

Report

**to the Hungarian Government
on the visit to Hungary
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 20 to 26 October 2017

The Hungarian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2018) 43.

Strasbourg, 18 September 2018

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EXECUTIVE SUMMARY

The main objective of the visit was to review the measures taken by the Hungarian authorities to implement the recommendations made by the CPT in its report on the 2015 ad hoc visit to Hungary and to review the implementation in practice of the recently amended aliens legislation. To this end, the CPT's delegation again visited several establishments, including the two transit zones at Röszke and Tompa situated on the border with Serbia. On the Serbian side of the border, the delegation also held interviews with foreign nationals who had recently been taken by border police officers to the Hungarian border fence and "pushed back" to Serbia.

The co-operation received throughout the visit, from both the national authorities and staff at the establishments visited, was excellent. However, the CPT expresses its serious concerns about the Hungarian Government's response to the report on the 2015 ad hoc visit. Further, after the 2017 visit, the authorities continue to refrain from entering into a meaningful dialogue with the CPT and simply denied the delegation's findings. The CPT stresses that all relevant findings described in detail in this report have been gathered exclusively by its delegation itself through interviews with foreign nationals and physical examinations performed by the delegation's doctor. It urges the Hungarian authorities to take effective steps in order fully to engage with the Committee's findings and to implement the Committee's recommendations, as set out in the report.

The CPT is pleased to note that its delegation received no allegations of ill-treatment by staff in any of the establishments visited. However, a significant number of foreign nationals interviewed by the delegation alleged that they had been physically ill-treated by Hungarian police officers in the context of their apprehension and return through the border fence towards Serbia (push-backs). A number of foreign nationals met by the delegation displayed recent traumatic injuries which, in the view of the delegation's doctor, were consistent with their allegations of ill-treatment.

According to the Hungarian authorities, a procedure has been put in place in order to prevent ill-treatment and to protect police officers against unfounded allegations of ill-treatment. However, the CPT considers that the system currently in place is ineffective. The CPT further considers that the deployment of foreign police officers provided by the European Border and Coast Guard Agency (Frontex) cannot be regarded as a safeguard against ill-treatment, given their participation in a limited number of patrols and their absence on the "front line" close to the border fence.

In the light of the frequency and consistency of the allegations of ill-treatment, the CPT once again recommends that the Hungarian authorities take steps without further delay to ensure that all police officers are given a clear and firm message, emanating from the highest political level, that any form of ill-treatment of detained persons, including threats of ill-treatment, as well as any tolerance of ill-treatment by more senior officers, is unacceptable and will be punished accordingly.

The CPT recalls that the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights entails the obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment (*refoulement*). The principle of non-refoulement applies not only in respect of return to the country of origin, but also to any other country to which removal is to be effected or any other country to which the person may subsequently be removed ("chain *refoulement*"). Consequently, it is essential that foreign nationals have effective access to an asylum procedure which involves an individual assessment of the risk of ill-treatment in the case of a forcible removal, on the basis of an objective and independent analysis of the human rights situation in the countries concerned.

The findings of the visit indicate that, in line with the amended legislation, foreign nationals staying anywhere in the territory of Hungary without the permission of the authorities were apprehended by the police and escorted to one of the gates in the border fence along the Hungarian-Serbian border. In the context of the removal, there is no procedure in place for their proper identification and registration and there are no legal remedies capable of offering effective protection against the expulsion. Neither can the asylum procedure offer such protection, given the lack of effective access thereto (at the time of the visit, five persons were usually admitted on each working day to each of the two transit zones, which were the only points of entry to the asylum system). Moreover, it is still the case that UNHCR does not consider Serbia as a safe third country. In the light of these circumstances, the CPT considers that the arrangements currently in place do not provide effective protection against *refoulement*, including chain *refoulement*, and recommends, *inter alia*, that the Hungarian authorities put an end to the practice of push-backs to the Serbian side of the border.

Further, the Committee recommends that the Hungarian authorities ensure that all foreign nationals who are deprived of their liberty by the police under aliens legislation are effectively granted, from the outset of their deprivation of liberty, the right to inform a relative or another third party of their situation and the right of access to a lawyer and a doctor, and are fully informed of these rights.

As regards the asylum procedures applied inside the transit zones, the CPT expresses doubts about whether some of the procedures applied provide effective protection against *refoulement*, including chain *refoulement*.

The CPT expresses its misgivings about the fact that the transit zones at Rösztke and Tompa constitute the only gateway to the asylum system in the country and that all foreign nationals seeking international protection, including families with children and unaccompanied minors (14 to 18 years of age) are compelled to stay there, for weeks and sometimes months on end, while their asylum claim is being processed.

The Committee notes the efforts made by the Hungarian authorities to provide decent material conditions for the accommodation of foreign nationals in the transit zones and to maintain the premises in a good state of repair and hygiene. That said, the overall design of the transit zones is far too carceral. Such an environment cannot be considered adequate for the accommodation of asylum-seekers, even less so when families and children are among them. Further, in both transit zones, conditions in the containers were cramped.

Concerning activities, it is positive that all foreign nationals in both transit zones were able to move freely within their section and associate with other foreign nationals. Further, some organised activities were offered to foreign nationals.

That being said, the CPT has repeatedly stressed that deprivation of liberty under aliens legislation should only be a measure of last resort, after a careful and individual examination of each case. Further, every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor (i.e. below the age of 18). Consequently, the Committee recommends that the authorities fundamentally revise their policy regarding the holding of foreign nationals in transit zones. As a matter of priority, an end should be put to the accommodation of unaccompanied minors therein. The Committee further recommends that the legal time limit of four weeks for holding foreign nationals in transit zones be re-introduced. Recommendations are also made to remedy some of the existing shortcomings in material conditions.

As regards the provision of health care in the transit zones, the CPT welcomes the fact that newly-arrived foreign nationals usually underwent medical screening on their day of admission. However, recommendations are made to improve screening for tuberculosis and, at Rösztke, for transmissible diseases.

Foreign nationals in need of specialist care were usually transferred to a local hospital, and a psychologist from the Hungarian Red Cross or a religious organisation occasionally carried out visits. Notwithstanding that, the provision of psychological and psychiatric care appeared to be insufficient. During the end-of-visit talks, the Hungarian authorities informed the delegation that steps were being taken to recruit a psychologist on a part-time basis in each transit zone. This is a welcome development.

The CPT expresses misgivings about the manner in which age assessment of unaccompanied minors was performed by military doctors who had no formal training for this task, and sets out certain basic principles which should be followed.

Finally, the CPT acknowledges the efforts made by the Hungarian authorities to facilitate in both transit zones foreign nationals' contact with the outside world, including by allowing foreign nationals to keep their mobile phones and by providing a Wifi Internet connection. However, the delegation received many complaints from foreign nationals (especially at Tompa) about the weakness of the Wifi signal and consequent frequent unavailability and/or disruption of communications. Moreover, due to the lack of fixed telephone lines, foreign nationals who were not in possession of a mobile phone were not able to make any telephone calls. The CPT recommends that the Hungarian authorities take steps to ensure that, in both transit zones, all foreign nationals are able to make telephone calls and that those who are indigent are offered a free-of-charge telephone call upon admission to the transit zone and on a regular basis thereafter.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Hungary from 20 to 26 October 2017. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention).¹

2. The visit was carried out by the following members of the CPT:

- Mark Kelly, 2nd Vice-President of the CPT (Head of Delegation)
- Inga Harutyunyan
- Wolfgang Heinz.

They were supported by Petr Hnátík and Patrick Müller of the CPT’s Secretariat, and assisted by Alan Mitchell, medical doctor at Dungavel House Immigration Removal Centre, United Kingdom (expert), as well as by Lina Dokhgan, Mouhcine El Guedimi, Gábor Karakai and Zoltán Köröspataki (interpreters).

3. The visit report was adopted by the CPT at its 95th meeting, held from 5 to 9 March 2018, and transmitted to the Hungarian authorities on 27 April 2018.

