

GENDER AND  
ASYLUM IN  
HUNGARY



National research report for the GenSen  
(Enhancing gender sensitivity and a har-  
monised approach to gender issues in  
European asylum practices) project

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## SUMMARY OF GOOD PRACTICES AND MAIN PROBLEMS

Gender-based asylum claims are rare in Hungary. Therefore, the Office of Immigration and Nationality (OIN) and judges have limited specific experience in dealing with these issues. Furthermore, OIN decision-makers and law enforcement officers do not have the gender-specific training necessary to implement appropriate practices, not only in the initial screening and first-instance procedures, but also in those pertaining to special needs and credibility assessment, subsequent claims policy, detention, reception and integration. In general, women with gender-based claims receive protection. However, certain cases were pointed out where decisions were clearly lacking gender sensitivity. For example, domestic violence was not recognized as persecution based on a particular social group, imputed political opinion is rarely recognized as a ground for persecution, past female genital mutilation (FGM) and rape were not recognized as persecution, gender aspects were not sufficiently considered when examining internal protection alternatives and lack of country information (COI) was considered as a proof for the lack of persecution. However, these were isolated cases that could be due to a lack of sensitivity of the particular asylum officers or judges involved and cannot be considered as a general practice.

The main shortcomings of the Hungarian asylum procedure regarding gender aspects are as follows:

- No gender-specific asylum guidelines exist.
- The safe third country rule is applied without considering any gender-specific aspect.
- Credibility assessment relies too much on the decision-maker's feelings and impressions, as well as the applicant's non-verbal communication during the hearing.
- The interviewing methods are not always adequate: for instance, it happens in practice that when the applicant touches upon a relevant fact or circumstance that could be considered as a ground for international protection, the interviewer changes the topic and asks about something completely different.
- No "special needs assessment" mechanism exists and such a test is not conducted at the beginning of the asylum procedure; no specific screening is carried out to detect victims of gender-based persecution among asylum seekers.
- No possibility exists to lodge a separate appeal for family members whose case was dealt with in a single procedure at first instance.
- If a woman lodges an asylum claim separately from her husband, and she was already considered as a dependent of her husband, her individual claim will be considered as "subsequent" claim. Subsequent applications do not have a suspensive effect on expulsion measures, if the asylum authority or a court in its latest decision decided that the prohibition of *refoulement* was not applicable.
- Childcare is not provided while parents are attending asylum interviews or language courses.
- OIN and police staff are not provided with specific training and sensitization on gender issues.
- No differentiated rules are applied to vulnerable persons with specific needs in immigration detention.
- No standard operating procedures are applied to address gender-based violence occurring in immigration detention or at refugee reception facilities.
- Lack of security in the women's house in the Debrecen refugee reception centre.
- The maximum six-month period of stay in the "pre-integration camp" in Bicske usually proves to be too short to find a job and accommodation outside the camp.

The following exemplary practices have been identified with regard to female asylum seekers and/or gender-related asylum claims:

- Late disclosure of gender-based persecution, if justified, does not affect the applicants' credibility.
- Harmful traditional practices are assessed in a "European context" (i.e. in light of Hungary's legal system and human rights obligations).
- Neither the OIN, nor the courts in charge of reviewing administrative asylum decisions ask precise details regarding rape or sexual assault.
- Female immigration detainees are placed in a special immigration jail for single women and families, where the regime is not as strict as in other similar facilities.
- Female asylum seekers and refugees highly appreciate the psychiatric and psycho-social assistance provided by the Cordelia Foundation.

## I. BACKGROUND

The Hungarian Helsinki Committee compiled this report in the framework of the "GenSen – Enhancing gender sensitivity and a harmonised approach to gender issues in European asylum practices" project, with the aim of assessing the practices related to gender-based violence and gender-related persecution in the Hungarian asylum procedure. The information included in the present report was gathered through desk research, questionnaires and personal interviews with different stakeholders. A questionnaire, drafted by project partners, was sent to the Hungarian asylum authority – the Office of Immigration and Nationality (hereinafter referred to as OIN), which provided answers on 21 June 2011.<sup>1</sup> The Menedék Association<sup>2</sup> also contributed with information, based on another questionnaire, on 17 June 2011. Personal interviews based on the questionnaires were conducted with lawyers, judges, social worker from the so-called "pre-integration centre" in Bicske, a social worker from the Interchurch Aid and female asylum seekers and refugees. The text was drafted in June 2011.

In Hungarian, the word "gender" has no direct translation. The expressions used are "biological sex" (*biológiai nem*) for sex, and "social sex" (*társadalmi nem*) for gender.

## II. GENDERED STATISTICS

The OIN provides gender-disaggregated statistics on asylum claims (see Annex 1). There are no statistics on the judicial review of asylum cases since 2009, but according to the estimation of the judges at the Metropolitan Court in Budapest, appeals lodged by women form less than 10% of all appeals.

The most common countries of origin of female asylum seekers in 2010 were:

Country of origin	No.
Serbia/Kosovo	90
Afghanistan	59
Serbia/Kosovo (Roma)	45
Serbia (Roma)	18
West Bank/Gaza Strip	10
Vietnam	9
Iraq	6
China/Hong Kong	5
Georgia	5
Russia	5

At first instance, the recognition rate (refugee status granted/all in-merit decisions) for women in 2010 was relatively high (~15%), as compared to men (~4%). The subsidiary protection and tolerated status<sup>3</sup> recognition rates did not significantly differ between men and women (~8% and ~3%, respectively).<sup>4</sup>

## III. GENDER GUIDELINES

In Hungary, no national gender guidelines exist in the field of asylum. The UNHCR's gender guidelines<sup>5</sup> were translated into Hungarian and copies were sent to the OIN and to the Metropolitan Court. The HHC published them on its website as well. In recent years, the OIN, the Metropolitan Court and lawyers of the Hungarian Helsinki Committee have equally used and referred to these guidelines in individual cases.

<sup>1</sup> Official positions of or information provided by the OIN referred to throughout this report are based on this letter.

<sup>2</sup> Menedék – Hungarian Association for Migrants, an independent non-profit organisation, providing social assistance to asylum seekers and refugees, [www.menedek.hu](http://www.menedek.hu)

<sup>3</sup> Tolerated status (*befogadott*): A protection status against *refoulement* based on a more general (not individualized) risk of harm in the country of origin.

<sup>4</sup> See Annex 1.

<sup>5</sup> UNHCR, Guidelines on International Protection No 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 2002, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3d36f1c64>

## IV. STATUS DETERMINATION ISSUES

### IV.1 Binding court decisions

In Hungary court judgments in asylum appeals only have *inter partes* effect. The OIN therefore does not have a legal obligation to take these judgments into account when deciding in similar cases. In the given case where the court obliges the asylum authority to make a new decision and it gives certain guidelines what to take into consideration, then the authority relies on the court decision.

Research could not reveal any particular judgment considered as authoritative judicial guidance on gender-related issues.

### IV.2 Interpretation of the Convention grounds of persecution

Gender is not explicitly mentioned as a ground for persecution in the Hungarian Asylum Act.<sup>6</sup> The only indication that international protection is interpreted in a gender-specific way is contained in Section 90 of the Government Decree implementing the Asylum Act,<sup>7</sup> which states that

*The social standing, personal circumstances, **gender** and age of the person applying for recognition shall be examined to establish whether the acts which have been or could be committed against the person applying for recognition qualify as persecution or serious harm.*

According to the HHC's experience, subsidiary protection or tolerated stay are not overused for women as a "substitute" of refugee status.

#### **a) Particular social group: policy and practices, case examples**

Successful gender-related claims for asylum mostly rely on the Convention ground of "membership of a particular social group". However, in Hungary, positive administrative decisions in asylum cases do not bear reasoning. Therefore, it is difficult or impossible to determine on which Convention ground the OIN granted refugee status. Usually, female genital mutilation cases and claims based on sexual orientation fall under the "particular social group" ground.

According to the Hungarian Asylum Act, a group shall be considered to form a particular social group where, in particular:

*a) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, **or***

*b) that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.*

#### Case examples:

An Afghan woman arrived in Hungary to join her husband via a family reunification procedure. They later divorced (on the husband's initiative), leading to the loss of woman's residence permit. She applied for asylum and was recognized as a *sur place* refugee by the OIN because, as a "repudiated" woman, she could face persecution if returned to Afghanistan.<sup>8</sup>

A Lebanese woman fled from her Palestinian husband, claiming that she was a victim of domestic violence and that her husband did not let her work. The OIN examined whether she could obtain protection from the Police. Ultimately, the OIN granted her refugee status, relying on country information reports showing that there was no effective state protection in cases of domestic violence.<sup>9</sup>

<sup>6</sup> Act LXXX of 2007 on Asylum.

<sup>7</sup> Government Decree 301/2007 (XI.9.) implementing the Act LXXX of 2007 on Asylum.

<sup>8</sup> The OIN informed the HHC about this case through the answers to the questionnaire for the GenSen project.

<sup>9</sup> Idem.

