in detention. If they live in the reception center they can be away from 8 a.m. till 22. p.m. without notice. If they indicate the intention to be absent for a longer period it is also their right, but absence must be approved by the reception center and the request has to be submitted three days before departure. No limitations whatsoever apply in terms of the part of the country to be visited.

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- B. About the place of residence (see §2 of article 7): explain to which extent the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).**

Asylum seekers may stay outside the reception centers, but their place of residence has to be designated/approved by the refugee authority (GD 172/2001, § 10 (1-2)). According to GD 172/2001 unaccompanied minors are to be accommodated in the appropriate child protection institution, in a reception center which guarantees their separate accommodation or with a relative who does not qualify as a close family member, but undertakes in writing to accommodate the minor and take care of and provide for the minor. (same, subpara 3.)

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- C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).**

As described above in the response to Q 10 essentially there are two scenarios. If the asylum seeker herself contacts the authorities with her protection needs, during the procedure she is accommodated in one of the three existing reception centers. There are no rules on the placement, it depends on the availability of places and other non-normative conditions. (E.g. are buildings being renovated or not.) There was only one exceptional period in which asylum seekers of a certain national background were collected at an ad hoc center designed for that specific group. (Afghans after September 11 2001)

Material conditions are provided in the center or on the basis of documents issued by the center so absence from the place entails a (temporary) loss of benefits. Illegal absence may lead to the curtailment of the monthly allowance.

Those in detention have absolutely no influence on the location of their detention.

Decisions are taken individually.

Occasionally -as a sanction – asylum seekers are transferred from one reception center to the other.

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- D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)**

There is no current practice on this issue. Back in the early 1990s ad hoc reception centers had been set up in former military barracks, etc.

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- E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)**

In case of residents of the open reception centers leave between 8.a.m. and 22. p.m. is unconditionally free. As described in response to sub-question A above, departure for longer periods is subject to prior request and approval. Rules on this procedure (Annex to MD 24/2001, the House Rules, point 4), do not establish criteria for granting or denying the permission.

In case of asylum seekers who are at the detention centers leave is practically impossible, except for health reasons to attend specialized treatment or to be hospitalised. Leave always entails escort. Naturally attendance at court hearings also entails a temporary leave from the detention center.

Asylum seekers transferred from detention to community shelters are free to leave for 24 hours. Those intending to be absent for a longer period must inform the aliens police stating the duration of the absence and the planned place of stay. (GD 170/2001, § 74 (2) e)

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- Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

According to § 7 (2) of the GD "If the beneficiary of the allowance - disregarding a written warning - repeatedly or seriously violates the House Rules of the reception center, the allowance must be withdrawn." Unauthorised absence may be considered a serious violation.

There are no public rules on the procedure of reduction or withdrawal of benefits. According to practitioners' observations there is an internal instruction of OIN according to which an unannounced departure from the reception center lasting for more than two days may lead to

the loss of accommodation and violent conflicts and breaches of the House Rules may lead to the withdrawal of benefits, including the withholding of the monthly allowance. OIN's sources deny that accommodation would not be provided any longer after not permitted absence. However if the case is terminated in the meantime, the returning person is treated as a new (repeat) applicant.

The "Concept paper" mentioned under Question 7 envisages the reform of the reduction and withdrawal system by way of harmonisation of the law with the directive. In that context it suggests the termination of material benefits (food, shelter) after the first level (administrative) refusal of the application in repeat procedures. That would mean that during the - much longer - appeal process no reception conditions would be provided. (Of course this is only relevant if appeal in repeat procedures retains its suspensive effect, i.e. prevents removal.)

B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

No.

It may be noted, that Hungarian law includes the category of "manifestly unfounded application" (AA, § 43). Manifestly unfounded applications are to be treated in accelerated procedure, leading to a first instance decision within 15 days. The three main reasons for considering an application manifestly unfounded are:

- the lack of clear substantiation of the claim to refugee status or well founded fear ;
- intentional deception of the authorities or abuse of the asylum procedure;
- existence of a safe third country which is obliged to take back the applicant.

Subparagraph (3) d) of § 43 deals with one of the manifestations of the second ground. It declares the application manifestly unfounded if the applicant "has illegally entered the territory of the Hungarian Republic and had an opportunity to submit an application [for the recognition of refugee status], but has not used it."

However, at present neither the concept of manifestly unfounded application nor accelerated procedures are combined with reduced or denied material benefits.

C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through an independent arbitrator) (see article 16, §4 which is a mandatory provision)?

As there is no formal procedure on reduction or withdrawal legal guarantees are not available. Individuality in practice is granted as cases relate to individuals and their concrete deeds. UNHCR notes the total lack of mediation or other formalised soft methods complementing (preventing) the implementation of sanctions.

D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

In principle statement 14/03 calling for the non-violation of article 3 ECHR is respected. However, it could be raised if in case of asylum seekers, who have committed no crime but the minor offence of breaking rules on the entry and stay of foreigners are not treated inhumanely. A full year of detention in prison-like circumstances may be out of any proportion to the wrongdoing.

As to the demand of taking into account the specific situation of vulnerable persons, practice shows that shortcomings exist, but they do not specifically relate to reduction or withdrawal of reception conditions.

As to the third demand of the statement: emergency health care is provided under all circumstances.

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- E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

As of yet there are no such decisions, especially as there is no regulated procedure of formal, legal appeal, beyond the essentially unregulated complaint procedure (See response to Q 22 D). According to information provided by OIN, decisions to withdraw monthly allowance have never been challenged so far.

Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

For the sake of clarity remedies concerning Article 7 decisions and other appeals have to be treated separately.

As indicated in the response to Q 21 the reduction or withdrawal of benefits is not subject to a publicly regulated procedure, therefore one can not speak of a system of legal appeal either. A complaint procedure exists. See point D below.

As regards detention and designation a compulsory place of residence AESF regulates appeals as part of the aliens law procedure. If asylum seekers are detained or subject to the designation of a compulsory place of residence they can utilise the same appeal rights. These can be summarised as follows.