The various recommendations, comments and requests for information made by the CPT are set out in bold type in the report. The CPT requests the Hungarian authorities to provide within three months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

¹ The CPT’s reports on previous visits to Hungary and related Government responses are available on the Committee’s website: <https://www.coe.int/en/web/cpt/hungary>.

B. Objective of the visit and establishments visited

4. In October 2015, the Committee carried out an ad hoc visit to Hungary in order to assess, in the context of an unprecedented number of foreign nationals arriving in the country, the treatment and conditions of detention of foreign nationals deprived of their liberty in different types of establishment, as well as the legal safeguards afforded to them.²

Since the 2015 visit, the legal framework governing the situation of irregular migrants arriving in Hungary has been the subject of major changes (for further details, see paragraph 10).

The main objective of the visit was to review the measures taken by the Hungarian authorities to implement the recommendations made by the Committee in its report on the 2015 visit and the implementation in practice of the recently amended aliens legislation.

To this end, the CPT's delegation again visited the two transit zones at Röszke and Tompa situated at the border with Serbia, as well as the Csongrád County Border Police Division in Szeged (Moscow Street). Further, it paid a short visit to the police detention facility at the border post at Röszke. On the Serbian side of the border, the delegation also held interviews with foreign nationals who had recently been taken by border police officers to the Hungarian border fence and "pushed back" to Serbia.

C. Consultations held by the delegation and co-operation

5. During the visit, the delegation held consultations with Sándor Pintér, Minister of the Interior, and László Felkai, State Secretary at the Ministry of the Interior, as well as with senior officials from the Ministry of the Interior, the National Prison Service, the National Police Headquarters and the Immigration and Asylum Office.

The delegation also met László Székely, Commissioner for Fundamental Rights (Ombudsman), as well as representatives of the Regional Representation for Central Europe of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities, other bodies and organisations with whom the delegation held consultations is set out in the Appendix to this report.

6. The co-operation received throughout the visit, from both the national authorities and staff at the establishments visited, was excellent. The delegation enjoyed rapid access to all the establishments it wished to visit (including those which had not been notified in advance), was able to interview in private persons deprived of their liberty and was provided with the information it needed to accomplish its task.

Further, the CPT would like to express its appreciation for the assistance provided before, during and after the visit by the CPT's liaison officer, Mr András Szücs, from the Office of the Prosecutor General.

² The CPT's reports on all previous visits and related Government responses are available on the Committee's website: www.coe.int/en/web/cpt/hungary

7. That said, the CPT wishes to stress that the principle of co-operation as set out in Article 3 of the Convention is not limited to facilitating the work of visiting delegations, but it also requires that the relevant authorities co-operate with the CPT in the context of the follow-up to visits by taking decisive action in response to the recommendations made in visit reports.

In this respect, the Committee must express its serious concern about the Government response to the CPT's report on the 2015 ad hoc visit, in which the Hungarian authorities outrightly denied most of the CPT's findings and dismissed many of the specific recommendations made by the Committee.

Despite the excellent co-operation provided during the 2017 visit, including the end-of-visit talks which were held in a constructive spirit, the Hungarian authorities continue to refrain from entering into a meaningful dialogue with the CPT after the visit, regarding the delegation's findings. In their response (by letter of 29 January 2018) to the preliminary observations made at the end of the visit, the authorities once again simply deny the delegation's findings, in particular as regards the allegations of physical ill-treatment of foreign nationals by Hungarian police officers in the context of push-backs.

While the key elements of the Hungarian authorities' response are considered later in the report, the CPT stresses already at this stage that all relevant findings described in detail in this report have been gathered exclusively by the delegation itself through interviews with foreign nationals and physical examinations performed by the delegation's doctor (for further details, see paragraphs 13, 14 and 21).

Having regard to Article 3 of the Convention, the CPT urges the Hungarian authorities to take effective steps in order fully to engage with the Committee's findings and to implement the Committee's recommendations set out in this report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

1. Preliminary remarks

8. With the exception of the police detention facility at the border post at Rösztke, all establishments had already been visited by the CPT during the 2015 ad hoc visit.

Since 2015, the two *transit zones* located at the border with Serbia have been significantly enlarged.³ At the time of the 2017 visit, the transit zone at *Rösztke* had an official capacity of 400 places and was accommodating 236 foreign nationals (including one single woman, 19 unaccompanied minors aged 14 to 18 and 116 accompanied minors).⁴ Unaccompanied minors were kept in a separate section in the transit zone. Most of the foreign nationals were Afghans, Iraqis and Syrians. With an official capacity of 250 places, the transit zone at *Tompa* was accommodating 194 foreign nationals (including 99 accompanied minors). The majority of them were families from Iraq and Syria. In both transit zones, the length of stay of the foreign nationals present varied between a few days and more than six months. According to the information provided to the delegation by staff, the average length of stay was some 30 days.⁵

The detention facility of the *Csongrád County Border Police Division in Szeged* (Moscow Street) contained three police holding cells and several containers placed in the courtyard of the police station, which could serve as overnight accommodation for foreign nationals. The temporary holding areas located in former garages which had existed at the time of the CPT's 2015 visit had been taken out of service. At the time of the visit, no persons were being held at the detention facility.

The delegation also paid a short visit to the *police detention facility at Rösztke Border Post* which contained a police custody cell intended for short periods of stay. No persons were being held in the cell at the time of the CPT's visit.

9. The relevant legal framework applicable at the time of the 2015 ad hoc visit to foreign nationals irregularly arriving in Hungary was described in detail in the report on that visit.⁶ It is recalled that in 2015, a legal basis had been provided for the construction of a border barrier (border fence) and for the creation of so-called "transit zones" close to the border, through which foreign nationals would arrive in the country and in which certain asylum applications would be processed. Further, a new accelerated asylum procedure and border (asylum) procedure were introduced to speed up the processing of asylum applications and the Government was authorised to adopt a list of "safe countries of origin" and "safe third countries". In addition, three new criminal offences punishable by imprisonment and mandatory expulsion had been introduced in the Criminal Code, namely illegally crossing the border barrier,⁷ damaging the border barrier and obstructing its construction or maintenance.

³ In 2015, each transit zone had an accommodation capacity of 50 places.

⁴ Earlier, the woman concerned had been accommodated at Tompa transit zone and had asked to be transferred to Rösztke.

⁵ See also paragraph 10.

⁶ See doc. CPT/Inf (2016) 27, paragraph 3.

⁷ The illegal crossing of the border not fitted with a border barrier, however, had remained an administrative offence.

10. Since the 2015 visit, the relevant legislation has undergone significant changes. In particular, following amendments to the Asylum Act and the Act on State Border (which entered into force on 5 July 2016), the Hungarian police were authorised to automatically expel irregular migrants who were apprehended within eight kilometres of the Hungarian-Serbian or Hungarian-Croatian border through the border fence (push-back).⁸

A further package of legislative amendments entered into force on 28 March 2017.⁹ These provisions only apply when the Government has declared by decree “a state of crisis caused by mass immigration”¹⁰, which was the case at the time of the CPT’s visit.¹¹ Most notably, the above-mentioned territorial limitation of push-backs to the eight-kilometre border perimeter is being suspended and the police are empowered to apprehend and automatically escort through the border fence irregular migrants apprehended anywhere in the territory of Hungary.

In addition, under the amended legislation, asylum applications may only be lodged in the transit zones and the transit zones may be designated as a mandatory place of stay for asylum-seekers for the whole duration of the asylum procedure. The legal maximum time-limit of 28 days for holding foreign nationals in the transit zone does not apply during a declared “state of crisis”. Consequently, during the “state of crisis”, there is no upper time-limit for holding foreign nationals in the transit zones. However, unaccompanied minors below the age of 14 who seek asylum should not be placed in the transit zones but in a child protection institution.¹²

11. Already at this stage, the CPT must express its serious concern about the fact that irregular migrants were subjected to push-backs without any formal expulsion procedure and that, prior to their push-back, the persons concerned were systematically denied access to an asylum procedure and did not benefit from the legal safeguards which normally apply to persons who have been deprived of their liberty by the police.

