Applicants with special needs - Hungary

Overview

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Relevant EU legislation

Hungary is bound by the recast Asylum Procedures Directive and it has transposed its provisions through the Law LXXX of 2007 on asylum, 2007. évi LXXX. törvény a menedékjogról

Hungary is bound by the recast Reception Conditions Directive and it has transposed its provisions through the Law LXXX of 2007 on asylum, 2007. évi LXXX. törvény a menedékjogról

National legislation

Asylum Law, Articles, 2(k), 4(3), 29, 30(1)(a), 30(4), 31/F(2), 32/O(1), 71/A(7), 72(6),

Asylum Decree, Articles 3-4A, 32-34, 35(4),(6), 36(4), 36/B, 59. 60(4), 67, 81(2), 92(3), 97(4), 99/F

Competent authority and other stakeholders

National Directorate-General for Aliens Policing (NDGAP) | Országos Idegenrendészeti Főigazgatóság (OIF)

Training initiatives

The law does not specifically foresee that case workers must be specifically trained for dealing with the cases of applicants with special needs. Asylum Law,

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Article 4(3) mentions among the basic principles that the measures in the law must be applied in consideration of the situation of applicants with special needs.

In practice, only specially trained case officers handle applications by people with special needs. Case workers of the special NDGAP unit for the applications of unaccompanied children are trained on a regular basis, based on the EUAA curriculum.

Special needs in reception

Identification of special needs

Asylum Law, Article 2(k) defines persons with special needs as unaccompanied minors, or other vulnerable persons, who might have special needs after considering the person's individual situation, especially minors, elderly, persons with disabilities, pregnant women, single parents, or victims of torture, rape, serious forms of physiological, physical or sexual violence.

They are identified during an individual examination of their case.

There is no formalised identification or assessment process. Asylum Law, Article 4(3) and Asylum Decree, Article 3(1) only notes that the NDGAP is obliged to examine whether the applicant has any special needs.

NDGAP is the authority responsible for the identification of persons in need of special procedural guarantees and identification and assessment of special reception needs. During reception, attention should be paid to the particular needs of person with special needs (Asylum Act, Article 29). Special provisions are determined in the Asylum Decree (Articles 32-34). In general, the authority needs to ensure separate accommodation within the reception facility for applicants with special needs.

The needs assessment typically takes place in the beginning of the asylum procedure (if indication arises at a later stage: assessment takes place any time during the asylum procedure) and a protection questionnaire is filled out initially. Religious background and gender as well as family units are taken into account when applicants are assigned to reception.

Within reception, the task of identifying persons with special needs falls mainly to social workers and medical staff.

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In order to help the wider identification of trafficking victims, the group of organisations cooperating in the identification was extended with the legal aid services and the probation services from 1 January 2018 (amendment of Government Decree No. 354/2012 (XII.13) on the Identification Order of Victims of Trafficking in Human Beings).

Referral of applicants with special needs

Applicants with special needs can be referred by case officers, if the case officer deems this to be necessary. Assistance can be provided by NGOs or other social institutions.

Reception and care of applicants with special needs and vulnerabilities

Asylum Law, Article 2(k) defines persons with special needs as unaccompanied minors, or other vulnerable persons, who might have special needs after considering the person's individual situation, especially minors, elderly, persons with disabilities, pregnant women, single parents, or victims of torture, rape, serious forms of physiological, physical or sexual violence. This definition applies in the context of reception as well.

Asylum Law, Article 29 notes that the authorities need to take into account applicants' special needs, when granting material reception conditions. Asylum Decree, Articles 32-34 lay down some measure for applicants with special reception needs.

Asylum Decree, Article 34 notes that applicants with special reception needs are entitled additional support services free of charge, if this is required due to the applicant's health condition, rehabilitation, psychological and clinical specialist psychological care, and psychotherapy.

Unaccompanied children: Unaccompanied children are accommodated at the Károlyi István Children's Centre in Fót. Children are transported by the police to the designated facility. Upon arrival, a medical check is conducted. At the Children's Centre, the child's age and gender are taken into account during accommodation. Younger children are placed separately from older ones, and girls are accommodated separately from boys. Material reception conditions are provided within the child care system.