A Kenyan woman arrived in Hungary with the aim of taking part in a media training course. After five months, the Police checked her identity and due to the expiry of her visa she was arrested. She then submitted an asylum claim. She claimed that according to the advice of the council of town elders, for her to break the trend of continuous deaths in her family, she needs to have sexual relation with her uncle. However, one of her family members died, so she lost faith in their advice and refused to take part in the upcoming "encounters" with her uncle. Her uncle pricked her ear with a stinging plant, closed her into a room and threatened her. She followed his orders, but the next day she fled from home, stayed at a friend's place in Nairobi, then went to the university dormitory in Kisumu. Her uncle sent her threatening letters. The media training was a good opportunity for her to leave Kenya. She did not submit an asylum claim before because she wanted to find a job and legalize her stay in that way. In the meantime, her uncle lodged a complaint with the Police accusing her of theft, further adding to her fear to go back. The OIN stated that the uncle's violent behaviour could not be accepted as persecution. It was held against her that she also waited five months to submit the asylum claim and she could not prove the existence of the arrest warrant against her. The available country information could not sufficiently support her claim either. Consequently, the OIN rejected her application. In the appeal procedure the Metropolitan Court stated that sexual violence is definitely accepted as a form persecution. However, the Court agreed with the OIN that the applicant could not be considered as a member of particular social group because she was not persecuted due to her status as a woman. The Court held that victims of sexual violence are not exclusively women. The uncle did not force her to have sexual relation because she is a woman, but because of "tradition and personal reasons". The Court found no indicators that women would be treated badly in the town the applicant comes from and concluded (based on country information) that protection is available in Kenya, which is therefore considered a safe country. The Metropolitan Court confirmed the OIN's rejection.<sup>10</sup>

Two lesbian Nepali women arrived together in Hungary after living four years in Israel. As a reason for their escape from their home country – apart from the threats by military forces – they referred to being outcast by their families and the society due to their sexual orientation. The OIN questioned the applicants' credibility, examined gay-specific country information and did not estimate the situation in Nepal as severe. Their sexual orientation was not questioned, but the OIN did not grant them protection considering the occurrence of persecution unlikely in their country of origin.

### ***b) Interpretation of other Convention grounds***

#### Case examples:

Unaccompanied minor girls from Somalia claimed that in their country of origin they had been subjected to female genital mutilation at a very early age and sexual abuse. They said that some men from another clan abducted them, raped them and forced them into slavery. The OIN granted them refugee status based on grounds of race because they belonged to an ethnic minority.

The OIN rarely recognizes imputed political opinion as a ground for persecution; only in exceptional cases of politically active asylum applicants. In the case of a woman from Cameroon, the OIN examined her claim on the grounds of political activities. She arrived in Hungary through Nigeria, Turkey and Serbia. She claimed to be a member of the Southern Cameroon's National Council (SCNC), which fights for the territorial independence of English-speaking Cameroonians. She claimed she was caught, arrested, beaten and put into detention. She escaped and fled from the country. The OIN rejected her asylum application and the Metropolitan Court confirmed the rejection. Both authorities found the applicant not credible because she could not give account of exact activities of the SCNC. The available country information also showed that members of the SCNC are not exposed to a significant risk of persecution or threat that would justify the need for international protection. The Metropolitan Court also stated that if a person decides to flee his/her country, he/she should ask for protection as soon as he/she reaches a safe country. The conclusion was that as she did not ask for asylum in Serbia, she is not really in need of international protection.<sup>11</sup>

<sup>10</sup> Judgment No. 17.K.34.620/2007/7 of 28 November 2008 of the Metropolitan Court.

<sup>11</sup> Judgment No. 3.K.30.117/2010/12 of 18 April 2011 of the Metropolitan Court.

### IV.3 Interpretation of gendered forms of “serious harm” as persecution

Based on available cases, rape and sexual violence appear to be the most common claims among single female asylum applicants in Hungary. According to the asylum authority, “[t]he OIN recognizes sexual abuse and other forms of gender-related violence – like the severe form of domestic violence, the potential danger of female genital mutilation – as an act of persecution because it inflicts severe pain and suffering, both mental and physical, and it harms or it can harm the body integrity and human dignity of the victim.” The OIN further stated that “even one act – for instance rape – could be considered as persecution that establishes the need for international protection.”

In general, the OIN considers that the risk of being forced to undergo female genital mutilation can constitute persecution. However, the HHC witnessed a case in which the OIN tried to weaken the severity of a prospective danger by arguing that FGM is part of tradition. The OIN also tried to present a lower risk by claiming that the applicant was old enough to no longer belong to the most endangered age group, so it is less likely that FGM will be performed upon return. The OIN failed to assess what consequences non-performance of FGM would have on the physical, mental and social well-being of a woman (including her chance of getting married, her position in society, etc.).

The Hungarian asylum authority usually does not consider past female genital mutilation as a factor that demonstrates a future risk of persecution. However, the OIN stated that “[i]n the majority of cases where women claim that they went through FGM, they also claim to be subjected to sexual abuse. These women were recognized as refugees not because of the past mutilation, but because they substantiated that they were victims of rape.” The following case, witnessed by the HHC, does not correspond to the OIN’s above statement:

A woman from the Ivory Coast underwent female genital mutilation when she was ten years old. In 2006, her parents were killed by an armed group. She fled to her cousin, who was killed shortly thereafter. The applicant was raped, beaten and stabbed by a group of soldiers. She spent a month in a hospital. She left the Ivory Coast and arrived in Hungary in 2008. The OIN rejected her asylum application, but granted her tolerated status based on the principle of *non-refoulement* with reference to the general situation in her country. The OIN argued that the past mutilation and the fact of having been raped could not be accepted as persecution. The Metropolitan Court held that the rejection of her asylum claim is unlawful. Problems related to ethnicity are often combined with political and religious conflicts. Therefore, even being aware of one’s ethnic origin is enough to know his/her political opinion or religion. Regarding the sexual violence that the applicant was subjected to, the court stated that: “[i]n times of war, the use of sexual violence against the enemy is a common practice. Only the fact of sexual violence itself, based on the ethnic origin, would be accepted as persecution.” The court considered ethnic origin, political opinion and religion as grounds for persecution. The OIN’s decision was overturned and the applicant was granted refugee status by the Metropolitan Court.<sup>12</sup>

#### Other case examples:

An Azerbaijani and a Syrian woman alleged that during their stay outside of their countries of origin, they gave birth to children from extramarital sexual relations. They could no longer return to their home countries because their families and the whole society would not accept them anymore. They feared being subjected to honour killings because of transgressing the rules of Islam. In the cases of these two women, the OIN determined that there is no state protection since the local authorities refuse to interfere in such cases. The OIN found that in both countries, the situation of women, who breached the rules of Sharia, is so severe – because of their isolation in society and the fact that they can be subjected to honour killings – that it can amount to persecution. Therefore, the OIN recognized both women as refugees.<sup>13</sup>

A Roma family fled from Kosovo because they were harassed by soldiers of the Kosovo Liberation army (UCK). When the soldiers came to look for the husband, they beat up the wife and raped her. The family moved to Serbia (at that time Kosovo was not yet independent), but there they also had problems because of their Roma origin. The wife was harassed at the local post office. At the court interview, the wife disclosed that she was raped by UCK soldiers. She had been too embarrassed to reveal this fact to anyone prior to the interview, especially to a male OIN officer. The fact that the woman was raped and harassed was not taken into consideration as a persecution based on gender. In order to assess the well-founded fear of persecution, both the OIN and the Court examined the situation of Roma in Serbia, but without considering any gender-specific aspect. The OIN and the Court were of the opinion that an internal protection alternative was available for the family in Serbia. The OIN stated that the harassment experienced in Subotica was a unique incident and cannot be considered as persecution based on ethnic

<sup>12</sup> Judgment No. 15.K.32.433/2009/26 of 2 April 2010 of the Metropolitan Court.

<sup>13</sup> The OIN communicated the case to the HHC through the answers to the questionnaire for the GenSen project.

discrimination. The OIN noted that the Police went to the place where the harassment occurred, showing that they did not reject dealing with the case. The OIN concluded that, according to the available country information, the situation of Kosovars of Roma origin is not safe in Serbia, but the discrimination they face does not amount to persecution. The applicants were granted tolerated status based on the principle of *non-refoulement*.<sup>14</sup>

The OIN rejected the asylum claim of an Iraqi mother and her two daughters (on credibility grounds, mainly based on contradictory statements), but granted them tolerated status, based on a general risk of *refoulement*. The women submitted a motion for judicial review, but before the Metropolitan Court could actually hold a hearing, the OIN modified its decision and granted them subsidiary protection based on Article 15 (b) of the Qualification Directive. The OIN assessed that women face a higher risk of suffering serious harm, should they be sent back to Iraq.<sup>15</sup>

A woman from the Ivory Coast claimed that in 2002, rebels kidnapped her parents and children, and raped her because her father was a soldier in the army. She was not sure if the attack happened because of her father's work or their Bete ethnic origin. She was attacked again in 2004 and 2007. After the third attack she decided to leave the Ivory Coast. First, the OIN only granted her tolerated status.<sup>16</sup> The OIN argued that she could find a safe area where Betes are not persecuted, and that since the last attack happened in 2007, but she left the country only in 2009, she was in a safe place for 2 years. In addition, because of the long periods between the attacks, the OIN was of the opinion that these incidents did not constitute systematic persecution. She, however, got tolerated status because she was a victim of rape, had no family members in the country and, according to the UNHCR's information on the Ivory Coast, her region of origin was considered dangerous. She appealed and the OIN withdrew the decision and started to re-examine the case because, according to the Cordelia Foundation's<sup>17</sup> opinion, she had serious mental problems. The OIN wanted to examine her health condition and the medical system in the Ivory Coast. However, the applicant left before the OIN could hold a new interview.