In this regard, reference is made to the detailed remarks and recommendations in paragraphs 28 to 31.

2. Ill-treatment

12. The CPT is pleased to note that its delegation received no allegations of ill-treatment *by staff in any of the establishments visited*. On the contrary, there appeared to be no particular tensions between foreign nationals and staff in the transit zones and the delegation observed positive interactions between detained persons and social work staff engaging with them. Further, instances of violence between foreign nationals in the transit zones appeared to be virtually non-existent.

⁸ See also paragraphs 24 to 31.

⁹ Act XX of 2017 on the Amendment of Certain Acts Relating to Strengthening the Procedure Conducted in Border Surveillance Areas which amended the following pieces of legislation: the Act on Asylum, the Act on the Admission and Right of Residence of Third-Country Nationals, the Act on State Border, the Act on Minor Offences and the Act on Child Protection and Guardianship Management.

¹⁰ See Article 80/A of Act LXXX of 2007 on Asylum. The crisis situation may be declared if, for example, the number of foreign nationals arriving in Hungary exceeds certain thresholds defined by law or if a migration situation poses a direct threat to the protection of the Hungarian borders or if it poses a direct threat to public safety, public order or public health, in particular if a riot breaks out or violent acts are committed, for example, in an accommodation facility for foreign nationals.

¹¹ In September 2017, the state of crisis had been extended until 7 March 2018.

¹² Certain other changes which concern the asylum procedure as such are described in paragraph 35.

13. However, a significant number of foreign nationals interviewed by the delegation who had been apprehended in Hungary and escorted by the Hungarian police through the border fence towards Serbia shortly before the CPT's visit alleged that they had been physically ill-treated by *Hungarian police officers in the context of their apprehension and return through the border fence (push-backs)*.

The alleged ill-treatment consisted in particular of kicks and punches to various parts of the body (including the face and/or head) and baton blows (in particular to the knees, shins and calves), in some cases after the persons concerned had been made to lie down on the ground, as well as of spraying pepper spray directly into the face. Further, several allegations were received from foreign nationals that they had been bitten by unmuzzled service dogs set upon them by police officers.

It should also be added that a number of foreign nationals met by the delegation displayed recent traumatic injuries which, in the view of the delegation's doctor, were consistent with the allegations of ill-treatment made.

14. The following cases are illustrative of the situation encountered by the delegation during the visit.

i) A foreign national stated that two days earlier, he had been one of 15 persons who had been caught by the police about one kilometre inside Hungarian territory. He alleged that the police had made him sit down and once seated they had kicked him on the right calf and the abdomen. The police had then used muzzled dogs to intimidate the foreign nationals. When examined by the delegation's doctor, he displayed a fading, approximately 10cm x 5cm linear abraded area, on the right calf.

ii) A foreign national alleged that, five days earlier, he had been assaulted by a Hungarian police officer in that he had been kicked below his right knee in the context of his apprehension and escort through the border fence. On examination, there was a triangular shaped abraded area below his right knee, measuring approximately 5cm x 4cm x 4cm.

iii) A foreign national alleged that, a few days earlier, he had been punched in the face by police officers after having been smuggled to Hungary in a truck and apprehended by the police. On examination, he had marked black/purplish bruising above and below his left eye with similar but less pronounced bruising beneath the right eye. This person also alleged that the police had not photographed him before escorting him back through the border fence towards Serbia (see also paragraph 16).

iv) A foreign national alleged that when being apprehended by Hungarian police officers some ten days earlier, a dog that had been set on him by the officers had bit his left upper outer arm. On examination, he had a pattern of puncture wounds on the arm indicative of a dog bite.

v) A foreign national stated that at around midnight on 18 October 2017, he had crossed the border into Hungary and, at around 2.00 a.m., he had been caught by the Hungarian police. He alleged that he had been beaten for some five minutes by Hungarian police officers, including receiving a punch to his left ear which "made his ear dead" before being escorted through the border fence towards Serbia. When examined by the delegation's doctor, he had four minor wounds of varying sizes and dimensions, three of which were situated around the left side of the neck and one beneath the left ear.

Moreover, shortly after his expulsion to Serbia, on 19 October 2017, the person concerned was examined by a medical doctor and a medical certificate was drawn up. The certificate recorded the allegations made by the foreign national (identical to those later made to the CPT's delegation and described above), indicated as diagnosis "*VLC [vulnus lacero-contusum] auriculae l. sin*" (lacerated contused wound of the left ear) and concluded that the medical findings were compatible with the allegations made by the patient.

vi) Two foreign nationals who claimed to be unaccompanied minors aged 14 and 16 stated that, a few days earlier at 7 a.m., they had been apprehended by the Hungarian police when attempting to cross the Hungarian-Serbian border hidden in a truck. They said that they had then been taken to a room in a building next to the Rösztke Border Crossing and kept there for some five hours. They had been asked for their names and nationalities and had been watched over by a police officer who had stood in front of the door of the room for the whole time that they had been held there. They had not been given anything to eat or drink during all that time.

They further stated that at about 2 p.m. on that day, they had been escorted in a police car to a gate in the border fence; the drive was said to have taken 12 minutes. One of the boys alleged that when they had reached the gate in the border fence, he had been hit and prodded with a truncheon, pepper-sprayed in his face and kicked on the outside of his left knee by a police officer. He had then started crying and police officers had purportedly laughed loudly at him. The other boy asserted that a police officer had smashed his mobile phone and threatened that his finger would be cut off with a bolt cutter.

The foreign nationals further said that they had then been given a document to read (which the boy who had been pepper-sprayed could not read), had been photographed holding a number (see paragraph 16) and returned through the gate in the border fence towards Serbia. It should be added that when the delegation later visited the Csongrád County Border Police Division in Szeged, it found the photographs of the two foreign nationals concerned and a report on the escort drawn up by the police.

vii) A foreign national stated that some three days earlier, he had been in a group of 13 or 14 persons who had cut the wire in the border fence and entered Hungary where they had walked for two to three hours during the night before being caught by two Hungarian police officers. Thereafter, around 15 to 20 police officers had attended, including two or three female police officers. The foreign nationals had then allegedly been made to stand in a line and the police had started kicking and punching the group while the female police officers had hit many foreign nationals with truncheons. This particular individual alleged that he had been hit on the head by a female police officer with her truncheon. He also stated that a police officer had thrust his heel onto the big toe of his right foot and punched and kicked him. He had then allegedly been made to kneel on the ground for two to three hours. Thereafter he had been taken to the gate in the border fence, had been photographed and returned towards Serbia.

15. Moreover, various interlocutors met by the delegation during the visit provided the delegation with medical certificates drawn up after a clinical examination by a medical doctor of foreign nationals who had been apprehended in Hungary and escorted through the border fence by the Hungarian police towards Serbia. The medical certificates capture the ill-treatment allegations, describe the injuries observed and in a number of cases contain a conclusion that the medical findings are consistent with the allegations made.

16. According to the Hungarian authorities, a procedure has been put in place in order to prevent instances of ill-treatment and to protect police officers against false allegations of ill-treatment. This is that, prior to being escorted through the border fence, every foreign national should be photographed and allocated a unique number, every transfer should be video-recorded and a written record should be kept of it.

However, the examination of a considerable number of such records at the Csongrád County Border Police Division in Szeged revealed a striking discrepancy between theory and practice. All the records seen by the delegation were incomplete. In particular, the names and personal data of the persons concerned were not recorded at all. In a number of cases, one single form was completed for a whole group of persons being escorted through the border fence (as opposed to individual records for each person).

Further, the photographs routinely showed only the faces of the persons concerned, whereas the allegations of ill-treatment received usually related to blows to other parts of the body and, in a number of cases, the photographs were out of focus or the faces of the persons concerned were covered with scarfs, hoods or other items. Further, video recordings sometimes showed the backs of unidentifiable persons passing through a gate in the border barrier.