There is no administrative remedy against the decision to place someone into detention. The decision's review can be requested from the local court within five days of its adoption. There

is a right to be represented by an attorney at law. The procedure is special: it is contentious inasmuch the foreigner has a right to hearing, but the decision of the court is not a judgment but an order. No further appeal exists. The procedure is strictly a review of the legality of the decision to detain, it is not aimed at reconsidering the decisions' reasonability or proportionality.

Information on appeal rights are included in the decision to detain.

There is a separate legal guarantee, a sort of habeas corpus. The detaining authority (Border Guards or the Police) must initiate the extension of the detention with the local court in the first six months and with the county court in the second six months. Review of the reasonableness of the detention is due after every 90 days. In that context the court may deliberate if further detention is justified. (AESF §51/A)⁷

GD 170/2001 states that there is no separate appeal against the designation of the location of detention.

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- B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?**

Asylum seekers who request the judicial review of the detention decision may hire a lawyer. The Hungarian Helsinki Committee, a leading NGO does maintain a network of lawyers who personally or through students assistants working in a legal clinic regularly visit detention facilities and make their services available free of charge.

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- C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?**

There are no published administrative appeal or court decisions on the reduction or withdrawal of benefits.

In the year 2000 there were decisions published in summary form concerning detention. As they dealt with a legal situation which no longer exists, they became irrelevant.

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- D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?**

⁷ At the moment there is a contradiction between the text of §§ 46 and 51/A of the AESF. The former envisages a review every month, the latter every 90 days. According to the information provided by OIN to this reporter, review is taking place as indicated in the main text, and the contradiction is simply due to a codification error. The passage of § 46 should have been removed when § 51/A was inserted.

There is no such system of "general complaint" by the non-affected persons, representatives of groups. Individual complaints can be submitted to the head of the reception center. Against that decision a further complaint or request may be lodged with the general Director of the OIN. (MD, § 7 (1-2))

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

The AA in the section determining the meaning of certain expressions (§ 2) defines "immediate family member". According to § 2 f) it refers to "the spouse and minor child of the foreigner; in case of a minor applicant the parent." GD 172/2001 on the procedure takes over the term and permits the submission of a single application covering the applicant and his/her immediate family members "if the applicant and the immediate family member have arrived to the territory of the country together". (§ 2 (2)). Immediate family members may be recognised as refugees "in order to secure common family life" (even if the family member does not meet the Geneva Convention definition) if the application was submitted jointly, or - although later - before the principal applicant is recognised as a refugee.

The Hungarian definition of the family follows that of the RD inasmuch it does not include the child of the spouse (who is not the child of the applicant). Unmarried couples in a stable relationship do not qualify as family according to the text of the rule.

It may be noted that in the context of family reunification of recognised refugees, the AESF as amended in 2005 operates with a broader and more clearly defined family concept as it includes the adopted children and extends to the child of the spouse. (§ 14 AESF)

Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Housing is practically exclusively organised in open reception centers, except for those who are detained. (See response to Question 10 above). It is rare (but on the rise) that an asylum seeker would stay on her own costs outside of the centers. Three such centers exist: in Békéscsaba, in Bicske and in Debrecen. Asylum seekers are entitled to stay there during the administrative and the court phase (if any) of their status determination procedure. According to § 27 of AA it is the task of the reception center to "provide care and maintenance and lodging for the period of the procedure of the authority" (a)). The refugee

authority designates the place of lodging/accommodation⁸. (§ 10 of GD 172/2001) Practice unequivocally relies on the GD and gives an extended meaning to the term "applicant" extending it beyond the administrative procedure to include the appeal phase, thereby overruling the narrower conception of § 27 of the AA. This is crucial as the administrative phase may be fairly short compared with the appeal phase and if the AA would be followed literally asylum seekers would not get accommodation for the large part of their status determination process.

Separated children (unaccompanied minors) are accommodated by a specific home run by the Hungarian Red Cross in Nagykanizsa.

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- B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The number of places depends on the stage of renovations. According to information from OIN on 31 December 2005 the capacity of Békéscsaba was 350, Bicske 100 and Debrecen 1395 places. The home for separated children accommodates 20 such persons. The capacity of Bicske was limited by deputy the director's instruction.

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- C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

In general the number of places is sufficient. New arrivals were below 2000 for the last years. (2004: 1600, 2005: 1609, 2006 January 1-June 30: 999). The same reception capacity could handle much larger numbers in the late nineties. (1999: 11 499, 2000: 7 801). When comparing the past with recent years a qualification has to be added: since the late nineties the time spent in the reception centers has dramatically increased. In the years with greater numbers a significant portion of the asylum seekers disappeared from the centers within weeks.

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- D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

There are no publicly known plans. It is assumed that in the frame of national defence planning contingency plans for large scale influxes are elaborated, but no hard evidence is available.

⁸ The Hungarian norms are somewhat confusing on the use of terms, which causes difficulties in translation. The AA speaks of "lodging" [elhelyezés] in the context of asylum seekers (§27 a)), the GD 172/2001 referring to asylum seekers speaks of place of accommodation[szálláshely], as is the GD. MD 24/2001 returns to the use of lodging.

Q.25. Accommodation centres (**important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question**)

A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No, there are not. Only the center for unaccompanied minors is different.

B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No. There is no time limit. Accommodation in private houses is not on offer. Asylum seekers stay in the reception center until the final decision is taken.

With the approval of the refugee authority they may move out, on their own cost.

(Recognised refugees have to leave the reception center 6 months or maximum a year after recognition)

B bis. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Annex to the MD 24/2001 contains the House Rules which are applicable at each reception center.

C. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

See responses to 21/A, 21/E and 22/D.

D. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

There is no formal rule on this. According to observers no efforts are made by OIN to achieve participation. OIN notes that in their experience those asylum seekers staying for a longer period in a reception center become informal mediators and sometimes spokespersons of others. On the other hand, the nationality breakdown of the asylum seekers accommodated in the Hungarian centers shows a great variety and the different nationality appear to be reluctant to co-operate with each other in order to form a common advocacy group.

E. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

According to point 5 of the House Rules the asylum seeker must participate in the cleaning of her own room and in “keeping the immediate vicinity of the building tidy.” Otherwise there is no obligation to work.

