Detention - Hungary

Overview

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Relevant EU legislation

Hungary is bound by the recast Reception Conditions Directive, the recast Asylum Procedures Directive and the Dublin III Regulation and has transposed their provisions through Law LXXX of 2007 on asylum (Asylum Law).

National legislation

Hungary transposed the recast Reception Conditions Directive by Law LXXX of 2007 on asylum | 2007. évi LXXX. törvény a menedékjogról. This law provides for the detention of applicants for international protection.

Hungary transposed the recast Asylum Procedures by Law LXXX of 2007 on asylum | 2007. évi LXXX. törvény a menedékjogról.

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	National Directorate-General for Aliens Policing (NDGAP) | Országos Idegenrendészeti Főigazgatóság (OIF)	Not applicable
Administration and management of detention facilities	National Directorate-General for Aliens Policing (NDGAP) | Országos Idegenrendészeti Főigazgatóság (OIF)	Not applicable

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Area	National authority/ stakeholder	Assistance to competent authority
Information provision in detention	National Directorate-General for Aliens Policing (NDGAP) | Országos Idegenrendészeti Főigazgatóság (OIF)	Not applicable
Interpretation services in detention	Interpreter appointed by the district court	Not applicable
Access to the procedure and provision of asylum information in detention	National Directorate-General for Aliens Policing (NDGAP) | Országos Idegenrendészeti Főigazgatóság (OIF)	Not applicable
Detention for the Dublin procedure	National Directorate-General for Aliens Policing (NDGAP) | Országos Idegenrendészeti Főigazgatóság (OIF)	Not applicable
Processing of asylum applications of applicants who are in detention	National Directorate-General for Aliens Policing (NDGAP) | Országos Idegenrendészeti Főigazgatóság (OIF)	Not applicable
Legal assistance and representation in detention	A legal representative (chosen and paid by the applicant or through the legal aid scheme), a case guardian appointed by the court. Legal assistance provided by civil society organisations.	Not applicable
Review of detention	District court (based on the place of detention)	Not applicable

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Grounds for detention during the asylum procedure

Grounds for detention in national law

Detention in the context of identification or verification of identity

Asylum Law, Article 31/A(1a): Applicants may be detained for the purposes of the asylum or Dublin procedure when their residence right is only based on the fact that they applied for international protection and it is necessary to clarify and establish identity and citizenship.

Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding

Asylum Law, Article 31/A(1c) uses the same wording as the recast RCD, Article(8b). The elements to assess a risk of absconding are listed in the Asylum Decree, Article 36/F:

- Refusing to make a statement or sign a document;
- Providing false data related to personal data;
- Likelihood of leaving for an unknown destination based on the applicant's statements.

The law also requires that these acts jeopardise the objectives of the asylum procedure or the Dublin procedure.

Detention in the context of a procedure to decide on the applicant's right to enter the territory

Asylum Law, Article 31/A(1e) and (g) allows the detention of an applicant in the airport procedure in order to decide whether the applicant may enter the territory of Hungary.

Government Decree 361/2024 (XI. 28.), Article 4(5) states that in the embassy procedure, following the applicant's entry into Hungary, they can be placed in a closed facility for 4 weeks.

Detention in the context of a return procedure

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Asylum Law, Article 31/A(1b) uses wording corresponding to the recast RCD, Article 8(3d).

Detention in the context of national security and public order

Asylum Law, Article 31/A(1d) uses wording corresponding to the recast RCD, Article 8(3d).

Detention for the purpose of a Dublin transfer

Asylum Law, Article 31/A(1f) allows for the detention of an applicant for the purposes of implementing a Dublin transfer when there is a serious risk of absconding. A foreigner may also be placed in asylum detention when they do not apply for asylum, but they may be transferred under the Dublin procedure.

Less coercive measures (alternatives to detention)

Asylum Law, Article 2(l) defines less coercive measures as a measure ensuring the availability of the applicant which may be ordered by the NDGAP and which may involve:

- Regular reporting obligation with the NDGAP;
- Designation of an obligatory place of stay: a private residence, reception facility, community shelter or the territory of a specific county;
- Asylum financial guarantee (bail).

Asylum Law, Article 31/A states that detention may only be ordered following an individual assessment and when the objective of the detention cannot be attained with less coercive measures. The NDGAP must include in the detention order the reasons for not using less coercive measures (Asylum Decree, Article 36/A(3)).

The NDGAP must assess ex officio whether asylum bail may be applied. This can be permitted at any step of the asylum procedure. When bail is ordered, the NDGAP at the same time must designate an obligatory place of stay and inform the applicant about their obligations and the fact that breaching these obligations lead to losing the deposited bail (Asylum Law, Article 31/H).

Application for international protection and processing while in detention/impact on the asylum procedure

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For applicants detained at the border or at the international airport, the rules of the border procedure apply. Applications made in detention should be prioritised by the NDGAP (Asylum Law, Article 35/A). The procedure follows the rules of the generally applicable rules for the regular or special procedures.

Procedural safeguards

Access to information and interpretation

Asylum Law, Article 31/E(1) states that the applicant in detention must be informed about their rights and obligations in their mother tongue or another language they understand. An interpreter is appointed ex officio by the court for the review of the detention order.