#### IV.4 Gender-related persecution by non-state actors

The HHC is aware of some cases where women, having suffered or fearing gender-related persecution by non-state actors, were able to make a successful claim for asylum. The fact that persecution or serious harm emanated from non-state actors is never a reason *per se* to reject an asylum claim. However, in cases of persecution by non-state actors, women always need to show that prior to fleeing their country they have sought protection from the Police or other authorities, unless specific country information shows that state protection is clearly not available. According to the OIN, "[i]n these cases the decision maker shall examine if the authority of the applicant's country of origin is able and willing to provide sufficient protection, whether the laws prohibit and penalize sexual violence, whether the perpetrators are given appropriate punishment, and whether the victims are ensured adequate compensation. If the state fails, or is unwilling to give protection to their citizens who became victims of sexual violence, the need of international protection is established."

##### Case examples:

A judge from the Metropolitan Court reported a case in which a seriously traumatized woman from Kosovo claimed that she was a victim of domestic violence (rape) by her husband. The woman did not have a legal representative at the court. The judge did not recognize that domestic violence could be a form of persecution because she could have turned to the Police for protection.

Another woman from Kosovo was forcibly married, beaten up, and abused by her husband, until she started criminal proceedings against him and managed to divorce. She spent a few days in a safe house for female victims of domestic violence. After the divorce, her family repudiated her. Her asylum claim was rejected because in the OIN's and the court's opinion, the fact that she could get divorced and spend a few days in a shelter proved that women, as victims of domestic violence, have rights and can obtain protection in Kosovo.

<sup>14</sup> Judgment No. 20.K.30.975/2006/7 of 10 July 2006 of the Metropolitan Court

<sup>15</sup> Decisions No. 106-2-9477/2010-M and 106-2-9480/2010-M of the Office of Immigration and Nationality.

<sup>16</sup> Decision No. 106-2-6400/24/2009-M of 8 June 2009.

<sup>17</sup> The Cordelia Foundation, an accredited member of the IRCT (International Rehabilitation Council for Torture Victims), is specialized in the treatment of the psycho-social and somatic problems of severely traumatized asylum seekers and refugees. [www.cordelia.hu](http://www.cordelia.hu)



## IV.5 Internal protection alternative

Section 92 (2) of the Government Decree implementing the Asylum Act<sup>18</sup> elaborates on the internal protection alternative:

*The applicant can be reasonably required to return to the part of the country concerned – with regard also to his/her personal circumstances – if*

- a) the applicant can access that part of the country in a lawful, safe and practically feasible manner;*
- b) the applicant has family relations or relatives in the given part of the country, or if the applicant's basic subsistence and accommodation are ensured by any other means; and*
- c) there is no threat that the applicant will suffer persecution or serious harm or other serious infringement of human rights in that part of the country, irrespective of whether these are connected with the reasons for fleeing presented in his/her application.*

Subsection (3) further states:

*When the provisions of Subsection 2 are applied the refugee authority shall assess in particular the applicant's health, need for special treatment, age, sex/gender,<sup>19</sup> religious affiliation, nationality and cultural ties as individual circumstances.*

According to the OIN, when considering the possibility of an internal protection alternative, the authority always takes into consideration the personal situation of the applicant and the overall circumstances of the case.

Judges interviewed for the purposes of this research claimed to look at the security situation, availability of Police protection, economic situation, presence of family or tribe members, etc. when assessing the availability of internal protection. In cases of female applicants, further scrutiny is required. Judges stated that they consider women especially vulnerable when assessing an internal protection alternative, because they face additional dangers, as a result of which it is often difficult to accept that a single woman could be sent back to certain countries (such as Afghanistan or Iran). In their view, the safe protection alternative does not exist for women coming from Asia or Africa who do not have a family or a tribe to return to.

Contrary to the above explanation provided by the judges of the Metropolitan Court, the HHC is aware of certain decisions, where the asylum claim was rejected because of an internal protection alternative, but the gender aspects were not duly taken into consideration.

### Case examples:

A Cameroonian woman claimed that after her father's death, her relatives wanted her to marry with the leader of the village in exchange for her family's debt. Before the wedding, she would have had to undergo genital mutilation. In fear of the FGM and forced marriage, she fled her country of origin. The authority examined if the applicant would have had the possibility to find a safe place to live inside her country of origin. Relying on available country of origin information, the asylum authority established that FGM is practiced in 3 of Cameroon's 10 districts, and that Cameroon is party to several international conventions protecting the rights of women and children, so an internal protection alternative had been available in the applicant's case. The authority examined the personal circumstances of the applicant and it found that the applicant was well-educated and she spoke several languages. The OIN was also of the opinion that she would be able to take care of her own livelihood and housing in another part of the country. Her claim for protection was rejected.<sup>20</sup>

In the case of a Somali woman the Metropolitan Court annulled the OIN's decision on the basis of lacking proof showing the availability of an internal protection alternative. The Somali woman applied for asylum in Hungary in 2008. In 2006, two of her children were killed in front of her own eyes. She was raped and robbed and her husband was beaten up several times. She recognized that the offenders were members of the soldiers of the temporary government. These people belonged to tribes of higher classes. She understood that they intend to kill people who belong to minority groups. Her neighbours took her to her relatives, where she spent almost two years. She was hiding from the soldiers in a settlement of single women in a forest – nothing more than a couple of wooden huts in the jungle, built on bare soil, with no roads and no sewage disposal. They often changed the location of the

<sup>18</sup> Government Decree 301/2007 (XI.9.) implementing the Act LXXX of 2007 on Asylum.

<sup>19</sup> Note that in the Hungarian language there are no separate words for sex and gender, only explanatory expressions ("biological" and "social sex"). Here the law uses sex, but it can also be understood as gender.

<sup>20</sup> Decision No. 106-2-7.063/20/2006-M. of 14 July 2006, of the Office of Immigration and Nationality.

settlement and they often had nothing to eat for days except the garbage left beside the roads. Her husband was killed while she was hiding in the forest. The OIN accepted the fact of persecution, but rejected her application, claiming that internal relocation was available in her case. The OIN claimed that since she was able to live at another place for two years before coming to Hungary, this can be considered as an internal protection alternative.<sup>21</sup> The Court annulled the OIN's decision because the asylum authority could not appoint a specific territory and the name of the town or village where the woman could safely relocate and did not sufficiently prove that the internal protection alternative would indeed be ensured in this case.<sup>22</sup> In a new procedure, the OIN granted refugee status to the applicant.

#### IV.6 Safe countries

Hungary does not maintain an official and public list of safe third countries; however, this concept is regularly used on a case-by-case basis.

Arrival through or previous stay in a safe third country constitutes a ground for denying admission to the in-merit phase of the asylum procedure. In this context, the OIN examines whether the person seeking asylum would be treated in accordance with the following principles in the third country concerned:

- (a) His/her life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) The principle of *non-refoulement* is observed in accordance with the 1951 Refugee Convention;
- (c) The rule of international law, according to which the applicant may not be expelled to the territory of a country where he/she would be exposed to the death penalty, torture, cruel, inhuman or degrading treatment or punishment, is recognized and applied; and
- (d) The possibility exists to apply for refugee status and, if found to be a refugee, to receive protection in accordance with the 1951 Refugee Convention.

The HHC has observed that since 2011, the OIN has been consistently rejecting asylum applications by asylum seekers – including single mothers with children – who were in Serbia before coming to Hungary. The OIN considers Serbia as a safe third country where refugees may have access to protection in accordance with international standards. The HHC is concerned that OIN does not carry out an individualized assessment of all the facts and circumstances of a particular case. No gender aspects are taken into consideration. Furthermore, in the judicial review stage of the procedure, Hungarian jurisprudence is largely inconsistent. The Szeged Tribunal,<sup>23</sup> which reviews most admissibility decisions, frequently bases its decisions on generalized, outdated information, while the Debrecen Tribunal<sup>24</sup> complies with evidentiary requirements prescribing an individualized assessment of the risk of return in each case, often arriving at the conclusion that Serbia cannot be regarded as safe.