The specific rule on work is that asylum seekers may take up paid employment within the reception center without a work permit (which - in the first year - they can not do outside.) (See: AA § 16 (2))

Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

Communication is free. All these organisations have free access to the centers and the asylum seekers are free to visit them. Naturally the latter entails technical problems as none of the centers is in Budapest, where the only UNHCR office is to be found. Bicske is only 30 kilometres away, but the distance of Debrecen is 230 km-s and of Békéscsaba 200 km-s. The problem is alleviated by the fact that travel on train is free of charge for asylum seekers. (Government Decree 287/1997 (XII.29) on benefits on public transportation, §2 (1) g))

The Hungarian Helsinki Committee’s lawyers regularly (usually: weekly) visit the centers and have office hours there, and the NGO Menedék is practically constantly present through its social workers doing counselling. UNHCR pays frequent visits to all of them.

As already mentioned internet is available in all the three centers, so asylum seekers can communicate via e-mail as well.

§ 15 c) of the AA assures that during the procedure the asylum seeker may contact UNHCR or “any asylum-related organisation” in order to assure legal representation.

- B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)**

Access is free. Separate rooms are available for discussion, assuring privacy.

- C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?**

Not to the normal reception centers.

- Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Yes, a mandatory medical screening is organized, which includes screening for HIV/AIDS. During the 2-3 weeks until the results become available the asylum seeker must remain separated from the community of the reception in a quarantine. See AA § 16)c and GD 172/2001 § 12 (1). In practice this rule is not uniformly applied in the reception centers as some of them does not enforce the quarantine, although the screening itself is realised with every newcomer.

- B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?**

Detailed rules on health care are incorporated in § 11 of the GD.

According to it:

“ (1) If the applicant ...is not covered by the social security system, he shall be entitled to the following health care services free of charge in the case of illness:

- a) examinations and curative treatments falling within the sphere of basic health care;
- b) examinations and curative treatments within the framework of outpatient health care in the case of emergency, including emergency dental treatment, as well as the medicine and dressing material used in the course of health care;
- c) inpatient hospital care in the case of emergency, and curative treatment in the hospital according to the prescriptions of the physician, including surgical operations and the therapeutic materials and prosthetic instruments used in the course of such operations, as well as therapeutic care, and the medicine, dressing materials and meals necessary for the treatment;

- d) following care/maintenance as indicated in paragraphs b) and c), after outpatient health care or inpatient hospital treatment, until the stabilization of the person's health condition
 - da) the examinations and curative treatment required;
 - db) medicine which cannot be replaced with any other medicine and which does not fall within the types of medicine referred to in paragraph f) and any medical instruments necessary for the application thereof;
 - e) prenatal and obstetric care,
 - f) medicine which can be prescribed free of charge for those "entitled to public health care" in accordance with a separate legal rule and/or medicine which can be ordered with a 90% or 100% social security subsidy on the basis of a "health care provision";
 - g) ambulance service in the case of the care/maintenance mentioned in paragraphs b) to e) if, due to the condition of the patient, transportation of the patient cannot be solved in any other manner.
- (2) Applicants and temporarily protected persons shall be entitled to the compulsory immunization subject to their age.

.....

(4) Unaccompanied minor applicants ... shall be entitled to full health-care services corresponding to their condition over and above the health-care provisions defined in subsection (1). "

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- C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Nurses are available 24 hours, doctors and paediatricians come to the center (twice a week) and have office hours, so do psychiatrists and non-verbal therapists of the Cordelia Foundation providing psychological care for psychiatric patients (torture victims, etc.) .

For specialized treatment asylum seekers have to attend the local special treatment centers. In case of hospitalisation need they are brought to the public hospitals.

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- Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

It is 1 year. (AA 16 § (2)) As indicated in response to Question 25 E asylum seekers are allowed to work within the reception center from the submission of the application (after the quarantine time).

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- B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?**

After the expiry of the year asylum seekers are obliged to obtain a work permit according to the general rules applicable to foreigners. Those are detailed in Decree No. 8/1999 (XI.10) of the Minister for Social and family Affairs, implementing Act No IV. of 1991 on the promotion of employment and on unemployment benefits.

Work permits are supposed to be delivered in ten days.

Their duration coincides with the length of the offer or has a maximum of one year, whichever is shorter.

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- C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?)**

There are no such limits (except for the jobs reserved for Hungarian nationals, naturally.) Asylum seekers are free to take up employment as any foreigner who is not an EEA national.

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- D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEA citizens and legally *resident* third-country nationals on the other?**

Asylum seekers qualify as legally resident third country nationals. EEA nationals have priority before them.

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- E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)**

There are no direct rules dealing with that issue. Occasionally OIN itself or the NGO Menedék organize ad hoc vocational training courses. In the past trainings as carpet waiver, ceramist and social worker have been offered.

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- F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?**

One of the few transpositional rules adopted in 2004 was the insertion of the 1 year deadline into the prohibition of employment. (§ 48 of Act No XXIX of 2004, amending § 16 (2) of AA) (Before that prohibition was unlimited) Accordingly the rules became more generous.

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- Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception**

conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes, the provision of the conditions - except for the accommodation and the food provided in the reception center - is subject to the asylum seekers own resources. (Wealth and/or income). According to § 3 (1) of the GD they are free from contributing if the average income per head of the applicants constituting one household does not exceed the actual minimum of old age pension. In 2006 this is 25.800 HUF which is approximately 90 euros.

The applicant has to make a formal statement concerning her wealth and income when applying. That statement is subject to renewal upon request of the refugee authority. The statement ends with a declaration in which the applicant takes note of the fact that she is obliged to pay for the services if her income exceeds the above mentioned limit. (See Annex 1 to GD). According to OIN the occurrence of the existence of own resources is 1 to 1000 among the applicants.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Apart from the specific rules in the procedure – which are not subject to this report – the following may be noted:

There is no formal transposition of § 17 RD. As mentioned elsewhere, unaccompanied minors (separated children) may be accommodated in a separate home in Nagykanizsa in which specific care is taken of them. Pregnant women get the appropriate medical care.