Of course, the CPT is not suggesting that irregular migrants should be undressed so that a full body photograph can be taken but it is simply highlighting that the current records do not permit even the identification of persons who have been in the hands of the Hungarian police and who allege that they have been ill-treated.

Moreover, the delegation heard several allegations from persons, who claimed to have been repeatedly escorted through the border fence, that when they had been particularly severely ill-treated by the police during the operation, they had not been assigned a number and had not been photographed.

In the light of the above, the CPT considers that the system currently in place cannot be regarded as an effective tool to prevent instances of ill-treatment or to protect police officers against any unfounded allegations of ill-treatment in the context of apprehension and subsequent escort of foreign nationals through the border fence.¹³

17. At the end of the visit, the CPT's delegation shared with the Hungarian authorities, including the Minister for the Interior, its concerns as regards the frequency and seriousness of allegations of ill-treatment received during the visit. In reaction, the authorities stated, *inter alia*, that the European Border and Coast Guard Agency (Frontex) deployed police officers to Hungary who were participating in the patrolling activities together with their Hungarian colleagues and would thus be in a good position to report on any ill-treatment taking place.

Further, by letter of 29 January 2018, in response to the end-of-visit talks, the Hungarian authorities provided the following information:

“The organization responsible for coordinating the border authorities of the European Union, the Frontex is continuously represented at the Hungarian-Serbian border and pays special attention to monitoring the migration situation and the respecting of human rights of migrants. The guest officers serving in Hungary have not experienced any instance of violation of human rights of the migrants or of their ill-treatment.”

¹³ See also the remarks and recommendations made in paragraphs 29, 30 and 31 regarding the safeguards which should be afforded to foreign nationals who are deprived of their liberty by the police and who wish to request international protection.

However, when met by the delegation during the visit, representatives of Frontex estimated that Frontex police officers participated in less than 20% of the border patrols.¹⁴ Further, they stated that their rules of engagement specifically prohibit them from operating on the “front line” close to the border fence and from participating in the actual escorts of foreign nationals through the border fence. Consequently, they were not participating in the activities in respect of which the CPT’s delegation received the vast majority of the ill-treatment allegations.

Moreover, several foreign nationals interviewed by the CPT’s delegation during the visit who claimed to have been repeatedly escorted through the border fence, stated that ill-treatment by the police at the site of their initial apprehension did not usually take place if foreign police officers were participating or that ill-treatment stopped when such officers arrived at the site.

Consequently, the practice at the time of the CPT’s visit of the deployment in Hungary of foreign police officers provided by Frontex cannot be regarded as a safeguard against ill-treatment of foreign nationals who were being apprehended and escorted through the border fence.

18. During the end-of-visit talks, the Hungarian authorities further stated that after the emergence of reports in Serbian media about cases of ill-treatment of foreign nationals by Hungarian police officers, they had requested Frontex to carry out an inquiry into these reports. **The Committee would like to receive a copy of the report on this inquiry.**

19. By letter of 29 January 2018, the Hungarian authorities provided the following information in response to the end-of-visit talks and as a follow-up to their response to the CPT’s 2015 report:

“The reason for our cited point of view is that the prohibition on ill-treatment of detainees is a fundamental requirement deriving from the Fundamental Law of Hungary and the regulations of the Act XXXIV of 1994 on the Police. The regulations of the Act on the Police, which entered into force on 1 October 1994 and remained unchanged until today, obviously provide that the police officer shall not apply torture, interrogation under coercion, cruel, inhuman or degrading treatment and shall refuse to execute instructions to apply such treatment. The police officer shall take measures against a person to prevent such behaviour irrespective of the service assignment, rank or identity of that person.

It is an essential part of the education preparing for the police career to make this principle known for the sworn police officers and to shape an attitude which complies with it. In Hungary, the “order of law” is the governing principle, in the light of which the recommendation cannot be interpreted [*sic*] which refers to an “official statement” to be made about the unacceptability of the violation of such a fundamental regulation. It is also inexplicable why police officers should be reminded this way of the respect of such a fundamental provision, the violation of which establishes criminal liability in accordance with the Hungarian law.

The report on the CPT's visit in 2015 was processed for the competent staff. The proceeding, which is related to persons whose personal liberties are restricted and is in compliance with international and national standards, is the subject of trainings, roll calls and supervision still today.

¹⁴ At the time of the visit, there were only five police officers provided by Frontex who took part in border patrols.

The overall conclusion is that there are statements in the preliminary report which overlook the fundamental facts, furthermore, the delegation disregarded the information provided during the on-site visits when drafting the report, and took a position based on reports made by international human rights organisations which had previously been investigated and proven unsubstantiated. The statements made in the preliminary report – similarly to the statements made by international and civil organisations – do not contain such substantiated information based on which investigations in particular cases could be initiated. The content of the preliminary report suggests that its drafters had preconceptions when examining the topic [and that] they were unilaterally informed [...].”

20. The letter also indicates that visits by delegation from the European Commission in 2016 and the Fundamental Rights Agency of the European Union (FRA) in 2017 did not reveal any instances of ill-treatment.

21. The CPT cannot but express its deep regret and dismay about the dismissive nature of the Hungarian authorities’ response to the delegation’s preliminary observations, which totally disregards the specialist nature of the CPT’s work and its *modus operandi*.

The task of the Committee is to strengthen, through non-judicial means, the protection against ill-treatment of persons deprived of their liberty. The CPT must stress that, in carrying out this task, it is not only independent but it also has a very distinctive fact-finding role. It interviews in private persons deprived of their liberty and may communicate freely with any other person whom it believes can supply relevant information; its recommendations are grounded in these findings in fact. Persons who allege ill-treatment are examined by CPT’s medical doctors who have expertise in recording injuries indicative of ill-treatment.

22. In the light of the frequency and consistency of the allegations of ill-treatment, which were received by delegation members through individual interviews with foreign nationals carried out separately and privately and the extensive supporting medical evidence gathered by the delegation’s doctor (including visible injuries displayed by the persons concerned), it is beyond doubt that irregular migrants apprehended by Hungarian police officers run a risk of being subjected to physical ill-treatment, contrary to “the prohibition [of] ill-treatment of detainees [as] a fundamental requirement deriving from the Fundamental Law of Hungary and the regulations of the Act XXXIV of 1994 on the Police”.¹⁵

Therefore, the CPT must recommend once again that the Hungarian authorities take steps without further delay to ensure that all police officers are given a clear and firm message, emanating from the highest political level, that any form of ill-treatment of detained persons, including threats of ill-treatment, as well as any tolerance of ill-treatment by superiors, is unacceptable and will be punished accordingly.

23. Following a request made by the delegation during the visit, the Hungarian authorities provided the Committee with a summary table of the complaints about ill-treatment by Hungarian police officers which had been lodged by foreign nationals, the measures taken and the state of the proceedings.

¹⁵ As stated in the response of the Hungarian authorities and quoted in paragraph 19 of this report.

At the time of the visit, ten (of eleven) investigations into complaints lodged in 2017 were pending. **The CPT would like to receive updated information on the number of complaints of police ill-treatment lodged by foreign nationals from January 2017 until the present time, a detailed account of the steps taken to investigate them and an account of the measures subsequently taken.**

3. Push-back operations

24. At the outset, the CPT wishes to recall that the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights entails the obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment.

This obligation is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or “renditions”, and non-admission at the border. This is evident from the wording of Article 33(1) of the 1951 Convention on the Status of Refugees, which refers to expulsion or return (*refoulement*) “in any manner whatsoever”.

The principle of *non-refoulement* applies not only in respect of return to the country of origin, but also to any other country to which removal is to be effected or any other country to which the person may subsequently be removed (“chain *refoulement*”). Consequently, it is essential that foreign nationals have effective access to an asylum procedure which involves an individual assessment of the risk of ill-treatment in the case of a forcible removal, on the basis of an objective and independent analysis of the human rights situation in the countries concerned. The principle of *non-refoulement* is expressly set out in Section 45 of the Asylum Act and Sections 51 and 52 of the Aliens Act.