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Victims of Human Trafficking: Pursuant to the Victim Support Act, if the victim of trafficking in persons is a third-country national, the following additional support is provided:

1. Additional guidance: Apart from general information, the victim is provided with:

- A 1-month reflection period to decide whether they are willing to cooperate with the authorities investigating the crime. During this period, the victim is entitled to a certificate of temporary stay.
- If the victim is willing to cooperate with the authorities, they are entitled to a residence permit for the period of cooperation.

2. The Victim Support Service initiates the issuance of a certificate for temporary stay from the immigration authority (Immigration and Asylum Office). If the crime occurred in Hungary, the trafficking victim may be entitled to both victim support and state compensation (subject to further conditions).

The victim support activities also include the Victim Support Line (+36 80 225 225), a free 24/7 call centre maintained by the Ministry of Justice, which primarily aims to ensure that victims can access personalized information and advice about available services at any time

Reception facilities and other housing arrangements

In principle, vulnerable persons are separately placed in the reception centres (separate rooms and separate bathrooms) and special care must be provided.

THB victims: No specific facility is established.

Gender related issues: No specific facility is established. In general, separate accommodation for single women is provided.

Women: No specific facility is established. In all open reception centres, applicants share rooms (between 4 and 12 people per room). Separate accommodation for single women is provided (however there is no protected space accessible only for women).

LGBTIQ: Asylum Decree, Article 22: When the gender identity of the asylum seeker is different from the registered gender, this must be considered when allocation accommodation within the reception centre. Separate rooms are

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available, but no specific facility is established.

Detention of vulnerable persons and applicants with special reception needs

Detention cannot be applied when the applicant is an unaccompanied minor, or, when the applicant is in need of long-term hospital care (Asylum Law, Article 31/A(7)(c) and (d)).

Reception of unaccompanied minors

The Asylum Law and the Asylum Decree has several provisions on unaccompanied minors, scattered throughout the legal text:

Asylum Law: Articles 2(f) and (k), 31/A(8)(c), 31/B(2), 35(6) and (7), 45(2), 48(2), 80/J(6)

Asylum Decree: Articles 4, 33(4)-(7), 36/B, 67, 81(2), 99/F,

The reception of unaccompanied children is managed by the NDGAP.

Reception facilities and other housing arrangements

Unaccompanied children are accommodated in the Károlyi István Children's Centre in Fót.

At the Children's Centre, the child's age and gender are taken into account during accommodation. Children of younger age are placed separately from the older ones and girls are accommodated separately from boys.

In general, taking into account the individual situation of a persons with special needs, if necessary, the law entitles them to additional free health services and psychological treatment. Social workers are responsible to ensure a safe living environment.

Age assessments

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If there are any doubts about their age, they may, upon their consent or upon the consent of a legal representative or guardian, be subject to medical examinations to determine their age. (Asylum Law, Article 44). The age assessment procedure is initiated by the NDGAP, and it is conducted by the local healthcare provider. The law does not provide for any further details on the methodology and process for carrying out the age assessment.

Access to education

The law does not provide for a specific time-limit, enrolment is as soon as possible. Applicant children are enrolled in preparatory classes and can join mainstream classes once their Hungarian language knowledge allows.

The organisation of education depends on the location and on the number of applicant children at a given time.

Access to healthcare

Applicants with special needs (including unaccompanied children) are entitled to health services, rehabilitation, psychological and clinical psychotherapy, as well as psychotherapeutic treatment for free of charge if it is justified by their health condition. The NDGAP reimburses the cost of health care to service providers.

Transition to adulthood

The transition to adulthood and subsequent aftercare of minors placed in special child protection care, including unaccompanied minors, is regulated under Law XXXI of 1997 on the protection of children and guardianship administration (Child protection Law) and its implementing decrees.

When an unaccompanied minor reaches the age of majority, their cared status and guardianship will end but they are entitled to the aftercare, if their livelihood is not secured (until the age of 21 or if the child has special needs, until the age of 22) or they pursue studies (until the age of 24 or, if they study at a university until the age of 25). Aftercare is provided in the framework of the child protection care under the same conditions as for Hungarian citizens (Child Protection Law, Articles 92-93) Specific support and services are continued.

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The state-run Károlyi István Children Centre under the supervision of the competent guardianship authority provides aftercare services for unaccompanied minors who turn 18.