Single parents with minor children and single women asylum seekers are accommodated in protected environments in Békéscsaba and Debrecen. Recently – due to increased funds for food – more attention was paid to taking care of the specific dietary needs of small children.

Rules do not provide for the special treatment of victims of torture, rape or other forms of violence. However, there is an NGO, the Cordelia Foundation which is actively involved, operating on external funding. According to their self-description (see: www.cordelia.hu) their therapeutic services are provided by a specialist team of psychiatrists, psychologists and social workers who provide rehabilitation services for clients based in the centres. These services –among others - include: mobile medical assessment and care unit, family and child therapy sessions, relationship counselling, movement/relaxation and art therapy.

- B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?**

There are no specific rules (beyond those recalled in response to subquestion A) expressly dealing with the issues referred to in the question.

- C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?**

Legal identification is mostly non-existent, except for minors. Nevertheless common sense dictates through the action of social workers. As to disabled: general Hungarian rules on disabled (accessibility of institutions, etc.) apply.

- D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?**

As described under subquestion A, there is a system in place, but it is not based on formal Hungarian rules prescribing a state task, but on voluntary activity of an NGO, not financed by state resources.

Q.31. About minors:

- A. Till which age are asylum seekers considered to be minor?**

Till the age of 18. According to AA § 2 c) "unaccompanied minor is a foreigner under 18 years of age, - except for persons who have attained adult status under Hungarian law -, who has entered the territory of the Republic of Hungary not accompanied by an adult person responsible for her/him on the basis of law or tradition, or who remains without supervision following entry, until s/he gets under the attendance/supervision of such a person"

- B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?**

According to the Act on Public education (Act No LXXIX of 1993), unaccompanied minors, and children of asylum seekers have access to the educational system, until the age of the educational obligation, which at present is 18 years. (§ 110 of the Act).

They must attend an educational institution after one year of stay in Hungary. However, they may start attending the educational institution earlier "upon the request of the parent" (§ 110 (2) a)

Attendance occurs on the same conditions as that of the Hungarian nationals (paragraph (3) of the same section), which means that education and services provided at the school are free of charge.

In practice the role of the local school director(s) is paramount. Asylum seekers in school age encounter major difficulties in Bicske, where the school is unwilling to accept them. For that reason a number of school-aged children attend boarding schools 200 km away.

According to UNHCR the children in the unaccompanied minors home in Nagykanizsa do not participate in education.

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- C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?**

If the parent so wishes access is ensured legally (from the first day). However, if the parent does not intend to send the child to school, at present she can withhold her for a full year. Education does last until expulsion is enforced.

-
- D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?**

There is no organised language education provided by the reception center.

-
- E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)**

Yes, they are.

-
- F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?**

See response to Question 30 A.

G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Act XXIX of 2004 has inserted a section into the AA (§ 34) according to which:

“(1) An ad hoc guardian shall be assigned forthwith to represent unaccompanied minors and the proceeding shall be conducted under priority.

(2) In a proceeding for the recognition of an unaccompanied minor an expert psychologist may be employed and requested to participate in the hearing of the minor.”

According to GD 172/2001 the appointment of the ad hoc guardian should serve the protection of the interests of the minor in general and may precede the submission of the (formal) application. (§ 7 (1)). In practice there is a difference among guardians in the perception of their role. Some limit it to participation in the refugee status determination procedure, others undertake to represent the minor’s interests in other contexts of the everyday life.

H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

According to GD 172/2001 § 10 (3) it is obligatory to place unaccompanied minors in child care facilities designated for such purpose, or into reception centres equipped with a facility for separately accommodating minors or in an institution operating accommodation on contractual basis. There is also the possibility to place unaccompanied minor with relatives not qualifying as immediate family members, if the relative undertakes to take care of the unaccompanied minor in writing, and it is obvious on the basis of the relationship between the unaccompanied minor and the person, that such placement would serve the interests of the minor.

Concrete decisions depend on the deliberation of the authority proceeding in the minor’s case. As mentioned earlier there is a home for unaccompanied minors (separated children) run by the Hungarian Red Cross on a contractual base.

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)ü

No provision exists on tracing the family members of the unaccompanied minor, but in practice it is done by the Central Tracing Unit of the Hungarian Red Cross. The lack of a formal rule leads to irregularity in tracing – it depends on the authority or the representative of the minor whether tracing takes place. It is not automatic.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be “as short as possible” (see article 14, §8)?

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

No.

B. Non availability of reception conditions in certain areas

No

C. Temporarily exhaustion of normal housing capacities

No.

D. The asylum seeker is confined to a border post

Yes, that is possible, but not practiced in the so-called border procedure (See response to Question 11) Those who directly apply for recognition with the Border Guards may spend hours or a day in custody before transfer to a reception center.

E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Not applicable.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

A. In which cases or circumstances and for which reasons⁹ (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be

⁹ Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that “Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum” is or not respected (even if has not yet to be transposed).

detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

The lack of travel documents or the illegal way of entering the country in themselves do not lead to detention. Neither are there self-standing national security reasons (singling out certain nationalities or other specified groups) which would lead to groups being ab ovo detained.

The decisive factor – as described in response to Question 10 – is how the asylum seeker enters into contact with any authority. If apprehended by the Police or the Border Guards - the latter having aliens policing authority - as a person whose entry, stay or exit is not in accordance with the applicable rules, the person will be stopped.

In the law there are three major forms of deprivation of the freedom of movement, beyond the entitlement of the Police to hold someone for 12 hours - among others – to clarify the person's identity.

1.) “Alien policing (expulsion) detention” – maximum duration: 12 months. Aim: to assure that the expelled person does not abscond. Legal basis: § 46 of the AESF

2) “Return detention” - maximum duration: 30 days. Aim: to implement a readmission agreement. Legal basis § 47 of the AESF

3) “Detention in preparation for expulsion” – maximum duration: 30 days. Aim: to establish the identity or the title to stay of a person and to carry out an aliens law procedure. Legal basis: § 48 of the AESF.