The HHC conducted two field missions to Serbia in 2011 and 2012, and concluded that Serbia should not be considered as a safe third country.<sup>25</sup> Reception capacities are very limited (the two existing accommodation centres, with a capacity of 200, are often full, leaving hundreds of asylum seekers<sup>26</sup> on the street), the recognition rate is extremely low (only five persons received subsidiary protection, and no refugee status was granted), no integration perspectives exist, etc. Serbia maintains a list of safe third countries that encompasses all neighbouring states, as well as Greece and Turkey.<sup>27</sup> Thus asylum seekers entering Serbia from any of these countries are to be automatically returned there without having their claim examined on the merits. In light of the grave deficiencies of some of the neighbouring countries' asylum systems, which have been highlighted by the European Court of Human Rights as well,<sup>28</sup> this practice gives rise to a serious risk of chain *refoulement*.<sup>29</sup>

<sup>21</sup> The OIN referred to the paragraphs 12, 19 and 20 of the UNHCR guidelines on International protection: "Membership of particular social group" in connection with ethnic minority and gender.

<sup>22</sup> Judgement No. 21. K. 31555/2009/6. of 11 November 2009 of the Metropolitan Court.

<sup>23</sup> Called the Court of Csongrád County before 1 January 2012.

<sup>24</sup> Called the Court of Hajdú-Bihar County before 1 January 2012.

<sup>25</sup> Hungarian Helsinki Committee, *Serbia as a safe third country: Revisited*, July 2012, <http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf>

Hungarian Helsinki Committee, *Serbia as a Safe Third Country: A Wrong Presumption*, September 2011, <http://helsinki.hu/en/serbia-as-a-safe-third-country-a-wrong-presumption>

<sup>26</sup> In the first half of 2011, more than 900 persons applied for asylum in Serbia.

<sup>27</sup> Government decree on defining the list of safe countries of origin and safe third countries, Službeni glasnik RS, No. 67/2009, <http://www.apc-cza.org/en/liste-sigurnih-drava.html>

<sup>28</sup> *M.S.S. v. Belgium and Greece*, Application No. 30696/09, 21 January 2011.

<sup>29</sup> Hungarian Helsinki Committee, *Serbia as a safe third country: Revisited*, July 2012, <http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf>

### Case example:

A single mother with two children from Afghanistan was not admitted to the in-merit asylum procedure based on the safe third country rule, because they came through Serbia. She appealed the decision, but the appeal was rejected.<sup>30</sup> In the judgement there is not a single sentence mentioning that her status as a single mother with children was taken into consideration. The OIN's decision only lists that Serbia joined all relevant international conventions, that it adopted an Asylum Act in 2008, that there is a procedure for granting international protection in Serbia and that the Hungarian Ministry of Foreign Affairs considers Serbia as a safe country for an asylum seeker.

The HHC is not aware of any cases in which an EU Member State responsible for examining an asylum application (under the Dublin Regulation) was not considered a safe country because of the gender aspects of a case.

## **IV.7 Exclusion and cessation**

According to the OIN, exclusion of the "main" asylum applicant from protection under the 1951 Refugee Convention does not automatically trigger the exclusion of his/her dependents.

While examining whether the situation in a country of origin has improved, the OIN stated that "[g]ender aspects are taken into consideration. In all cases the decision shall be based on the individual assessment of the situation of the affected person."

## **IV.8 Credibility and evidentiary issues**

According to the OIN, asylum seekers have the duty to submit all the elements necessary to substantiate their application for international protection as soon as possible. These elements consist of the applicant's credible and coherent statements and all documentation and evidence at his/her disposal. It very rarely happens that asylum seekers can submit documentary evidence, but it is enough that he/she makes a genuine effort to substantiate his/her application and his/her statements are found to be coherent and plausible, not running counter to available specific and general information relevant to the case. This requirement is not different in gender-related cases.

As for the standard of proof applicable in asylum cases, the Asylum Act uses the term "to prove or to substantiate", which indicates a lower or more flexible standard of proof. According to the judges interviewed, the requirement of proof in the examination of asylum claims is not different in gender-related cases. There are no specific rules on how to assess credibility in gender-related cases. The OIN usually conducts more than one hearing, and if the female applicant's testimony is found coherent at all the interviews, she would be deemed credible.

According to the judges interviewed, late disclosure of acts of harm in general (not only in cases of gender-based persecution) would not be considered credible unless the applicant provides acceptable justification for the late disclosure. However, the principle of *non-refoulement* would always be assessed in light of the new elements. The HHC is aware of two cases where female asylum seekers disclosed that they had been raped only at the appeal procedure, during the court hearing. In both cases, the women were able to justify the late disclosure by referring to the fact that they were too ashamed to speak about this at the first interview with the OIN. In one of these cases, the applicant's husband was not aware of the fact that she had been raped and this presented another obstacle for her, since she was too afraid and ashamed to admit this fact to her husband. Since the husband and wife were both present at the court hearing, it was very difficult to convince the husband to leave the courtroom while the woman was being heard.

Hungarian authorities usually request medical evidence provided by a gynaecologist in cases of female genital mutilation. In the cases of rape, the OIN does not systematically request a gynaecologic examination of the applicant, but only in cases where the applicant's credibility is questioned. Asylum seekers' legal counsellors can also submit medical evidence. In the cases of asylum seekers suffering from post traumatic stress disorder (PTSD), the lawyers of the Hungarian Helsinki Committee usually submit an expert opinion issued by the Cordelia Foundation. However, because of the increased use of these expert opinions by HHC lawyers, the OIN seems to accord them less importance than in the past. If the decision-maker finds during the interview that the applicant may have suffered severe trauma because of the events he/she went through in his/her country of origin, the authority could initiate – with the consent of the affected person – the assistance of a medical or psychological expert.<sup>31</sup> However, this option is rarely used because of the high costs it entails. According to the OIN, "[i]n the case of a traumatized asylum

<sup>30</sup> Judgment No. 3.Kpk.21120/2011/3. of 14 June 2011 of the Csongrád County Court.

<sup>31</sup> Section 59 (2) of Asylum Act.

seeker, the asylum authority takes into consideration that the applicant is not necessarily able to present a coherent and logical story about his/her flight and it refrains from evaluating contradictions to the detriment of the applicant. The asylum authority evaluates credibility according to the specific circumstances and features of the given person and case."

The HHC is not aware of cases where the OIN used the argument of "cultural relativity" to reject gender-based claims. According to the judges interviewed, they usually apply the European point of view when deciding cases. Therefore, if a certain tradition (such as FGM) is not accepted in Europe, the court does not accept the justification that "this is a cultural norm" in the country of origin.

According to the OIN, "decision makers are aware that cultural differences and trauma play an important and complex role in determining the behaviour of asylum seekers. There are certain well-known differences in gestures and demeanour that are culturally determined. For example, avoiding eye contact, smiling and laughing can have different meanings in different cultures. The OIN is also aware of the fact that sexual and domestic violence is a taboo in certain cultures, something people are ashamed of and do not want to talk about. The applicant might be afraid that what he/she says will get back to his/her family and for that he/she will have to face reprisals from the family. It is also due to trauma that it is hard for the applicants to talk about certain events. The decision makers are aware of these facts and try to create a supportive environment, where the asylum seekers are reassured about the strictest confidentiality of their claim."

Both the OIN and the judges interviewed claimed not to ask precise details of rape or sexual assault at asylum hearings. The OIN stated that it usually tries to establish general circumstances of the incident by asking what the place was like, how many perpetrators there were, what they said, etc. It also considers important to talk about what happened before the sexual assault and what led to it. The OIN recognizes that it can happen that the applicant, because of trauma and PTSD, is not able to, does not dare to or is not willing to answer the questions. The OIN claims that the mere fact that the applicant is reluctant to give details about the sexual assault and talk openly about it is not evaluated to his/her detriment.

According to the HHC's experience, lack of emotions shown at the interview had a negative impact on the credibility assessment in one case. In this case, the OIN stated that if the woman had really been raped, she would have been more distressed at the interview. The OIN also referred to the "sexually active behaviour" of the woman in the reception centre, as a factor raising doubts about her credibility. One of the arguments of why the OIN did not believe the applicant was sexually assaulted, was that an OIN social worker reported that the applicant had a relationship with another asylum seeker living in the same reception centre. Despite the experience of this particular case, the OIN, for the purpose of this research, stated that "[t]he lack of emotions is not necessarily taken into consideration when evaluating the credibility of the applicant. The disturbed behaviour itself or an incoherent demeanour (for instance laughing while talking about the sexual assault that happened to her) does not justify the questioning of the applicant's credibility. With the assistance of a medical or psychological expert, the authority is able to evaluate if the reason of the above mentioned demeanours is related to the trauma or not."

In the HHC's opinion, it is worrisome that some judges stated that they are relying on their feelings in order to determine whether someone is credible or not and that they take into account elements of non-verbal communication at the hearing. One judge stated that if an applicant presents his/her narrative too aggressively, acting in a very offensive way, it might be a sign that he/she is not telling the truth. However, according to other judges, lack of emotions is not considered as a sign of lacking credibility.