Detention of unaccompanied minors

The law underlines that unaccompanied children cannot be detained (Asylum Law, Article 31/B(2)). Law XC of 2023 on general rules on the entry and residence of third-country nationals (TCN Law), Article 131 (3) and (4) notes that unaccompanied children under the age of 16 cannot be detained in immigration detention, while after reaching the age of 16, they may be detained as a measure of last resort, for maximum 30 days, if it is considered that the purpose of detention cannot be achieved through seizing the child's travel document or assigning a particular place of stay.

Special procedural guarantees

First instance determination for applicants with special needs

The Asylum Law and the Asylum Decree provides some adjustments of the procedure, mainly related to support during the interview. Asylum Decree, Article 90 notes in a general manner that: "In order to determine whether the acts committed against the person seeking recognition or the acts committed against the person constitute persecution or serious harm, the social background, personal circumstances, gender and age of the person seeking recognition shall be taken into account."

Applicants with special needs are not exempted from the accelerated procedure, but they are exempted from the border procedure and the airport procedure.

Access to information

Specific information targeting applicants with special needs (e.g. unaccompanied minors and survivors of human trafficking) is not explicitly provided. The general practices apply for applicants with special needs as well. Case officers strive to fully inform the applicants in general, also when applicants have special needs.

Personal interview

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The Asylum Law and Asylum Decree provides some specific rules for certain categories of applicants with special needs. In general, according to Asylum Law, Article 43 (2), personal interview is not required if the applicant is not in a condition to be interviewed. In practice, the NDGAP notes that interviews with applicants with special needs took place several times without any disruption. In addition, case officers carry out those interviews tailored to the applicants needs and conditions.

Minors: Children above the age of 14 can be interviewed in the presence of their legal guardian or a child protection guardian. (Asylum Law, Article 43(3), Asylum Decree, 74(1)). The interview must be adapted to the child's age and maturity and need to take into account the child's gender and cultural background (Asylum Decree, Article 74(1a)). Accompanied children under the age of 14 can only be interviewed, if this is necessary for the clarification of the case (Asylum Law, Article 43(3)). The interview in this case should preferably be conducted in a child-friendly interview location (Asylum Decree, Article 74(1c). The case officer conducting the interview must have acquired the necessary knowledge to interview a child (Asylum Decree, Article 74(1d)). In case another interview is necessary, the same case officer must conduct this interview as well. (Asylum Decree, Article 1b). When the presence of the legal guardian is deemed to hinder the procedure, the NDGAP is obliged to appoint a child protection guardian (Asylum Decree, Article 74(3)).

Victims of trafficking or other forms of violence: The law does not include specific measures, beyond the general obligation that the NDGAP must take into account an applicant's social background, personal circumstances, gender and age, when assessing whether the acts (potentially) against the applicant may be considered persecution or serious harm (Asylum Decree, Article 90).

Applicants with disabilities or other health issues: The law does not include specific measures, beyond the general obligation that the NDGAP must take into account an applicant's social background, personal circumstances, gender and age, when assessing whether the acts (potentially) against the applicant may be considered persecution or serious harm (Asylum Decree, Article 90).

Legal assistance

An applicant (in general) has the right to legal assistance during all stages of the asylum procedure as provided under Asylum Law, Article 37 (3). According to the

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Asylum Law, legal assistance and representation for asylum applicants are governed by the general rules for legal aid as enshrined in the Legal Aid Act LXXX of 2003 (hereafter Legal Aid Act).

Several civil society organisations, such as the Hungarian Helsinki Committee or Menedék, provide legal assistance to applicants, including for applicants with special needs.

Guarantees for unaccompanied minors

The Asylum Law and the Asylum Decree provides some adjustments of the procedure for unaccompanied minors, mainly through the assignment of the guardian and adaptation of the personal interview.

Making, registering and lodging an asylum application

The regular legal framework relevant for unaccompanied minors are impacted by the fact that currently two sets of special situations apply:

- crisis situation due to mass migration: impacting the assignment of legal guardians and the overall care for children, making a distinction between children under and above 14 years;
- special conditions for submitting an asylum application (embassy procedure): unaccompanied minors without a legal right to stay in Hungary have to submit first a letter of intent at the Hungarian embassy in Belgrade or Kyiv, to express their wish to apply for asylum in Hungary. The NDGAP examines this intent and upon positive decision delivers a one-time visa to Hungary, allowing the child to travel there legally with the intent to apply for international protection.