The text of the above quoted three provisions is the following (for the benefit of complexity and contextual interpretation tightly related sections are also reproduced.):

Detention

Alien policing detention

Article 46

(1) *In order to ensure the implementation of the expulsion order, the regional alien policing authority may place the foreigner in alien policing detention who*

- (a) *has been hiding from the authority or has obstructed the implementation of the expulsion order in any other way;*
- (b) *has refused to depart or there are other good reasons to presume that he would delay or thwart the implementation of the expulsion order;*
- (c) *is subject to expulsion and prior to departure has committed a petty offence or criminal act;*
- (d) *has severely or repeatedly violated the prescribed rules of behaviour in the place designated for his mandatory stay, has failed to meet the obligation to appear prescribed for him in spite of being called upon to do so and has thereby impeded the alien policing procedure;*
- (e) *has been released after a prison sentence levied owing to having committed a deliberate criminal act.*

(2) *When the foreigner is expelled as a result of having committed a deliberate criminal act related to drug trafficking, terrorism, illegal arms trafficking, man-smuggling, money laundering or organised crime, alien policing detention shall be ordered in order to ensure implementation of the expulsion order.*

- (3) *Alien policing detention shall be ordered by resolution and it shall be implemented simultaneously with its notification. The detention shall immediately be terminated once the reasons for having ordered it have ceased.*
- (4) *Alien policing detention may be ordered for at most five days, which may be extended by the local court competent according to the place of detention until the departure of the foreigner.*
- (5) *When the period of alien policing detention exceeds thirty days, the court shall monthly review the need for maintaining the detention.*
- (6) *Only the county (Budapest) court competent according to the place of the detention shall be entitled to extend the alien policing detention in excess of six months. The court shall review the need for maintaining the detention every ninety days.*
- (7) *The alien policing detention may last until the conditions of implementing the expulsion order are put in place but at most for twelve months. The detention may last for six months at most when it has been ordered in order to implement a measure taken by the authority responsible for petty offences.*
- (8) *Detention shall be terminated when the conditions of expulsion are assured or when it becomes obvious that the expulsion cannot be implemented. The regional alien policing authority ordering detention shall designate a mandatory place of stay for the foreigner.*
- (9) *In case of committing another petty offence or criminal act while subject to expulsion, the alien policing detention shall again be ordered against the foreigner staying in a designated place.*

Detention for refusal

Article 47

- (1) *The alien policing agency of the Border Guard shall, in order to ensure the implementation of the refusal measure, place the foreigner in detention (detention for refusal) whose refusal can be implemented within thirty days from the date of the arrest or transfer on the basis of a readmission agreement.*
- (2) *[not in force any longer].*
- (3) *Detention for refusal may be ordered for a maximum of five days which may be extended by the local court competent according to the place of detention until the departure of the foreigner but at most for thirty days.*

Detention in preparation for expulsion

Article 48

- (1) *The regional alien policing authority may detain the foreigner whose personal identity or the legality of his stay are not clarified for reasons of public security in order to conduct the alien policing procedure (hereinafter referred to as "detention in preparation for expulsion")*
- (2) *Detention in preparation for expulsion may be ordered for a maximum of five days which may be extended by the local court competent according to the place of detention until the departure of the foreigner but at most to thirty days.*

Section 48/A.

- (1) *Expulsion detention, detention for refusal and detention in preparation for expulsion (hereinafter referred to collectively as "detention") shall be terminated immediately when the grounds therefore no longer exist.*
- (2) *Detention may not be terminated solely on the ground that the foreigner has submitted an application for asylum while in detention.*

Ordering of detention, review of its legality and extension of the detention by the court

Article 49

- (1) *The foreigner may not request the suspension of the procedure ordering detention. There shall be neither an [administrative] appeal nor an initiation of equity procedure against the resolution ordering detention.*
- (2) *The review of the legality of the order to detain may be requested from the court within five days of the issue of the order.*
- (3) *The president of the county (metropolitan) court may designate a local court other than the one competent according to the seat of the ordering authority as the competent for the review of legality.*
- (4) *In the procedure for the review of the order to detain, the foreigner may empower a legal representative. Only an attorney at law may be empowered as a legal representative.*
- (5) *The request for the review the order has no suspensive effect on the implementation of the detention.*

Article 50

(1) In case the foreigner requests the review of the legality of putting into detention, the foreigner shall be brought to the court for a hearing within five days, - save for the exceptions in paragraph (2).

(2) The court may omit the hearing if the foreigner is unable to appear because of treatment in an in-patient institution or the request or motion does not originate with the entitled person.

(3) At the hearing, the foreigner and the alien policing authority may put forward their evidence in writing or present orally. Those who are present shall have opportunity to familiarize themselves with the evidence. If the party which had put forward the motion has not appeared, but had put it forward in writing, the judge presents it.

....

Implementation of the detention

Article 53

(1) The combined period of the alien policing detention, detention for refusal and detention in preparation for expulsion, applied against the foreigner, shall not exceed twelve months. Detention shall be terminated immediately when the reason for ordering it has ceased.

(2) Upon his/her admission, the detained foreigner shall be informed of his/her rights and obligations in his/her mother tongue or any other language known to him/her.

B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be “confined” in such a place?

Although there was no formal transposition of that rule yet, some Hungarian rules in force “resemble” its meaning.

According to § 10 of GD 172/2001 the refugee authority designates the place of accommodation of the asylum seeker. If it is a reception center it entails certain limitations, not in space but in time, binding longer leaves to prior permission. If the asylum seeker convinces the refugee authority to designate a private address then no restrictions apply. However, change of address is always dependent on the approval of the authority.

If the asylum seeker has been in detention for 12 months she has to be freed. In that case the aliens police authority will designate a “compulsory place of stay”. (§ 56 AESF, especially subpara (1) b(4)), which usually is a community shelter.

C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

As already indicated, detention need not be experienced by the applicant. It only occurs when an alien policing rule had been violated. (Exception: border procedure and the 12-24 hours

before the applicant is directed to the reception center after contacting an authority, whether Police or Border Guards.)