#### Case examples:

A Congolese woman claimed that national authorities arrested her husband, who disappeared on 29 September 2010. On the same day, before his disappearance, he was invited to an event of the political party Union pour la Démocratie et le Progrès Social (UDPS). On 9 October 2010, she took part in a demonstration of the UDPS. In the evening policemen broke into her house and raped her. On 18 October 2010, she participated in a protest against sexual violence. In the evening of the same day, policemen broke into her house again and threatened to kill her. She then decided to leave for Europe. The OIN rejected her application, stating that the applicant could substantiate neither the existence of a "personal persecution", nor her well-founded fear thereof. According to the referred country of origin information, her husband's name was not listed among the ones that were arrested at the demonstration on 29 September 2010. The OIN did not believe that the applicant had taken part in the protest on 18 October 2010 in Kinshasa either. According to the Congo News Agency, BBC and Al Jazeera, the protest was on 17 October 2010 in Bukavu. Because she connected the demonstrations with the sexual abuse, her credibility regarding the latter was not accepted either.

An Ethiopian woman was a victim of sexual violation in 1999. Soldiers stopped her in the street and asked about her membership in Oromo Liberation Front (OLF). They put her into a car, took her to an unknown place and raped her. She was found in the street a couple of hours later. She mentioned that she was drugged; this is why she was not aware of any details of the sexual violation. In the same year, she gave birth to a child. In the next year she was arrested by the Police because of her ONOG membership. After having left Ethiopia, she went to Ukraine in 2002. She lived there for two years. She went to Romania in 2007, where she asked for asylum, but her claim was rejected. She arrived in Hungary in 2009. The OIN rejected her asylum application on credibility grounds, but granted her tolerated status based on the principle of *non-refoulement*. According to the OIN, she could not substantiate that she had been raped and detained. She was also mixing up dates. The Metropolitan Court stated that the OIN did not clarify sufficiently the circumstances of the case.<sup>32</sup> According to the Court, it was not the applicant who was mixing up the dates; it was the OIN officer who was not asking questions in chronological order. The Court criticized the practice that every time an applicant touches a relevant fact or circumstance that could be considered as a ground for international protection, the interviewer changes the subject and asks something completely different. The Metropolitan Court argued that this practice is not acceptable and stated that “[t]he OIN should have clarified the contradictions by asking well-oriented questions that facilitates the understanding of the story.” Most of the time, these contradictions were the result of the poor quality of the translation or other general misunderstandings. The Metropolitan Court further stated that the OIN came to a wrong conclusion regarding the psychological state of the applicant and, therefore, an independent expert’s opinion should be required. The OIN should have examined if the applicant suffered from PTSD. Finally, the OIN did not compare and evaluate the facts of the case with the relevant elements of the concept of serious harm. The Court quashed the decision and ordered a new procedure.

A Liberian woman fell in love with her female friend. The husband of her partner wanted to kill her in revenge, and then her brother was killed instead of her. She escaped from Liberia. She later married a man in Ghana and had children. She referred to her sexual orientation only in the judicial review phase of the asylum procedure. Because of this late disclosure, the statements about her lesbian relationship were deemed superficial and incoherent. Furthermore, due to her marriage and cohabitation with a man, the OIN did not consider her credible. The OIN stated that “[i]t is evident that if the applicant was a lesbian she would not marry a man 15 years after she first established a lesbian relationship and would not live together with him for several years.”

A Nigerian woman left her country of origin because she was persecuted by her family and social environment based on her sexual orientation. She claimed that she was beaten by her parents and brought to an imam, who imprisoned her for a few days and then issued a decision according to which she would be stoned. This was the final reason leading to her decision to escape. The OIN requested an opinion of a psychiatrist, who determined (using Szondi and Rorschach tests) that she was not a lesbian. The OIN also contested her age and did not believe that the scars she had on her body were from the beating. In the OIN’s opinion, the scars occurred when she wanted to remove her tattoos. Because the applicant was not deemed credible, she was not granted protection. The Metropolitan Court later confirmed the OIN’s decision.<sup>33</sup>

## V. ASYLUM PROCEDURE

### V.1 Access to information

Foreigners apprehended by the Police receive a leaflet on their rights and obligations at the police station, but it does not contain information on the asylum procedure. Those who submit an asylum claim receive information about the asylum procedure in oral and written forms in their native language, or in a language that they understand, before their interview with the OIN. According to the OIN, the general information leaflet contains all the necessary information about the whole asylum procedure. The applicants also receive leaflets about the admissibility procedure and another about the in-merit procedure before the respective interviews. These leaflets do not contain specific information on gender issues. In short-term detention facilities on the border, in a reception centre or immigration

<sup>32</sup> Judgment No. 24.K.32.957/2009/23. of 30 September 2010 of the Metropolitan Court.

<sup>33</sup> Judgment No. 3.K.35.072/2009/7. of 21 January 2011 of the Metropolitan Court.

jail, asylum seekers can have access to the HHC's leaflets on asylum procedure, where it is explicitly mentioned that gender and sexual orientation can be a ground for persecution.<sup>34</sup>

Regarding couples, the OIN stated that their case is handled as a single asylum case if they have authentic documents proving that they are lawfully married. Upon submitting the asylum claim and during the first interview of the admissibility procedure, married applicants are informed that they are allowed to ask for separate decisions in their cases. Moreover, they have to give written approval if they want their case to be decided together. However, the HHC did not observe such a practice. Instead, if the couple states that they are married their case is automatically handled as a single asylum case, neither an authentic document proving their marital status, nor their written consent is requested. The HHC is also aware of certain cases where Afghan women claimed that only their husbands were provided with information about the asylum procedure.

The OIN officer informs women before their first interview that the information they provide is confidential and will not be shared with their family members.

## V.2 Border procedure

In Hungary, there is no specific border procedure in asylum cases. The only exception is when the asylum seekers arrive at the airport. They should remain there for the time of the admissibility procedure, which should be finished within 8 days (the admissibility procedure otherwise takes up to 30 days). There are no special provisions or policies for women claiming asylum at the border.

When asylum seekers make a claim for asylum at the border, they should be allowed to enter the country and have access to the asylum procedure. However, the HHC's experience shows that a remarkable proportion of border police officers are reluctant to "hear" asylum claims and routinely fail to record asylum applications.<sup>35</sup>

## V.3 Screening/admissibility

The Hungarian asylum procedure consists of two phases: the admissibility procedure and the in-merit procedure. In the admissibility procedure, the OIN examines whether:

- a Dublin procedure should be started;
- the applicant is a citizen of an EU Member State;
- the applicant has already been recognized as a refugee by another EU Member State, or by another country, and whether this status is still valid and he/she can go back to this country;
- the applicant presented new elements in case of a subsequent asylum claim;
- there exists a country which qualifies as a safe third country from the point of view of the individual case;
- the application manifestly lacks grounds for international protection.

In the HHC's opinion, gender-specific considerations should be taken into account while examining any of the above-mentioned grounds. However, this requirement is not stated in legislation.

## V.4 Timeframes

There is no deadline by which an asylum claim should be submitted upon arrival in Hungary. However, according to Section 51 (5) (c) of the Asylum Act, the application for international protection is rejected as manifestly unfounded in the admissibility procedure if the asylum seeker failed, without reasonable justification, to make the application within a reasonable period of time. However, the claim cannot be refused only because of the delay. According to the OIN, as there is case-by-case evaluation, special circumstances (including gender) of the specific applicant are taken into account when deciding whether this delay should lead to the rejection international protection. However, the HHC's long-standing experience indicates that submitting a late application for asylum can often have a negative impact on credibility findings.

Furthermore, the HHC is aware of a judgement where the late submission of the asylum application was *per se* evaluated to the detriment of the asylum seeker. The Metropolitan Court stated that "[i]f a person decides to flee

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<sup>34</sup> <http://helsinki.hu/en/infoleaflets-for-asylum-seekers>

<sup>35</sup> For more information see: Hungarian Helsinki Committee, National Police Headquarters, United Nations High Commissioner for Refugees, *Access to Territory and Asylum Procedure in Hungary (2011)*, <http://helsinki.hu/en/border-monitoring-report-of-activities-carried-out-in-2011>

his/her country, he/she asks for protection as soon as he/she gets to a safe country. If the applicant does not do so, he/she can be considered as not really in need of international protection.<sup>36</sup>

In Hungary, there is no accelerated procedure. Asylum claims based on gender are not prioritized, only those submitted by unaccompanied minors or asylum seekers in detention.<sup>37</sup> The OIN has to adopt a first-instance decision relatively fast (within three months, with the possibility of extension for one month). On average, the OIN decides within 45 to 90 days. The courts have to perform the judicial review within three months, but in practice it takes around 4 months to finish court proceedings.

## V.5 Flexibility and vulnerable applicants

The substantive interview cannot be postponed with the purpose that the applicant gathers further evidence. However, the applicant can submit further evidence throughout the whole asylum procedure, although later submissions might not be taken into consideration when deciding on the case, if they arrive too late.

In general, female asylum seekers are not considered members of a "vulnerable group" in Hungarian legislation. They belong to a vulnerable group if they are pregnant, unaccompanied minors, elderly, disabled, single mothers, or victims of torture, rape or any other grave form of psychological, physical or sexual violence.

An asylum seeker with special needs shall be eligible for free health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person's state of health with respect to the person's individual situation and based on a medical expert's opinion.<sup>38</sup>

No specific identification mechanism exists for the identification of asylum seekers with special needs. If these needs are not obvious, the asylum seeker has to notify the authorities of his/her special needs, otherwise these might remain untreated/unidentified.