25. Following the March 2017 amendments to the Aliens Act (see paragraph 10), the police are empowered to immediately escort through the border fence irregular migrants apprehended anywhere on Hungarian territory. Further, foreign nationals are only allowed to submit a request for international protection in either of the two existing transit zones.

An Action Plan on the implementation of the tasks of the police related to Act XX of 2017 (“Action Plan”) issued by the National Police Headquarters provides that the apprehended foreign nationals should be informed that they are staying illegally on the territory of Hungary and that the necessary measures are to be taken to escort them through the border fence. They should be informed of the police intervention and its purpose, the possibility to lodge a complaint about the intervention and the possibility to apply for asylum in a transit zone. The Action Plan further stipulates that personal data should be collected and checked in the available registers and that the apprehension must be documented in the “Robotzsaru” police custody database according to the general rules on apprehension.

26. From the information gathered by the delegation during the visit, it transpired that foreign nationals staying anywhere on the territory of Hungary without the permission of the authorities were apprehended by the police and – apparently irrespective of which country they had arrived from – were escorted to one of the gates in the border fence along the Hungarian-Serbian border.¹⁶ Immediately before their removal through the border fence, they were shown, but not given a copy of, an information sheet. Thereafter, they were released through the gate in the border fence in the direction of Serbia.

The sheet, which existed in various languages, informed them that they were residing “illegally” in Hungary, that action was being taken against them to escort them back to the “temporary security border fence” and that if they wanted to apply for asylum in Hungary, they should do so in the transit zone which had been established for that purpose and which may be reached “from the [S]erbian side by walking parallel to the temporary security border fence”. Further, the sheet informed foreign nationals that, according to the police law (1994. XXXIV.), if police action was taken against them or if they were arrested by force, they had the right “to appeal [to] the police department or the Independent Police Board”, and indicated an e-mail address to which “complaints” may be sent.

It must be pointed out, however, that according to the information gathered during the visit, the possibility to lodge an “appeal” (or “complaint”) concerned the way in which the apprehension was carried out or force used by the police, but not the forcible removal itself. Moreover, any such complaint would not have a suspensive effect on the implementation of the forcible removal.

27. The findings of the visit clearly indicate that, during the apprehension and escort through the border fence, the foreign nationals concerned were at best photographed with a number and/or filmed as they were crossing the border fence towards Serbia, and a record (often incomplete and covering a whole group of foreign nationals) was kept by the police (see paragraph 16). No other record of the apprehension and escort through the border fence was presented to the CPT’s delegation by the Hungarian authorities during the visit.

28. In conclusion, as a result of the legal amendments which entered into force on 28 March 2017 and their practical implementation, all foreign nationals irregularly entering Hungary and apprehended by the police, with the exception of unaccompanied minors below the age of 14, are subject to automatic forcible removal to Serbia.

The argument put forward by the Hungarian authorities that in view of the fact that alongside the external side of the fence there is a strip of a few metres on Hungarian territory, the foreign nationals concerned are not being expelled from Hungarian territory and that they may simply walk along the border fence to the transit zone and submit an asylum application there¹⁷ is unrealistic. As described also in paragraph 32, only some five persons were admitted from Serbia to each of the two transit zones every working day and, according to the information gathered through interviews with foreign nationals, the waiting time to be admitted ranged between six and twelve months.

¹⁶ With the exception of unaccompanied minors below the age of 14 who should be placed in a child protection institution.

¹⁷ This is also suggested by the information sheet shown to foreign nationals at the moment of their expulsion towards Serbia through the border fence.

The foreign nationals concerned are thus *de facto* automatically forcibly removed to Serbia. In the context of the expulsion, there is no procedure in place for their proper identification and registration and there are no legal remedies capable of offering effective protection against the expulsion as such. Neither is the asylum procedure capable of offering such protection in view of the lack of effective access thereto (see paragraph 32). Moreover, it is still the case that UNHCR does not consider Serbia as a safe third country.¹⁸

In the light of these circumstances, the CPT considers that the arrangements currently in place do not provide effective protection against *refoulement*, including chain *refoulement*.

Therefore, **the Committee recommends that the Hungarian authorities put an end to the practice of push-backs to the Serbian side of the border and take the necessary steps, including of legislative nature, to ensure that all foreign nationals arriving at the border or present in the territory of Hungary are effectively protected against the risk of *refoulement*, including chain *refoulement*. In particular, they should have effective access to a procedure which involves an individual assessment of the risk of ill-treatment in the case of expulsion, on the basis of an objective and independent analysis of the human rights situation in the countries concerned.**

29. The CPT wishes to recall that, in the same way as other categories of detained persons, irregular migrants should benefit, as from the very outset of their deprivation of liberty, from three fundamental safeguards against ill-treatment, namely the right to inform a relative or another person of their choice of their situation and the rights to have access to a lawyer and a doctor. The foreign nationals concerned should be expressly informed, including in writing, without delay and in a language they understand, of all their rights and the procedure applicable to them.

According to the information gathered during the visit, the period of time between the actual apprehension by the police and the escort through the border fence could last for a few hours up to 24 hours, depending on the distance from the Hungarian-Serbian border at which foreign nationals were apprehended.

As already noted in paragraph 11, the amended aliens legislation does not explicitly provide any of the aforementioned safeguards to the foreign nationals concerned and the information gathered during the visit through interviews with police officers and with foreign nationals who had been escorted through the border fence clearly indicates that, indeed, the safeguards were in practice not granted to apprehended foreign nationals prior to their forcible removal to the Serbian side of the border.

Many foreign nationals interviewed by the delegation indicated that, following their apprehension, they had been allowed to keep their mobile phone but had been prevented from making a phone call and informing a third person of their situation. Some allegations were also received that police officers had destroyed the mobile phones of apprehended foreign nationals.

30. As regards more particularly the right of access to a doctor, the Action Plan (see paragraph 25) provides that if an injury or a serious illness requiring medical treatment is detected, foreign nationals should first receive the necessary medical care and then be escorted through the gate in the border fence or transferred to a hospital, in line with the doctor's proposal.

¹⁸ UNHCR informed the delegation that their position set out in document "Serbia – A Country for Asylum" (available at <http://www.unhcr.rs/media/UNHCRSerbiaCountryofAsylumScreen.pdf>) remained unchanged.

Notwithstanding this requirement, none of the injured persons interviewed and medically examined by the delegation in Serbia stated that they had received any medical attention after being apprehended in Hungary and before being escorted to the Serbian side of the border.

31. **The CPT recommends that the Hungarian authorities take the necessary steps, including of a legislative nature, to ensure that all foreign nationals who are deprived of their liberty by the police under aliens legislation are:**

- **effectively granted from the outset of their deprivation of liberty the right to inform a relative or another third party of their situation and the right of access to a lawyer and a doctor;**
- **fully informed of their above-mentioned fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information immediately after apprehension, to be supplemented at the earliest opportunity (that is, immediately upon their first entry into police premises) by provision of a written form setting out the detained person's rights in a simple and straightforward manner. This form should be available in an appropriate range of languages.**

4. Admission to the transit zones and asylum procedures applied to foreign nationals

32. The admission and asylum procedures applied to foreign nationals were practically the same in both transit zones visited by the delegation.

On each working day, five persons¹⁹ were usually admitted to each of the two transit zones. According to the information provided to the delegation by staff, a list of the foreign nationals to be admitted was prepared by a "community leader" in Serbia who was in touch with the Serbian immigration authorities, and was submitted to the staff in the transit zones. As a result, many foreign nationals were compelled to wait for several months or even longer before they were given an opportunity to apply for international protection in Hungary.

It is of all the more concern in this connection that according to a press release by UNHCR of 16 February 2018, "[f]or the past few weeks, UNHCR has observed that the Hungarian authorities are, on average, only allowing two asylum-seekers a day to enter the country through the two "transit zones" at the border with Serbia."²⁰

In this regard, reference is made to the recommendation in paragraph 28.