Information provision

Specific information targeting applicants with special needs (e.g. unaccompanied minors and survivors of human trafficking) is not explicitly provided. The general practices apply for applicants with special needs as well. Information should in principle be explained by the guardian, with the help of an interpreter if necessary.

~~Age-appropriate information leaflets are available from NGOs.~~

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Best interests of the child in the Dublin procedure

NDGAP does not use a standardised template for specifically assessing the best interests of the child under Dublin procedure. However, EUAA Practical Guide on the best interests of the child is being used.

The representative appointed to the unaccompanied child for the Dublin procedure is the same as the representative within the international protection procedure. The representative's involvement in the Dublin procedure is participating at all stages, providing information to the child, collecting information on family members/relatives, collecting information on health conditions, taking part in the Dublin interview, involvement in assessment of the best interest of the child, the representative's assertions are taken into account.

Personal interview

All children above the age of 14 are interviewed, and unaccompanied minors below the age of 14 should be interviewed as well. The same guarantees apply, as for accompanied children:

- Unaccompanied children can only be interviewed in presence of their child protection guardian.
- The interview must be adapted to the child's age and maturity and need to take into account the child's gender and cultural background (Asylum Decree, Article 74(1a)).
- Unaccompanied children under the age of 14 should be interviewed preferably in a child-friendly interview location (Asylum Decree, Article 74(1c).
- The case officer conducting the interview must have acquired the necessary knowledge to interview a child (Asylum Decree, Article 74(1d)). In case another interview is necessary, the same case officer must conduct this interview as well. (Asylum Decree, Article 1b)

The child protection guardian must inform the child about the interview, the way to prepare for it, and its consequences (Asylum Decree, Article 74(2)).

Legal representation during the asylum procedure

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Asylum Law, Article 35 (6) foresees that the NDGAP notifies the child protection authority to order the assignment of a guardian for an unaccompanied child within 8 days.

In case of crisis situation due to mass migration, Article 80/J(6) notes that this provision only applies to children under the age of 14. Children under the age of 14 are assigned a permanent guardian, while children above the age of 14 are assigned an ad-hoc guardian.

In the embassy procedure, the guardian should be appointed within 8 days from the child's arrival to Hungary's territory.

Child Protection Law, Article 84(2a) notes that siblings or minor parents with children should be assigned the same guardian. Article 84(6) and (6a) allows a guardian to care for maximum 30 children simultaneously, where children with special needs should be considered as two for the calculation of maximum number of children in care. Article 86 notes that the guardian must monitor and promote the physical, intellectual, emotional and moral development and upbringing of the child, and monitor the implementation of the child's comprehensive care. It lists the guardian’s obligations as follows:

- initiating a personal and direct meeting and conversation with the child, in accordance with the child's age within a maximum of fifteen days after the assignment, and at least once a month during the assignment, or - in the case of a child under the age of six - at least once every two weeks,
- ensuring that the child can contact the guardian and providing contact details to be reachable by phone or through an in-person meeting,
- monitoring and, if necessary, facilitating contact with parents and other relatives,
- maintaining contact with the educational institutions providing the child's education and monitoring the child's school progress and behaviour,
- cooperating with the child welfare centre in order to learn about the situation of the child's biological family,
- if the child leaves the place of care without authorisation, returning the child if the guardian knows where the child had left, or. Taking the necessary measures to find the child,
- preparing a report on the child's situation to the guardianship authority as necessary, but at least every year,
- participating in the preparation of the child's individual care and upbringing plan,

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- cooperating with the child's supervisory officer to prevent recidivism, if the child had committed an offence.

Legal assistance and counselling

The guardian is responsible for providing or organising the legal assistance and counselling of an unaccompanied child. The legal guardian’s right and responsibility at the same time to represent the child in all their personal matters (Child Protection Law, Article 87(1).

An applicant (in general) has the right to legal assistance during all stages of the asylum procedure as provided under Asylum Law, Article 37 (3). According to the Asylum Law, legal assistance and representation for asylum applicants are governed by the general rules for legal aid as enshrined in the Legal Aid Act LXXX of 2003 (hereafter Legal Aid Act).

Free legal services are provided by the Budapest Government Office and several civil society organisations, such as the Hungarian Helsinki Committee or Menedék, provide legal assistance to applicants, including for applicants with special needs.

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