Accordingly the question about “alternatives” does not genuinely apply, since it would not constitute an alternative to any element of the reception conditions.

However in practice - in case of asylum seekers who at the same time are treated as “illegal aliens”, the alternative may show itself after 12 months or if it becomes clear earlier that there is no prospect of their expulsion: in that case they ought to be transferred to a compulsory place of stay, usually a community shelter. Should the compulsory place of stay be something else (e.g. a private home - very rare) then the aliens police may prescribe a duty to regularly report (show up) to the authority. (AESF § 56 (2) c))

D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

As indicated under subquestion A the aliens police authority of OIN or the Border Guards (also having aliens policing powers) may order detention. (In case of foreign criminals the court may also order expulsion which leads to detention). Both of them order detention as a consequence of violating the rules of entry, stay or departure. Merely the fact that someone is an asylum seeker may not serve as a ground for detention if the identity of the asylum seeker is not in doubt.

After 5 days the local courts have to confirm (extend) detention, after 6 months the county courts or the Metropolitan (Budapest) court.

E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

The maximum is 12 months, but it may re-start if she commits an aliens policing offence or other violation of the applicable rules.

F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

MD 27/2001 regulates the issue. Detention takes place in seven specific detention facilities, of the Border Guards, spread all over the country (Budapest, Győr, Kiskunhalas, Orosháza, Nagykanizsa , Nyírbátor, Szombathely). In these only persons awaiting expulsion or the implementation of return agreements (plus Dublin II) are to be found. In special cases (release from previous criminal punishment) a further institution (a genuine prison) may be involved: for men Nagyfa National Prison, and for women: Pálháza National Prison. According to reports the latter practically never accommodates asylum seekers, whereas the prison in Nagyfa does.

G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR has free access and NGOs also have access on permission or on the basis of long term cooperation contract – like that of the Hungarian Helsinki Committee and the Border Guards enabling lawyers of the HHC accessing the detained persons.

H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which “Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review” respected (even if it has not yet to be transposed)?

As described above under subquestion D , and as revealed by the sections of AESF quoted under subquestion A detention extending beyond five days is automatically subject to review (following a motion to extend by the detaining authority) by the local court which must have a hearing involving the detained person. Later every 90 days the necessity to detain must – by the force of law – be reviewed in which process the authority wishing to prolong detention must justify it. (GD 170/2001 § 57 (2)).

I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

In principle the directive is acknowledged to be applicable, however, in practice the aliens law procedure character prevails.

J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be “as short as possible” (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the

requirements of the directive (is article 13, §2, second indent of the directive following which “*Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention*” respected?).

The level of control is much more intensive. The telephone conversations may be overheard – for security reasons – correspondence checked if suspicion emerges, visits from the outside of other than lawyers, authority representatives or embassy employees and international organisations’ delegations may be limited. MD 27/2001 goes into details, including the determination of the minimum space (5 m²), the need to provide heating, fixing a one hour access to outdoor spaces. It also states that food must have 10 900 joule energy and pregnant mothers must get at least half a litre of milk per day. In practice payphones are only accessible when the asylum seeker is escorted to them.

A much criticised difference – awkwardly in favour of the detainee – is that whereas asylum seekers in reception centers(at least in principle) must stay in the quarantine while the medical screening takes place, detained persons are not subject to that procedure of separation from others in the same institution. They only undergo a much simpler medical control, not entailing quarantine.

K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Yes, according to § 4 of MD 27/2001 minors must be placed separately from other adult detainees and together with their relatives. OIN claims that practically all the minors (whether with family or unaccompanied) are evicted from detention and placed either in the specific home or in the normal reception center – i.e. in their case the asylum seeker character prevails over the “illegal alien”. According to the information stemming from OIN the same applies to single women, especially with special needs.

L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

See the answer to the previous subquestion.

M. In particular is article 10 regarding access to education of minors respected in those places?

As there are normally no asylum seeking minors in detention institutions the question is irrelevant. However, if nevertheless minors are detained (whether with relatives or unaccompanied) they have no access to education. (NGOs and UNHCR claim that occasionally they find minors with their families in detention.)

N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

Currently (late June 2006) 18 asylum seekers are in detention centers, which indicates a low proportion, 2 – 5 % of all the applicants. According to one source the reason for that is that the Border Guards and the aliens policing authority follow different practices in relation to foreigners who do not have a title to stay. Border Guards transfer them to open reception centers when it becomes clear that the detention for refusal will not lead to the person's (re)admission to another country.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is centralised, it is OIN which runs reception centers. (See MD 24/2001 § 1 b)) Any NGO participating in providing reception conditions concludes a contract with the central office of OIN.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

Except for the very small home for unaccompanied children which is run by a Hungarian NGO (the Hungarian Red Cross) all accommodation centers (in fact: reception centers) are public, run by OIN.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

As mentioned earlier at the moment there are three reception centers (Békéscsaba, Bicske, Debrecen) and a home for unaccompanied children. (Nagykanizsa).

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There are no such plans. In fact rumour sometimes refers to closing one of the three centers as the number of applicants is a fraction of that of the late nineties. In preparatory works to the

amendment/redrafting of the AA the idea was also raised to attribute a specific profile to one of the centers (reserving it to eligibility procedures, e.g.) What was consequent in the past and is predictable in the future is that asylum seekers are not received in Budapest, the capital, where one fifth of the population lives.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is no such body. The three most important actors mentioned in response to Subquestion 18 D act as “de-facto” umbrella organisations which are usually - but not always – involved in dialogue with the state agencies about conditions. Frequently they take public positions on existing practice or desired changes. E.g. Menedék issued a widely publicised statement shortly before the transposition deadline of the RD was to expire, listing points where harmonisation had not been achieved. The Hungarian Helsinki Committee, Menedék and OIN have jointly produced the report on transposition which went to the European Parliament as part of a comparative report.

Asylum seekers do not maintain stable NGO-s engaged in policy dialogue or in controlling the everyday operation of the centers.

To repeat the main point: there is no central body in which government, NGO-s, churches and municipalities would participate together and discuss reception conditions related matters.