The detainee receives a copy of the detention decision in Hungarian, but interpretation is provided, either with interpreter of the applicant's mother tongue or in a language that the applicant understands. The case officer with help of the interpreter explains the details of the decision.

Legal assistance and representation

A legal representative must support the applicant, either paid by the applicant or through the legal aid scheme. A case guardian is appointed ex officio by the court for the review of the detention order. Legal assistance may be provided by civil society organisations. The detention order cannot be appealed, but an objection may be presented by the applicant, in written or orally. The NDGAP is obliged to transmit the objection to the district court.

Length of detention

The detention ordered by the NDGAP can last a maximum of 72 hours. Within 24 hours, the NDGAP may request the district court for an extension of detention by 60 days. Requests for extensions by 60 days may follow, for a maximum period of 8 months. The NDGAP must initiate the extension with the court 8 days before the end date of the previous order. Families with children may only be detained for a maximum of 30 days.

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Detention must be ended when:

- 8 months (30 days) elapsed;
- The reason for detention ceased;
- It was determined that the applicant is an unaccompanied minor;
- The applicant is in need of extended hospitalisation due to their state of health;
- The criteria for a Dublin transfer are nor ensured;
- The Dublin transfer may not be implemented. (Asylum Law, Article 31/A(8)).

For circumstances Nos 1, 3, 4 and 6, the NDGAP must assign an obligatory place of stay when detention ends. For circumstance No 6, the authority may proceed with this measure but it is not obligatory.

Judicial review of detention

The detention order cannot be appealed (Asylum Law, Article 31/C(2)). The district court must assess the legality of the detention order beyond 72 hours and must decide on its subsequent extensions as well.

Applicants may submit an objection against the order within 3 days. This can be done in written or orally. In the latter case, NDGAP must draw up a report about the objections. The documents are transmitted to the court by the authority.

A legal representative must represent the applicant in the procedure before the court. A case guardian and an interpreter are appointed by the court when the applicant does not speak Hungarian and does not have the financial means to ensure the presence of a legal representative. A court hearing must be held for the first prolongation by the court beyond 72 hours, and then, only when the applicant requests for further extensions and the objection process. The court hearing can be omitted when the applicant is hospitalised and cannot appear in person or when the objection against the detention is submitted by an unentitled party. The court must decide within 8 days.

Specific conditions relating to detention

Conditions of detention

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The Asylum Law and the Asylum Decree provide for minimum standards in reception facilities and detainees' rights and obligations.

Men and women must be separated, with the exception of spouses. Families with children should also be detained apart from other detainees, Applicants with special needs must receive adapted care, especially regarding their age or (mental) health.

Detained applicants have the right to:

- Unsupervised contact with family members and consular representatives;
- Send and receive packages and letters and receive visitors;
- Complement their meals at their own expense;
- Practice religion, including meals adapted to the rules of their religion;
- Participate in available cultural activities;
- Make objections, requests, complaints, public statements and report abuse;
- Spend time outdoors according to the house rules, at least for 1 hour.

They have the obligation to:

- Follow the house rules and obey the orders based on them;
- Behave in a manner that does not violate other detainees' rights and does not disturb them;
- Contribute to the cleaning of the facilities without remuneration;
- Be subjected to examination, examination of their clothes and let the authorities take away objects that they cannot keep as personal belongings;
- Reimburse damages caused on purpose;
- Reimburse to the costs of detention, except if they are granted international protection or subject to non-refoulement.

Applicants in detention are granted material reception conditions.

Detention facilities must ensure:

- At least 15m3 airspace and 5m2 per person, for couples and families with children a separate 8m2 living space;
- Common space suitable for meals and free time, including play and recreational activities for children and receiving visitors;
- Separate bathrooms and toilets with hot and cold water, corresponding to the number of places in the facility;
- A local GP for medical examinations;

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- Outdoor space;
- Lighting;
- Electricity without interruptions;
- Separate space for receiving visitors;
- Telephone and Internet use;
- Windows and airing in the rooms, common space, GP local, visitors' local, canteen and social space.

Immigration detention cannot take place in a criminal detention facility.

Women and men, spouses, families with children, and people under pre-detention and detention must be placed in different locations within the facility.

The applicant's gender identity must be taken into account when assigning a suitable place.

When the length of detention justifies, children should receive education corresponding to their age and maturity, either within the facility or at another suitable location.

The facility should also provide for the possibility for sports activities and other activities contributing to spending free time purposefully.

At least a social worker must be present 24 hours.

Detention of applicants with special needs

Legislative overview

Asylum Law, Article 31/B(2) underlines that unaccompanied children cannot be detained. When an applicant claims to be an unaccompanied child following the detention order, the NDGAP requests an age assessment procedure to be undertaken with priority.

However, the rules applying in a crisis situation due to mass migration allow authorities to keep unaccompanied children between 14-18 years in transit zones.

There are no other categories of applicants with special needs, who are automatically exempted from detention.

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Families with children may be detained for a shorter period of time, for a maximum of 30 days for the purposes of the asylum procedure. Detention may be only applied as a last resort, taking into account the best interests of the child. Families must be placed in a separate area in the detention facility. When the length of detention justifies, children should receive education suitable for their age and maturity.

Women must be detained separately from men.

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