¹⁹ The number could be slightly higher, for example, in the case of a larger family.

²⁰ See <http://www.unhcr.org/hu/4486-hungary-unhcr-dismayed-border-restrictions-draft-law-targeting-ngos-working-asylum-seekers-refugees.html>.

33. After having entered the transit zones from Serbia through the turnstile gate located at one end of the transit zone, foreign nationals and their luggage were searched by police officers for sharp/dangerous objects. Reportedly, foreign nationals were allowed to keep their mobile phones and valuables, including cash. The police registered the name and other personal data of the foreign nationals, as well as their intention to apply for asylum in Hungary²¹ and handed over the persons, together with the record, to the asylum authority (the Immigration and Asylum Office – IAO),²² which subsequently started an asylum procedure.

34. According to the statistics presented to the delegation, between 28 March 2017 (i.e. the entry into force of the amended legislation) and 20 October 2017, 1,500 asylum applications had been lodged in the two transit zones; 50 persons had been granted refugee status, 745 subsidiary protection and 62 temporary protection. In the remaining cases, the procedure was either pending at the time of the visit, or the asylum application was rejected on various grounds. The IAO staff with whom the delegation spoke estimated that the recognition ratio of the asylum applications in the transit zones was more than 40%.

Further, in a letter of 29 January 2018, in response to the end-of-visit talks, the Hungarian authorities state that “[i]n the period after 28 March 2017, the number of positive decisions increased considerably as the asylum seekers were granted *international protection* in 66% of the substantive decisions [taken] by the Office for Immigration and Asylum” and that “[b]etween 28 March 2017 and 31 December 2017, the determining authority granted international protection for the foreigners in 1,117 cases. The authorities thus considered that “the possibility of access to asylum in Hungary is well guaranteed and Hungary grants international legal protection for those who meet the Hungarian and international legal requirements.”

It is axiomatic, however, that a distinction must be made between the recognition ratio and effective access to an asylum procedure. Given the Hungarian authorities’ policy of permitting very restricted access to their asylum procedure, the CPT must point out that such statistics are of relatively little explanatory power.

35. The various existing asylum procedures were described in detail in the report on the CPT’s 2015 visit to Hungary.²³ It should be recalled that, in addition to the “standard asylum procedure”, two new asylum procedures (an accelerated procedure²⁴ and a border procedure²⁵), which contain considerably shorter deadlines for taking a decision and lodging an appeal, had been introduced in 2015.

Following the March 2017 amendments (see paragraph 10), however, during the “state of crisis caused by mass immigration”, the border procedure cannot be applied (see Section 80/I(i) of the Asylum Act); all applications submitted in the transit zones are thus processed either in the accelerated or standard procedure, depending on the circumstances of each case. Under the standard asylum procedure, a decision on an asylum application must be taken by the IAO within 60 days; if the accelerated procedure is applied (or if an asylum application is to be declared inadmissible), the IAO must take a decision within 15 days.

²¹ If the persons concerned did not wish to apply for asylum, they would be escorted back to Serbia.

²² Previously, the asylum authority was called the Office of Immigration and Nationality (OIN).

²³ See CPT/Inf (2016) 27, paragraph 65.

²⁴ Grounds on which an asylum application may be decided in the accelerated procedure are laid down in Section 51 (7) of the 2007 Asylum Act (e.g. where the applicant discloses only irrelevant information, provides misleading information, originates from a country included on an EU or national list of safe countries or refuses to give fingerprints).

²⁵ In the border procedure, only the admissibility of an asylum application is examined by the IAO.

According to the staff of the IAO met by the delegation, unlike in 2015, the concept of Serbia as a safe third country was virtually not being applied at the time of the 2017 visit.²⁶

36. As for *legal safeguards accompanying the asylum procedures*, at the beginning of the first asylum interview, foreign nationals were provided with information verbally and given a written note which existed in several languages and which informed them, *inter alia*, about the asylum procedure, the possibility to ask for interpretation, the right to seek the assistance of a lawyer and the possibility to request free legal aid, the right to contact UNHCR and to seek assistance from organisations providing free legal aid, as well as the right to appeal to the court against the decision of the IAO.

As regards legal aid, foreign nationals were free to contact their own lawyer or ask for free legal aid. In the latter case, the regional government office appointed a lawyer from a list of available *ex officio* lawyers.²⁷ The asylum-seeker had the right to consult the lawyer in private prior to the asylum interview and the lawyer was entitled to be present during the proceedings.

Arrangements were made by the Hungarian authorities to ensure interpretation (usually by means of video-conferencing) throughout the asylum procedures, including during the initial asylum interview.

At the end of the procedure before the IAO, a copy of the written decision was given to the asylum-seeker; however, the decision was issued in Hungarian and was only orally interpreted into the language spoken by the foreign national concerned. **The Committee recommends that steps be taken to ensure that foreign nationals receive a written translation in a language they understand of decisions of the asylum authority, as well as information on the modalities and deadlines to appeal against such decisions.**

37. Unless refugee status was granted to the foreign national, the decision of the IAO could be challenged by means of an appeal to the court. However, the March 2017 amendments shortened the deadline for lodging an appeal against inadmissibility decisions²⁸ and decisions rejecting the asylum application in the accelerated procedure from seven to a mere three days.²⁹

As for time-limits for the court, if the initial decision was taken by the IAO in the standard asylum procedure, the court had 60 days to rule on the appeal; if an appeal was lodged against a decision taken in the accelerated procedure (or in the case that the asylum application was rejected as inadmissible), the court decision must be taken in eight days.

²⁶ In 2015, most asylum applications processed in the transit zones were rejected in the border procedure as inadmissible on the ground that the asylum-seekers had transited Serbia which was considered a safe third country (see CPT/Inf (2016) 27, paragraph 66).

²⁷ At the time of the visit, there were five lawyers on the list who were available to provide free legal aid to foreign nationals.

²⁸ Grounds on which an asylum application may be declared inadmissible are provided for in Section 51(2) of the Asylum Act (e.g. where the applicant is a national of one of the EU member states, where the application is repeated and no new facts or circumstances have occurred to justify granting international protection or where a safe third country exists for the applicant through which he or she has travelled and in which he or she had the opportunity to apply for protection).

²⁹ A decision taken in the standard asylum procedure may be appealed within eight days.

According to the amended Section 80/K(5) of the Asylum Act, the foreign nationals concerned should be heard in person by a judge in the transit zone; this, however, includes the possibility of a hearing via a remote audio-and-video computer connection. It became clear during the visit that the latter option was exclusively used in practice and that judges never went to the transit zones to hold court hearings there.

Moreover, by virtue of the same provision, if the asylum application was rejected as inadmissible by the IAO or if the decision was taken in the accelerated procedure, the court decision does not necessarily have to be taken by a fully qualified and duly appointed judge but may be taken by a “court secretary”.³⁰

38. To conclude, the CPT notes the relatively short deadline for the IAO to take an inadmissibility decision or a decision in the accelerated procedure, the extremely short deadline for lodging an appeal against decisions of the IAO rejecting an asylum application as inadmissible or taken in the accelerated procedure, which may render any possibility to provide effective legal aid with lodging an appeal more difficult, the practice of courts to hear the foreign nationals concerned exclusively via a remote audio-and-video computer connection without direct contact and the fact that the court decision on the appeal may be taken by a “court secretary”.

In the light of these circumstances, and as was already the case in 2015 in respect of the border procedure,³¹ the CPT has certain doubts whether, in the event that the accelerated asylum procedure is applied in the transit zones or if an inadmissibility decision is issued, there is a real opportunity for foreign nationals to present their case and whether the procedures in such cases involve an individual assessment of the risk of ill-treatment in the case of removal and thus provide an effective protection against *refoulement*, including chain *refoulement*. **The CPT would like to receive the comments on this issue from the Hungarian authorities.**

39. Concerning the specific situation of unaccompanied minors aged 14 to 18 who were placed in the transit zones, according to the information provided by IAO staff, once the presence of such a foreign national became known to the authorities, a guardian was appointed who had to attend all the stages of the asylum procedure.³² **The CPT would like to receive more details on the operation in practice of the guardianship in such cases.**

40. As regards the practical arrangements in the transit zones, the CPT notes that two police officers were present in front of each caged accommodation area. Asylum-seekers were not allowed to leave the area in which they were placed on their own, but for any movement, even within the highly-secure environment of the transit zone (see paragraphs 43 to 45), they had to be escorted by two police officers even when they went to see a doctor, lawyer or IAO staff.³³

³⁰ That is, a qualified lawyer employed by the court who is entitled to act in cases specified by the relevant legislation.