UNHCR noted that it organises twice a year a half day long operational partners’ meeting which brings together OIN, relevant ministries and NGOs (and naturally UNHCR itself) and is an informal forum for discussing current issues.

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The body in charge is OIN. As mentioned in response to Question 3 a new governmental structure has been adopted in June 2006. Responsibility for overseeing (controlling and directing) OIN - and with it, the reception conditions – is moving in these days from the former Ministry of the Interior to the (former) Ministry of Justice. The latter’s competences have been extended to include the control of the law enforcement agencies (Police, Border Guards), and its designation has appropriately been changed to Ministry of Justice and Law Enforcement.

(It is telling that at the time of finalizing this text, the homepage of the Ministry of Justice and Law Enforcement only takes note of the re-arrangement in its Hungarian version. Readers of the English homepage will note no changes... www.irm.gov.hu)

B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the

basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreational rooms for children,...) to be respected in particular in accommodation centres?

MD 24/2001 on the operation of the reception standards, especially in § 5 and in the annexed House Rules fixes some standards. (Private bed, running hot water, access to TV, leisure equipment, sporting opportunities.) It is not phrased in as precise terms as the already quoted MD 27/2001 on standards of detention.

C. How is this system of guidance, control and monitoring of reception conditions organised?

Guidance, control and monitoring is the duty of OIN (§ 1 of MD 24/2001). The general director of OIN is the employer of the directors of the reception centers and exercises direct bureaucratic and personal control over them through the head of the refugee affairs directorate. An organigram is available at: http://www.bmbah.hu/szervezeti_egysegek.php. The Department of Reception and Refugee Integration, supervises directly the professional operation of the reception centers and of the unaccompanied minors home. The financial supervision is run by the Directorate of Finances of the OIN.

D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

OIN does not produce reports for the general public, nor for Parliament. The reception centers have an obligation to report on a monthly bases. The Directorate of Refugee Affairs completes a report about the operation of all the centers twice a year. These reports are not made public, but according to OIN can be requested. Each year the OIN sends a full report about activities and figures connected to the field of asylum, reception and integration, including costs, budgets etc. to UNHCR but neither that, nor UNHCR's country report is in the public domain.¹⁰

Assumedly there are also reports on spending ERF money on reception conditions.

It is noteworthy that the Committee on Human rights, Minorities, Civil and Religious Matters of the Hungarian Parliament recurrently organizes hearings at which leaders of the OIN report about their activities. The Committee occasionally relocates to one of the affected institutions and proceeds with the hearing there. Another institution which may serve as a source of knowledge about certain aspects of the reception conditions granted or withheld is the Office of the Parliamentary Commissioner of Human Rights

Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22

¹⁰ The author of this report occasionally was not seen as a member of the general public, but as an insider...

obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

All data here were provided to the reporter by OIN.

The number of new arrivals in the three reception centers in 2005

Center	<i>Békéscsaba</i>	<i>Bicske</i>	<i>Debrecen</i>
	216	228	362
Total	806		

naturally the center also covered those who arrived earlier, and did not cover new arrivals for a full year (as they might have arrived later or left earlier.)

Another indicator is the number of nights spent at the center, i.e. the day/person units of providing reception conditions. The misleading element in that figure is that it is not broken down to groups so includes the recognised refugees still stayed at the center

That figure is the following for the year 2005:

center	<i>Békéscsaba</i>	<i>Bicske</i>	<i>Debrecen</i>
person/days	30.196	49.402	88.202
Total	137.604		

We also have statistics for the monthly average number of persons (asylum seekers and others) in the reception centers:

month												
center	01.	02.	03.	04.	05.	06.	07.	08.	09.	10.	11.	12.
<i>Békéscsaba</i>	99	87	83	89	88	89	87	86	85	84	72	78
<i>Bicske</i>	117	116	115	119	122	128	143	155	157	161	160	129
<i>Debrecen</i>	257	253	265	245	246	210	209	220	215	200	181	182
Total	473	456	463	453	456	427	439	461	457	445	413	389

- B. What is the total budget of reception conditions in euro for the last year for which figures are available?

No such data is available at the moment. the magnitude of the costs can be calculated in the following way:

The daily person/day overall average cost is available for all the three centers. That can be multiplied by the days and persons actually spent there

Center	Average cost in HUF	Days in 2005	Total in HUF	Total in Euro*
Békéscsaba	6.190	30.196	186.913.240	
Bicske	4608	49.402	227.644.416	
Debrecen	4.380	88.202	438.088.202	

Grand total			852.645.858	3.410.583
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* Rate vaguely that of December 2005 = 1 Euro = 250 HUF

- C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

Center	Average cost in Euro*
Békéscsaba	24,76
Bicske	18,43
Debrecen	17,52

*Rate vaguely that of December 2005 = 1 Euro = 250 HUF

- D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

Costs are born by the central government. health care costs are immediately born by the health care system (also governmental) and then reimbursed by OIN.

- E. **Is article 24 § 2 of the directive following which “*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*” respected?**

Naturally this is by definition subject to debate. This reporter would believe that in a European context a cautious “yes” would be appropriate. More criticism would go for issue areas not covered by this report, namely integration of persons in need of international protection. (See also response to question 48.)

- Q.41. A. What is the total number of persons working for reception conditions?

The number of staff working in reception centers were continuously reduced in the last two years. At the end of 2005 it was 82 in the three centers altogether. Many tasks are contracted out for external service providers. The number of staff and the overall capacity of the reception centers could seem to be disproportionate especially in Bicske, where the number of the official staff is only 12. This must be read bearing in mind that the kitchen and security guard services are given by third party service providers.

- B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**

In OIN’s budget there is no separate budget line for training. The directorate of refugee affairs of OIN organizes frequent (every 2-3 month) meeting for social workers.. EU

funded projects also offer training. Country of origin information training is given on specific countries (upon the request of the centers) during the meeting of social workers. Special training modules are and will be offered to workers of the unaccompanied minors home.