## V.6 Interviews and hearings

The Hungarian asylum authority does not have separate guidelines about gender-sensitive interviews, but they use the UNHCR's Guidelines on International Protection: Gender-Related Persecution.<sup>39</sup> According to the asylum authority, "[i]n case the applicant who lodged a gender-related asylum claim is also a victim of torture, rape or any other grave form of psychological, physical or sexual violence, he/she is considered a person requiring special treatment, and as a result the asylum authority conducts the procedure with regard to his/her special needs. In case of potential victims of gender-based violence the interviewing methods are adapted. The interviewer and the translator try to remain neutral, compassionate and objective during the interview. The interviewer tries to create an environment that helps the claimant to open up and makes sure that the applicant is able to present his/her case with minimal interruption. During the interview decision-makers avoid body language or gestures that may be perceived as intimidating or culturally insensitive/inappropriate."

The asylum authority does not have separate guidelines on how to conduct an asylum interview of victims of torture or traumatized individuals, but from time to time the decision makers are trained by the Cordelia Foundation on the methods of interviewing victims of torture and traumatized persons. However, the last such training took place in 2008, and so far there have not been any follow-up initiatives.

According to the HHC's experience, sometimes the fact that a person is traumatized is not revealed at the beginning of the interview and, therefore, does not really influence the interviewing techniques applied. This happens because the OIN usually asks the applicant whether he/she has medical problems only at the end of the interview. According to the HHC's opinion, the use of appropriate interviewing techniques largely depends on the sensitivity of the individual OIN officer dealing with the case.

Asylum seekers can have access to specialized psychological assistance by the Cordelia Foundation before the substantive interview, but only if they are actually aware of this possibility. OIN officers are supposed to give asylum seekers an information sheet listing NGOs at the admissibility stage of the procedure, but not all officers do so, while some do hand over the sheet but do not explain the content thereof. The social workers at the Debrecen refugee reception centre also provide information to asylum seekers about available psychological assistance. In immigration jails, since March 2012, psychologists employed by the NGO Menedék provide psychological help when needed.

<sup>36</sup> Judgment No. 3.K.30.117/2010/12 of 18 April 2011 of the Metropolitan Court.

<sup>37</sup> Section 35 and 35A of the Asylum Act. Although the HHC has not experienced that asylum claims of detained applicants would be examined much faster than the claims of those in an open reception facility.

<sup>38</sup> Section 34 of the Government Decree implementing the Asylum Act.

<sup>39</sup> UNHCR, Guidelines on International Protection No 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 2002,

<http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?page=search&docid=3d36f1c64>

Female asylum seekers are not automatically interviewed by a female asylum officer. Section 66 of the Governmental Decree implementing the Asylum Act stipulates that an interpreter of the same sex shall be used, and the case shall be handled by an officer of the same sex as the asylum seeker, if this does not hinder the completion of the procedure and the asylum seeker requests so. If the asylum seeker declares that he/she suffered harm or humiliation relating to his/her sex/gender, it shall be compulsory to designate an official of the same sex for his/her case, if requested by the person. It is often more difficult to guarantee a female interpreter and for certain languages (e.g. Somali or Singhalese) this is essentially impossible in Hungary.

The OIN cannot provide childcare services during the interview. Childcare is therefore entirely dependent on the *ad hoc* availability of a social worker employed by the reception centre or immigration jail in question.

An applicant usually has at least three interviews, first with the Police, second with the OIN officer in the admissibility procedure, and then a longer interview in the in-merit phase. The OIN mostly uses open questions when interviewing an applicant. Additional interviews can also be held and in many cases they actually take place in practice.

## V.7 Appeals

There is no possibility to lodge a separate appeal against the OIN's decision in joint cases of spouses, and the Court cannot "separate" a joint case of spouses if the OIN dealt with it as such the first instance. The only possibility the Court has is to repeal the decision of the OIN and include in the justification of the judgement that one of the spouses may lodge a separate claim for asylum because new facts or circumstances emerged during the court procedure.

There is usually enough time to prepare for a court hearing, since it normally takes place several months after the OIN's decision. However, if the applicant needs additional time to obtain evidence and the court is willing to accept it, the court can postpone the hearing.

In Hungary, 82% of judges are women. Even if this proportion is somewhat lower in case of the limited group of judges dealing with asylum, it is often likely that a female applicant would get a female judge. However, there is no rule regulating this, therefore each request depends on the individual judge. According to the HHC's experience, the mere fact of the proceeding judge being a woman is not *per se* beneficial for the outcome of gender-related asylum claims, as sufficient gender sensitivity or reference to negative stereotypes in some appeal cases was not dependent on the proceeding judge's sex.

It is mandatory to hold a personal hearing before the court. Even if the applicant is traumatized, he/she has to appear before the court. However, according to the interviewed judges, if the applicant is not fit for a hearing, it can be postponed or be made shorter and conducted with more breaks. If the applicant is traumatized, this information is included in the minutes. According to a judge, in case of a severely traumatized individual, the court can ask for a psychiatrist's opinion and consider this opinion as part of the hearing. Therefore, the applicant would not be questioned about the events that made him/her traumatized. Still, the applicant would have to be present at the court. A closed hearing can be held whenever the applicant requests so, or if the characteristics of the case so require.

## V.8 Subsequent applications

Asylum seekers have access to the asylum procedure in case of subsequent claims, but they need to present significant new facts or circumstances that were not considered in their previous asylum procedure. However, a subsequent application<sup>40</sup> does not have a suspensive effect on expulsion measures, if a Hungarian authority or court, in its latest relevant decision, decided that the prohibition of *refoulement* was not applicable. Asylum seekers, who have to submit subsequent asylum claims, are also not entitled to the same reception conditions as those lodging initial applications, even if the merits of their cases have not yet been examined.<sup>41</sup> This is problematic for all asylum seekers and is of particular concern for vulnerable groups.

If a married woman lodges an asylum claim separately from her husband following the rejection of their previous joint application, her new claim will be considered as subsequent.

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<sup>40</sup> The term "subsequent" refers to an application submitted once a previous asylum procedure has been closed with a final decision or has been discontinued (closed without a decision on the merits of the claim, e.g. because the person absconded in an early phase of the procedure).

<sup>41</sup> Section 54 of the Asylum Act.



## **VI. COUNTRY OF ORIGIN INFORMATION (COI)**

According to the OIN, its Litigation Unit produces "internal country guidance", but it is not publicly available. It depends on the country if the guidance contains gender-related information. The OIN also has a COI Documentation Unit, which produces query responses for each individual case (compilation of different COI sources). There are eight national COI researchers, but they are not specifically trained on gender issues.

Courts may occasionally conduct COI research on their own, but they also use the country information query responses produced by the OIN's COI unit and information submitted by the applicants' lawyers. According to some judges interviewed, the COI submitted by the OIN does not show the whole picture and is often inaccurate.

One judge stated at the interview that the lack of gender-specific COI in a given country is regarded as lack of evidence demonstrating the risk persecution. Meanwhile, other judges said the opposite. According to them, the most important objective of using country information is to demonstrate the availability of state protection and the existence or non-existence of violence. If there is no sufficient country information the principle *in dubio pro reo* (the benefit of the doubt) should apply. According to the OIN, the authority is aware that in some cases the COI is not complete or lacks enough detail and this is not held against the asylum seeker.

The OIN further stated that the main challenge regarding gender-specific country information is that, in many cases, official reports are contradictory (for example about the frequency of the sexual violence occurring in the country of origin). The COI also gives insufficient information as to whether states have the will and the tools available to prevent acts of serious harm and persecution, or if an internal protection alternative is available.

## **VII. TRAINING**

OIN officers and judges were not specifically trained on gender issues apart from one short session on basic gender issues (in an asylum context) and female genital mutilation in particular, held by the HHC in 2009. Border guards and detention staff have never been trained on this issue. The HHC's staff, including refugee lawyers, regularly attends training abroad that often touches upon gender issues as well.

Within the GenSen project, the HHC organized a regional seminar on gender and asylum at the end of March 2011. The seminar reunited representatives of immigration authorities, NGOs and courts from Hungary, Romania, Bulgaria and Poland, as well as the UNHCR Regional Representation for Central Europe.

## **VIII. AUDITS**

The OIN's Litigation Unit does not specifically focus on gender aspects when reviewing the first instance decisions. In the scope of a recent UNHCR-led quality enhancement project,<sup>42</sup> the UNHCR undertook audits of decisions in the asylum procedure and, *inter alia*, focused on gender aspects.

## **IX. DETENTION CONDITIONS OF FEMALE ASYLUM SEEKERS**

Hungary applies a strict immigration detention policy, meaning that the majority of asylum seekers entering the country illegally are detained. The maximum period of detention is 12 months, while for families with children it is 30 days. According to the Third Country Nationals Act (hereinafter referred to as TCN Act),<sup>43</sup> unaccompanied minors cannot be detained.