³¹ See CPT/Inf (2016) 27, paragraph 69.

³² In addition, as it was the case for adult asylum-seekers, the unaccompanied juvenile had the right to choose a lawyer or had a lawyer appointed *ex officio*.

³³ In principle, asylum-seekers were not handcuffed while being escorted within the transit zone.

Despite that (and as was the case in 2015), the designation of the transit zones as a mandatory place of stay for asylum-seekers for the whole duration of the asylum procedure (see also paragraph 10), such a stay was not formally regarded as deprivation of liberty by the Hungarian authorities. Consequently, no formal decision was issued which could be challenged before a court.³⁴ In this respect, the authorities maintained their position that asylum-seekers present in the transit zones, while they were not allowed to enter Hungary, were free to leave for Serbia at any time.

The same position was reiterated by the Hungarian authorities in their written response to the delegation's preliminary observations.

41. The CPT acknowledges that these assertions are in line with Section 80/J(5) of the amended Asylum Act which provides that "Applicants may leave the transit zone across the exit gate" and that this provision is replicated in the information note given to foreign nationals upon their admission to the transit zones. Further, when asked, police officers and IAO staff working in the transit zones confirmed that this was indeed the case and that asylum-seekers could leave anytime, including at night and weekends, to be released in the direction of Serbia.³⁵

However, the CPT notes that in such a case, the asylum proceedings of the foreign national concerned would be automatically discontinued.³⁶

³⁴ Article 5(4) of the European Convention on Human Rights stipulates that "[e]veryone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

³⁵ Reportedly, a member of IAO staff was on duty 24/7, would be informed about the request, make a record and ensure that the person may leave.

³⁶ It is noteworthy in this context that in the case of *Ilias and Ahmed v. Hungary* (no. 47287/15, 14 March 2017, paragraphs 55-56, 68-69 and 76-77) which concerned the stay of two Bangladeshi asylum seekers in the transit zones for 23 days in 2015, the European Court of Human Rights ("the Court") concluded that the applicants could not have left the transit zone in the direction of Serbia without unwanted and grave consequences, that is, without forfeiting their asylum claims and running the risk of *refoulement*. Consequently, their confinement to the transit zone amounted to a *de facto* deprivation of liberty which, however, occurred without any formal decision of the authorities and solely by virtue of an elastically interpreted general provision of the law. The applicants' detention thus could not be considered "lawful" for the purposes of Article 5(1) of the Convention which had therefore been violated.

The Court also found a violation of Article 5(4) of the Convention as the applicants did not have at their disposal any proceedings by which the lawfulness of their detention could have been decided speedily by a court.

It should be pointed out, however, that on 18 September 2017, the Court accepted the Hungarian government's request for referral of the case to the Grand Chamber of the Court. The judgment is thus not final at the time of the adoption of this report.

5. Situation in the transit zones

a. introduction

42. At the outset, the CPT must express its misgivings about the fact that the transit zones at Röszke and Tompa constitute the only gateway to the asylum system in the country and that all foreign nationals seeking international protection, including families with children and unaccompanied minors (14 to 18 years of age) are compelled to stay there, for weeks and sometimes months on end, while their asylum claim is being processed.

b. living conditions

43. As indicated in paragraph 8, the two transit zones have been significantly enlarged since the 2015 visit. On the side towards the border with Serbia, the premises of the zones were now partly delimited by a row of adjacent containers, partly by a high wire-mesh fence. All other sides of the transit zones were surrounded by a 3.5-metre-high wire-mesh fence, parts of which ran in several parallel lines. The container roofs and the fences were topped with (sometimes several) rolls of razor-blade wire. Within both transit zones, foreign nationals were accommodated in rectangular caged areas (nine at Röszke and five at Tompa) of different sizes which were formed by rows of prefabricated accommodation containers on three sides and a wire-mesh fence on the fourth.

44. The CPT notes the efforts made by the Hungarian authorities to provide decent material conditions for the accommodation of foreign nationals in the transit zones and to maintain the premises in a good state of repair and hygiene. The accommodation containers measured 13m² and were usually equipped with two bunk-beds and a bed (fitted with clean mattresses, pillows and bedding) and five lockers. The containers had good access to natural light and artificial lighting, as well as to electric heating. In addition to the accommodation containers, in each caged section, there were containers which served as an office for social workers, a dining room (equipped with chairs, tables and a washbasin, as well as with a fridge, an electric kettle and a microwave oven), a laundry room (with a washing machine and a tumble dryer) and separate communal sanitary facilities for men and women (with washbasins, toilets and showers).

45. That said, a number of shortcomings were observed by the delegation. First and foremost, the overall design of the transit zones is far too carceral – rolls of razor blade wire were omnipresent, as were high wire-mesh fences which sometimes ran in several lines. This was the case not only on the outside perimeter but also in the caged accommodation sections which were located within an already highly-secure area of the transit zones. Such an environment cannot be considered adequate for the accommodation of asylum-seekers, even less so where families and children are among them.

Further, in both transit zones, conditions in the containers were cramped. At the time of the visit, a number of accommodation containers were used at full capacity (i.e. five adult and adolescent foreign nationals sharing a room of 13 m²), while, at the time of the visit, some of the accommodation sections at Röszke were not being used. In addition, some complaints were heard in both transit zones that, during the summer, the containers had often become very hot as they had neither been properly insulated nor equipped with air-conditioning.

46. As regards activities, it is positive that all foreign nationals were able to move freely within their section and associate with other foreign nationals and had unrestricted access to an adjacent outdoor yard and an air-conditioned communal activity room (equipped with tables, chairs, a television set, board games, playing cards and a table tennis table, as well as some books and toys for children) and a prayer room.

In the middle of each accommodation section, there was a gravel outdoor yard equipped with tables, chairs/benches and parasols, and, in several of these yards, foreign nationals could play basketball and volleyball. That said, it is regrettable that, at Tompa, the outdoor area for single male adults (Section E) only consisted of a long but very narrow (3m) fenced off corridor which prevented the foreign nationals concerned from exerting themselves physically.

Further, apart from the cloth parasols, the yards had no proper shelter against inclement weather.

47. In both transit zones, some organised activities were offered to adult foreign nationals (such as group discussions, Hungarian language classes, board games/chess). However, many complaints were received from the foreign nationals, in particular those who had been held there for longer periods, about a lack of activities.

48. Efforts were being made in both transit zones to provide children with organised activities. School classes (basic English, Hungarian, mathematics, “cultural matters”) were organised every working day (9 a.m. to 12 noon) by teachers attending from the outside community and there were some leisure activities (2 to 4 p.m.), mostly organised by various NGOs. However, it appeared from the information gathered during the visit that the school classes were targeted at kindergarten-age and young school-age children and that hardly any educational activities were offered to older juveniles.

49. It is praiseworthy that, at Rösztke, the outdoor yards of most accommodation sections for families with children comprised a playground for children (with slides, swings and a sandbox). However, at Tompa, not all outdoor yards for families had such equipment.

50. The CPT has repeatedly stressed that deprivation of liberty under aliens legislation should only be a measure of last resort after a careful and individual examination of each case. Further, every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor (i.e. a person below the age of 18). In particular, as a matter of principle, unaccompanied minors should not be held in a closed immigration detention facility, but they should always be provided with special care and accommodated in an open (or semi-open) establishment specialised for juveniles (e.g. a social welfare/educational institution for juveniles). If, exceptionally, minors are held with their parents in a transit zone, their stay should be for the shortest possible period of time. Every effort should also be made to avoid splitting up the family.