- C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Social workers get training in ethical questions during their professional education. The professional association of social workers has adopted an ethical codex in April 2005, which enjoys very wide support in the profession and has been adopted for the workers of the reception centers too. Other staff working at the center - to this reporters knowledge – do not get a specific training. Nevertheless all the staff is expected to obey the general rules on data protection which are quite strict in Hungary.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

- Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

As with practically all the EU acquis, especially those which have been adopted around or after accession, there are major problems with the Hungarian text version.

Below comes a small table summarising salient differences.

Text in RD	Hungarian	Hungarian re-translated (back) to English	German
§ 8 to maintain as far as possible family unity	a család egységét adott formájában, amíg lehetséges, fenntartsák	to maintain <i>as long as</i> possible	so weit wie möglich zu wahren
§ 9 medical screening	orvosi vizsgálatát	medical examination	medizinische Untersuchung
§ 13 (2) persons who have special needs in accordance with article 17	“különleges igényeket támaztó személyek” (§ 13 (2))	persons raising special demands	besonders bedürftige Personen
14 (8) specific needs of the applicant	“A kérelmező egyedi szükségletei” (§ 14 (8))	the individual/specific needs of the applicant	spezifische bedürfnisse des Asylbewerbers
§ 15 (2) applicants who have special needs	“különleges elbánást igénylő kérelmezők”	applicants requiring special treatment	Asylbewerbern mit besonderen Bedürfnissen
§ 17 “vulnerable	“kiszolgáltatott	“persons at mercy	besonders

persons”	személyek”	/defenceless persons”	schutzbedürftigen Personen
§ 8 and 14(1) housing	8: elhelyezés 14 szállás	8 placement/lodging 14 accommodation	8 Unterkunft 14 Unterbringung
§ 18 best interest of the child	“elsődlegesen a gyermek érdekeit”	primarily/foremost the interests of the child	das Wohl des Kindes
§ 21 last instance	“végső szakban”	final stage	letzten Instanz
§ 23 ensure that appropriate guidance, monitoring and control of the level of reception conditions are established	“gondoskodnak megfelelő vezetés, ellenőrzés és irányítás kialakításáról a befogadási feltételek szintjén.”	[does not really make sense, approximately sg. like] provide for the establishment of appropriate guidance, control and governing <i>at the level of reception conditions</i> [sic]	gewährleisten..eine geeignete Lenkung, Überwachung und Steuerung des Niveaus der Aufnahmebedingungen.
§ 24 shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive	ezen irányelv végrehajtására hozott nemzeti rendelkezéseknek megfelelően osztják el a szükséges erőforrásokat	shall distribute the necessary resources according to the national provisions enacted to implement this Directive	stellen die ressourcen bereit, die im Zusammenhang mit den nationalen Durchführungsvorschriften zu dieser richtlinie erforderlich sind

As this table shows, translation difficulties may stem from the difference between two other language versions, but sometimes it is sheer misinterpretation of the original.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,...)?

In response to the previous questions the report had identified them. (See the list of abbreviations.) The rules listed there all had rules which match normative requirements of the directive. None of them is a transposition rule *per se*, but some of them had been changed with a view to transpose a rule of the directive (e.g. when AA was amended to recognise the right to work beyond 1 year of the asylum seeker.)

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Generally not, especially as there is no rule pointedly transposing the directive, neither is it within sight. However, the above mentioned rule on access to labour market, or those on unaccompanied minors, or the appeal rights against the revocation of benefits already had or will sooner or later have a clarifying impact.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Changes so far were minor. The most important already introduced relates to access to the labour market, and similarly important will be the formal procedure regulating the revocation of benefits and the legal appeals going beyond mere complaint. Persons with specific needs have already benefited (in practice) from the existence of the directive.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There has not been such a debate in public. There was no formal transposition yet. The amendment of the AA (and its implementing rules) is prepared behind closed doors by a small group involving only government agencies and UNHCR. NGOs are not invited. A concept paper was completed by May 2006 (dealing with the transposition needs of the whole EU asylum acquis) but it is not in the public domain.

The media does not take note of the issue of transposition as an EU obligation. There is no social discourse about “us” and “them” and the issues of fairness in distributing resources between the asylum seekers and the rest. The small numbers of asylum seekers explain this low visibility of the theme.

In the small NGO community dealing with asylum seekers and refugees, and among other stakeholders (primarily UNHCR) naturally transposition is a deliberated issue. Gap analyses and reports have been produced, informal exchange of views is constant, but is not elevated to the public policy debate level.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

Rules have not dramatically changed (see responses to questions 43-45) On balance the rules emanating are more generous. However in this reporter’s judgment the most important were and will be two impacts:

- a continuous sensitisation to persons with special needs;
- the limitation of discretion exercised by the authorities. In general that discretion may have been used in favour of the applicant, but with the transposition of the directive the applicant will be entitled to resist in the few cases when it is not. (Think of access to schooling, e.g.)

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The strength of the system is a still living tradition of hospitality going back to the early formative periods of the system in 1989-1993, when asylum seekers from Romania and Yugoslavia sought refuge in Hungary. A firm desire to meet international (not only EU) requirements still prevails, UNHCR is a potent actor in the setting of standards.

It is a strength of the system that it guarantees access to services related to basic needs. (Shelter, clothing, food, health).

Weaknesses there are, also.

The state is reluctant to go beyond the minimum. and tries to retreat even from the most basic duties, leaving it to project financing, relying on ERF and independent funds. (social work, interpretation, legal aid, mental health of traumatised persons.)

The system is essentially haphazard and unduly differentiates among asylum seekers. Those who were seeking protection elsewhere and were apprehended when committing an aliens law offence are mostly detained, occasionally for a full year, those who turned to the authorities without being caught may live relatively decent life in open reception centers.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

- The recently established protected environments for single female asylum seekers and mothers with children are really appreciated by the affected persons and by the competent stakeholders
- Access to internet appears to be very useful.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

Fundamental changes might be underway.

The new government structure might have thoroughgoing impacts on the control and guidance of reception centers.

The pattern of providing reception conditions may also change. Collective reception centers may lose their dominant position in favour of asylum seekers being accommodated according to their choice or with other institutions offering reception conditions on the basis of a contract with the state. (This is an already existing legal possibility, but hardly used.)