As a major shortcoming, the Hungarian alien policing legislation does not set forth differentiated rules for vulnerable persons with specific needs in immigration detention. Section 126 (6) (b) of the Government Decree implementing TCN Act<sup>44</sup> only states that detention shall be terminated immediately if it becomes evident that the expulsion order cannot be executed, in particular, if the person subject to expulsion needs prolonged hospital treatment. This provision, however, does not allow favourable treatment for detainees with specific needs other than prolonged medical treatment in a hospital (e.g. for reasons of psychological distress, age, pregnancy or disabilities).

During its monitoring visits, the HHC repeatedly found that a large number of detainees had psychological or psychiatric problems due to a previous trauma left untreated, bad detention conditions and/or forced inactivity. The HHC in 2010 interviewed an eight-month-pregnant woman in Kiskunhalas, whose detention was continuously

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<sup>42</sup> Asylum Systems Quality Assurance and Evaluation project, <http://www.unhcr.org/48d24c002.html>

<sup>43</sup> Act no. II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>44</sup> Government Decree 114/2007. (V.24.) implementing the Act no. II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

prolonged and she was only released to a hospital when giving birth to her child.<sup>45</sup> Once she was dismissed from the hospital, she could go to the open refugee reception centre in Debrecen. However, despite that the reception centre is situated more than 200 km away from the hospital, the OIN did not ensure any transport service to her and her new-born child. Finally, an interpreter had to take them to Debrecen on its own initiative.

The HHC has observed progress in the treatment of women in immigration jails. In 2009, women could still be detained in any of the four permanently operating immigration jails in the country and, as there were significantly fewer female detainees than male ones, it was not unusual for a woman to spend weeks (or months) alone in detention without being able to communicate with fellow detainees. Furthermore, the Police staff that runs administrative detention facilities is overwhelmingly composed of men. In 2010, as a sign of some progress, the detention of women was limited to only one immigration jail, located in Kiskunhalas. However, the detention regime was still very strict. Women could spend only one hour per day outdoors and watching TV was the only recreational activity available to them. In 2011, a social worker from the Menedék Association started to visit the jail every day. The jail also had a male doctor, a nurse present 24 hours a day and a female Police psychologist available on request. In case there was a seriously traumatized detainee, a psychiatrist of the Cordelia Foundation could also be contacted. According to the social worker of the Menedék Association, 20% of the detention staff in Kiskunhalas was female. In each shift there were a certain number of women, but, according to the social worker, it happened from time to time, that only male security guards were working in the female sector of the jail.

Since 23 May 2011, single women are no longer detained in Kiskunhalas, but in the Békéscsaba immigration jail, which was transformed into a detention facility for families and children from an OIN closed reception facility in April 2011. The regime in this jail is less strict than in the others. The corridors are not locked during the day and women and families can move freely in the courtyard. Only during the night are the doors of the corridors locked, but not the doors of individual rooms. Social workers of the Menedék Association are present daily in the jail and provide information, do community work, maintain contact with other organizations and help in re-establishing contact between asylum seekers and their families.

There is no specific screening to detect victims of gender-based persecution in detention. The TCN Act sets forth that men must be separated from women in detention. This provision aims to prevent cases of sexual harassment or violence. Apart from that arrangement, there are no standard operating procedures in cases of gender-based violence in detention. According to the asylum seekers detained, medical assistance provided in the Békéscsaba immigration jail is of better quality than in other detention facilities. A nurse is present 24 hours a day, and a general physician for adults and a paediatrician visit the jail twice a week. If needed, a Cordelia Foundation psychiatrist visits the jail once a week. Interpretation is not explicitly provided for during the doctor's and the psychologist's visits. If an asylum seeker and the doctor cannot find a common language, other asylum seekers help with the translation. A female lawyer of the Hungarian Helsinki Committee visits the jail once a week to provide free-of-charge legal counselling and representation for asylum seekers.

Women, in general, are not separated from their minor children. However, the HHC is aware of a case where an asylum-seeking Afghan family was put in pre-trial detention in a regular penitentiary institution due to the use of forged documents, while their children were placed in foster care.

## **X. RECEPTION CONDITIONS OF FEMALE ASYLUM SEEKERS**

Women who are not detained are placed in an open refugee reception centre in Debrecen. Single women are accommodated in a separate building, as well as families. A social worker works with single women in the building in the daytime. Women can lock the entry of the unit, but not all of them are always diligent enough to lock the door, and since there is no overnight security present, the place cannot be considered sufficiently safe for single women.

There is no specific screening process in place to detect victims of gender-based persecution in the reception facility in Debrecen. There are no standard operating procedures in cases of gender-based violence in the camp either. Generally, in case of need, a woman must explicitly ask for help, otherwise the personnel might not notice that she was abused or harassed. There are no specific needs assessment procedures in place. In one case from 2010, a woman collapsed while doing the cleaning and she was hospitalized. It was only after that incident that the social worker alerted the Cordelia Foundation (regularly present in the camp) for assistance. The woman in question, later on, stated that she finds the weekly treatment and consultation with the Cordelia Foundation's psychiatrist very helpful.

Social workers of the Menedék Association are present daily in the Debrecen camp and provide community work and social assistance for residents. Women constitute an especially important target group in their practice, which means specific, regular activities (for example aerobic clubs, sewing clubs, etc.) only for women, depending on their actual

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<sup>45</sup> For more information see the report: The Hungarian Helsinki Committee, *Stuck in jail – Immigration detention in Hungary (2010)*, April 2011, [http://helsinki.hu/dokumentum/HHC%20immigration%20detention\\_ENG\\_final.pdf](http://helsinki.hu/dokumentum/HHC%20immigration%20detention_ENG_final.pdf)

needs. A female HHC legal officer provides free legal advice and representation in the camp on a daily basis. A general physician for adults visits the camp every morning (not always a female doctor), a paediatrician comes a few times a week and the Cordelia Foundation's psychiatrists are also present in the camp every Thursday. Asylum seekers are entitled to basic medical care.<sup>46</sup>

In one case, a woman reported sexual harassment in a community shelter in Nyírbátor (this community shelter no longer exists as it has been transformed into a jail). She claimed that a resident and security guards harassed her. She did not report this to the authorities because she was not aware of the existence of any complaint mechanism. The woman was a victim of trafficking and she received a temporary humanitarian residence permit immediately upon her arrival. However, she was obliged to travel alone to the community shelter in Nyírbátor, and she had to beg for money at the train station in order to be able to take the train to the shelter.

Until the autumn of 2011, unaccompanied minor asylum seekers were placed in a designated shelter in Bicske. The Bicske shelter was operated in the framework of a project run by Hungarian Interchurch Aid, a charity organization.<sup>47</sup> The project provided continuous supervision by the shelter's social workers, the possibility to consult psychiatrists if necessary and organized schooling in local establishments. Other recreational programmes, such as outdoor activities and excursions, were also offered. In past years, very few unaccompanied minor girls arrived in Hungary. There was a protocol on how to proceed if sexual violence occurs. In such a case, the social workers were to report the violence to the Police and to take the offender to another place, out of the children's shelter, in order to avoid further violence. A full-time female psychologist was working in the shelter. The social workers arranged the interpretation if it was needed, but they did not use another child as translator because of the sensitivity of the subject. The shelter for unaccompanied minors was moved to another town near Budapest called Fót in the autumn of 2011. It is operated by the Ministry of Human Resources. Unaccompanied minor asylum seekers are assigned a legal guardian to represent them in asylum procedures.<sup>48</sup>

## **XI. SPECIFIC INTEGRATION PROGRAMMES FOR FEMALE REFUGEES**

In general, refugees and persons granted subsidiary protection have a right to live in the pre-integration camp in Bicske for six months after the recognition of their status. This period is very short, especially for single mothers, who have difficulties in finding a job and taking care of their children at the same time. Under special circumstances, if the person falls under the definition of persons with special needs, the right to stay in the pre-integration camp can be prolonged for another six months. The staff consists of 13 women and 15 men, all employed by the OIN. All the social workers are women. Social workers are there to accommodate residents and provide pre-integration assistance and information. They collaborate with the NGOs that visit the camp on a case-by-case basis.

No specific screening is performed to detect victims of gender-based persecution in Bicske. At arrival, refugees undergo a reception interview, but it is rather formal. The reasons for persecution may rather come to light in the framework of informal talks. During the first few weeks, these informal talks with social workers take place at least 2-3 times a week. There are no standard operating procedures in place for cases of gender-based violence. The interviewed social worker reported that there were no such incidents so far. Should such an incident occur, a victim could talk to the social workers, who would then call the centre's security service and the Police if needed.. The social workers from Debrecen could inform the social workers in Bicske that a certain person has special needs because of gender-based violence, however by the time of writing this has never happened. Residents can also raise their special needs concerns with a psychiatrist from the Cordelia Foundation, who visits the camp once a week.

According to the social worker interviewed, the residents of the camp receive a monthly financial support of 7125 HUF per person (approximately 26 EUR). Additionally, they can choose to receive meals and a hygiene pack or their money value instead. Women's hygiene packs contain more products for female hygiene and baby care. Single women or mothers are lodged in a special house in the camp. There is also a children's room, which is not specifically designated only for women and children, but in practice, men do not go there.

A nurse service operates every day. They can conduct basic checkups and give certain medicines for free. The doctors come twice a week (adult and child doctors). There is also a laboratory in the centre to examine urine and blood samples. The nurses and doctors working in the centre speak English. The nurses are women, and both doctors are men. The translators employed by the centre are available every day before noon, but not every afternoon. If residents go out to local hospitals, they usually have to take care of the translation themselves.

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<sup>46</sup> Section 26 of the Government Decree implementing the Asylum Act.

<sup>47</sup> For more information see: <http://www.hia.hu/object.9ff13eb0-ffaf-4ec7-9401-651b4b19111f.ivy>

<sup>48</sup> It should be noted that in the present system, no training or guidance has been made available to legal guardians by the authorities concerned. Therefore, as the HHC's experience shows, the legal guardians do not have the necessary expertise to deal with asylum cases. Consequently, it is at least questionable whether a legal guardian can effectively assist in protecting the best interests of the child.

Women in the camp, interviewed by the HHC, were generally satisfied with the living conditions. One woman reported psychological problems and she was particularly satisfied with the fact that she can visit a female psychologist from the Cordelia Foundation once a week, whom she trusts and can talk to about all her needs. The main concern of all is the fact that they must leave after six months. Another problem is that there are no childcare services provided during the Hungarian language classes. Therefore, one of the parents has to stay at home, which means that usually men are able to attend the classes. Single mothers cannot attend the language classes unless another resident or an eventually available social worker can take care of their child.

## **XII. RECOMMENDATIONS**

The Hungarian authorities are recommended to:

1. Adopt and implement public gender guidelines for decision makers, based on the UNHCR's gender guidelines;
2. Adopt and implement public guidelines for gender-sensitive interviews;
3. Provide gender-specific training to OIN decision makers, Police and judges, and ensure all training is gender mainstreamed;
4. Inform married women in private on the right to claim asylum separately from their husbands;
5. Ensure that vulnerable asylum seekers are identified as early as possible in the asylum procedure through an effective "special needs assessment mechanism", which should be formally adopted and performed in practice;
6. Provide appropriate security and complaints mechanisms in reception/detention centres;
7. Provide appropriate psychological assistance and support in reception/detention centres;
8. Take gender aspects into consideration already during the admissibility procedure (e.g. when applying the Dublin Regulation, safe third country rule, etc.);
9. Avoid basing credibility assessment on "gut feelings" and non-verbal communication during the hearing;
10. Ensure that when an applicant touches upon a relevant fact or circumstance that could be considered as a ground for international protection, the interviewer will not change the topic and ask about something completely different, but he/she will rather make sure that all the details of the relevant fact or circumstance are properly explored;
11. Enable the family members, whose case was dealt with in a single procedure at first instance, to lodge a separate appeal;
12. Ensure that if a woman lodges an asylum claim separately from her husband, and she was already considered as a dependent of her husband in a previous asylum case, her individual claim will not be considered as her subsequent claim and a suspensive effect on expulsion measures will be granted automatically;
13. Ensure that childcare services are provided while parents are attending asylum interviews or language courses;
14. Refrain from detaining vulnerable persons with specific needs in immigration detention;
15. Ensure that security is guaranteed in a house for single women inside the Debrecen refugee reception centre.

**ANNEX**

**Statistics on asylum claims in Hungary, 2011<sup>49</sup>**

Nationality	Asylum applications		Refugee status		Subsidiary protection		Tolerated status		Rejection		Otherwise closed	
	F	M	F	M	F	M	F	M	F	M	F	M
Afghanistan	172	477	5	5	11	63	1	3	77	225	21	60
Albania	0	2	0	0	0	0	0	0	0	1	0	0
Algeria	0	56	0	0	0	0	0	0	0	21	0	0
Armenia	2	10	0	0	0	2	0	0	2	2	0	0
Bangladesh	0	3	0	0	0	0	0	0	0	0	0	0
Benin	0	1	0	0	0	0	0	0	0	0	0	0
Bhutan	0	1	0	0	0	0	0	0	0	1	0	0
Bosnia-Herzegovina	0	2	0	0	0	0	0	0	0	1	0	0
Cameroon	2	4	1	2	0	0	0	0	1	2	0	1
China	0	8	0	0	0	0	0	0	0	6	0	2
China (Tibetan)	1	1	1	0	0	0	0	0	0	0	0	0
Cuba	1	0	0	0	0	0	0	0	0	0	1	0
DR of Congo	7	8	0	0	0	0	0	0	2	2	2	1
Egypt	0	20	0	1	0	0	0	0	0	2	0	5
Eritrea	1	3	1	0	0	0	0	0	0	0	0	0
Ethiopia	0	1	0	0	0	0	0	0	0	1	0	0
Georgia	1	20	0	1	0	1	0	0	0	10	0	4
Ghana	0	2	0	0	0	0	0	0	0	0	0	0
Guinea	0	4	0	0	0	0	0	0	0	5	0	0
India	0	11	0	0	0	0	0	0	0	1	0	0
Iran	5	28	1	5	1	0	0	0	0	13	3	5
Iraq	8	28	0	1	0	3	0	0	1	14	5	9
Iraq (Kurdish)	3	15	0	0	0	0	0	0	1	5	0	0
Ivory Coast	0	4	0	0	0	0	0	0	0	2	0	0
Jordan	0	1	0	0	0	0	0	0	0	0	0	0
Kazakhstan	0	1	0	0	0	0	0	0	0	0	0	0
Kosovo	46	78	0	0	2	0	0	0	28	39	8	13
Kosovo (Roma)	38	49	0	0	0	0	0	0	24	41	7	5
Lebanon	1	11	0	0	0	0	0	0	1	5	0	2
Libya	1	16	0	0	1	4	0	0	0	3	0	2
Macedonia	0	3	0	0	0	0	0	0	0	2	0	1
Moldova	0	9	0	0	0	1	0	0	0	4	0	0
Mongolia	0	2	0	0	0	0	0	0	1	3	0	0
Montenegro	0	1	0	0	0	0	0	0	0	1	0	0
Morocco	1	29	0	0	0	0	0	0	0	9	0	3

<sup>49</sup> Source: Office of Immigration and Nationality (note that the OIN keeps disaggregated statistics on ethnic background in case of some countries of origin)

Nepal	0	2	0	0	0	0	0	0	0	0	0	0
Netherlands	1	1	0	0	0	0	0	0	0	0	0	0
Nigeria	1	21	0	0	0	1	0	0	1	12	0	2
Pakistan	0	121	0	0	0	2	0	0	0	41	0	1
Romania	0	2	0	0	0	0	0	0	0	0	0	0
Russia	1	8	0	0	0	0	0	0	0	2	0	0
Russia (Chechen)	0	2	0	0	0	0	0	0	0	0	0	1
Senegal	0	1	0	0	0	0	0	0	0	1	0	0
Serbia	3	4	0	0	0	0	0	0	1	2	0	0
Serbia (Albanian)	0	2	0	0	0	0	0	0	0	0	0	0
Serbia (Hungarian)	0	2	0	0	0	0	0	0	0	0	0	0
Serbia (Roma)	10	6	0	0	0	0	0	0	6	3	0	0
Sierra Leone	0	5	0	0	0	0	0	0	0	6	0	1
Somalia	16	45	0	4	0	1	0	0	5	6	0	0
Sri Lanka	1	3	2	1	0	0	0	0	0	2	0	0
Stateless	0	1	0	0	0	0	0	0	0	1	0	1
Sudan	0	4	0	0	0	0	0	0	0	2	0	0
Syria	26	65	0	1	0	0	1	2	7	15	4	11
Tunisia	1	29	0	1	0	0	0	0	0	14	0	1
Turkey	3	10	0	0	0	0	0	0	1	5	0	1
Turkey (Kurdish)	1	11	0	0	0	0	0	0	0	9	0	4
Ukraine	1	4	0	0	0	0	0	0	1	2	0	0
Unknown nationality	12	14	5	8	4	1	0	0	3	2	0	1
Unknown nationality (Palestinians)	3	5	0	0	0	0	0	0	0	2	0	0
Vietnam	4	7	0	0	0	0	0	0	2	3	0	1
West Bank and Gaza Strip	2	27	0	1	0	0	0	2	0	10	0	4
Western Sahara	0	1	0	0	0	0	0	0	0	2	0	0
Yemen	0	2	0	0	0	0	0	0	0	2	0	0
Zimbabwe	2	1	0	0	0	0	0	0	3	1	0	0
Total	378	1315	16	31	19	79	2	7	168	566	51	142
Total in % by gender	22,33	77,67	34,04	65,96	19,39	80,61	22,22	77,78	22,89	77,11	26,42	73,58
Total		1693		47		98		9		734		193
Total % <sup>50</sup>		/		5,29		11,04		1,01		82,66		/
Total % by gender	/	/	1,8	3,49	2,14	8,9	0,22	0,79	18,92	63,74	/	/

<sup>50</sup> % of (refugee status + subsidiary protection + tolerated status + rejection).