The CPT recommends that the Hungarian authorities take the necessary steps – including at the legislative level – to fundamentally revise their policy regarding the holding of foreign nationals in transit zones, in the light of the above precepts. As a matter of priority, an end should be put to the accommodation of unaccompanied minors – including those aged 14 to 18 – in transit zones and all unaccompanied minors should be transferred without delay to a (semi-) open establishment specialised for juveniles (e.g. a social welfare/educational institution for juveniles) inside the country.

51. The living conditions in both transit zones are generally acceptable for holding foreign nationals for a limited period of time (i.e. up to several weeks). However, they are not adequate for holding foreign nationals for prolonged periods, in particular families with children. Therefore, **the CPT recommends that the Hungarian authorities take the necessary steps to ensure that the legal time limit of four weeks for holding foreign nationals in transit zones is re-introduced.**

Further, the Committee recommends that steps be taken in both transit zones to ensure that:

- the design and layout of the entire premises are thoroughly revised with a view to rendering them less carceral;
- the occupancy levels in accommodation containers are reduced;
- the temperature in the accommodation containers is always appropriate (including during the summer and winter);
- all outdoor yards are equipped with a means of shelter against inclement weather;
- all outdoor yards of sections which hold families are equipped with a playground for children.

Finally, steps should be taken to review the layout of the outdoor yard of accommodation section “E” at Tompa transit zone to ensure that male adult foreign nationals have an opportunity to exert themselves physically.

c. health-care services

52. In both transit zones, the health-care staff included a doctor who was present on a rota basis on workdays,³⁷ and a pool of part-time nurses (feldshers), two of whom were present around the clock, seven days a week. In addition, a military doctor was present for two hours per day seven days a week in both transit zones; he mainly carried out age assessments and provided emergency treatment. A paediatrician visited both of the transit zones twice a week.

53. At Tompa, the health-care facilities comprised a well-stocked pharmacy, while, at Rösztke, only very few medicines were available. In this regard, the delegation was puzzled by the fact that, except in emergency situations, doctors working at Rösztke were apparently not allowed to issue prescriptions for medicines, and foreign nationals who needed a medical prescription had to be referred to the local hospital. **The CPT recommends that the procedures for the supply of medicines at Rösztke be aligned with those at Tompa, so that foreign nationals no longer have to be taken to a hospital for a medical prescription.**

54. The CPT welcomes the fact that, in both transit zones, newly-arrived foreign nationals usually underwent medical screening on their day of admission by a nurse, in the presence of a qualified interpreter. The screening included a general physical examination, anamnesis and screening for bodily injuries, as well as, at Tompa, screening for transmissible diseases (such as HIV, hepatitis B and syphilis). In the case of need, foreign nationals were subsequently referred to the doctor.

³⁷ Four hours per workday at Rösztke and two hours per workday at Tompa.

That said, the Committee is concerned by the absence of timely screening for tuberculosis (even in its simplest form of enquiring about key symptoms such as a productive cough, night fevers and weight loss) in both transit zones. X-rays were arranged only once every three months by a mobile X-ray unit. During the end-of-visit talks, the Hungarian authorities informed the delegation that visits by the mobile X-ray unit would henceforth take place on a monthly basis.

In the CPT's view, besides having an X-ray unit visiting the transit zones on a regular basis, it would be preferable that foreign nationals are asked for symptoms upon arrival, and those displaying symptoms are transferred without delay to a nearby hospital for further examination/treatment.

The CPT recommends that the medical procedures for tuberculosis screening be revised in both transit zones accordingly. Steps should also be taken to offer foreign nationals at Rösztke screening for transmissible diseases (as is the case at Tompa).

55. At Tompa, individual computerised medical files were kept for every foreign national. At the outset of the visit, no such individual medical files existed at Rösztke. After the delegation had provided the management at Rösztke with feedback on its findings, the doctor immediately started opening individual medical files for foreign nationals. **The CPT would like to receive confirmation from the Hungarian authorities that an individual medical file is now being kept for every foreign national held at Rösztke.**

56. The CPT has misgivings about the fact that, at Rösztke, in the context of the medical screening upon admission, interpreters were required to take an initial history from the newly-arrived foreign national and to complete and counter-sign a special form for this purpose. It is noteworthy that no such practice existed at Tompa. **In the CPT's view, interpreters should not collect personal health-related data and attest to it; this should be the exclusive task of health-care staff.**

57. As regards the specific health-care needs of children, the CPT welcomes the fact that a paediatrician attended both transit zones twice per week. That said, it is regrettable that no immunisation history was usually taken with regard to whether or not newly-arrived children had been vaccinated, nor were any immunisations such as measles, chicken pox, mumps or rubella offered. In this regard, the Committee wishes to recall that the presence of children in transit zones increases the risk of transmission of contagious diseases common in children. **Steps should be taken to review the provision of health care for children in both transit zones, in the light of the preceding remarks.**

58. In both transit zones, the delegation was informed that foreign nationals in need of specialist care were usually transferred to a local hospital (including, if necessary, for psychiatric and psychological consultations) and that a psychologist from the Hungarian Red Cross or a religious organisation occasionally carried out visits (focusing mainly on unaccompanied minors).

Notwithstanding that, the provision of psychological and psychiatric care appeared to be insufficient. Several foreign nationals met by the delegation stated that their mental and emotional state was troubling them, and some of them (including unaccompanied minors) displayed signs of depression, but said that they had received little or no psychological support.

During the end-of-visit talks, the Hungarian authorities informed the delegation that steps were being taken to recruit a psychologist on a part-time basis in each transit zone. Further, the CPT notes that, in a recent communication³⁸ to the Council of Europe's Lanzarote Committee,³⁹ the Hungarian authorities provided the following information:

“From November 2017 the Immigration and Asylum Office employs a psychologist in the transit zones. The psychologist works at Rösztke Transit Zone for nine hours per week, and at Tompa Transit Zone for six hours per week. From January 2018, a psychiatrist is present for three hours per week in each of the transit zones. (...) Also, if necessary, the psychiatric care of state hospitals is still available for the applicants.”

This is a welcome development. **The CPT trusts that the Hungarian authorities will ensure that the newly-recruited psychologist(s) will work in close co-operation with the health-care staff in both transit zones and that they will assess in due course whether the psychologists' presence is sufficient to meet the needs of foreign nationals held in both transit zones.**

59. As indicated above, in both transit zones, qualified interpreters were present, whenever needed, during the medical screening of newly-arrived foreign nationals. That said, the delegation received several complaints from foreign nationals that no interpretation had been provided during subsequent medical consultations (either in the transit zone or in an outside hospital) and that they had thus been prevented from describing adequately their health problems. **Steps should be taken to remedy this shortcoming.**

60. At Tompa, medical confidentiality was generally respected. However, it is a matter of concern that, despite the specific recommendation made by the Committee in the report on the 2015 visit, a police officer was systematically present during medical consultations at Rösztke.

The CPT reiterates its recommendation that medical consultations (whether in the transit zone or in outside hospitals) always be conducted out of the hearing and – unless the health-care professional concerned requests otherwise in a particular case – out of the sight of non-medical staff.

61. As indicated in paragraphs 8 and 10, unaccompanied minors below the age of 14 were not kept in either transit zone but placed in a child institution inside Hungary, and unaccompanied minors aged 14 to 18 were kept in a separate section at Rösztke. Therefore, doctors were requested to carry out an age assessment in order to determine whether young unaccompanied asylum-seekers were below the age of 18 and 14 years respectively.

The CPT has misgivings about the manner in which such assessments were performed by military doctors who had no formal training for this task. One doctor met by the delegation explained that he would ask the persons concerned how old they were, consider their height, weight and secondary sexual characteristics, look at their wisdom teeth and then complete a standardised form.

³⁸ Entitled "Developments further to the visit as referred to by the Hungarian authorities during the 20th meeting of the Lanzarote Committee (29-31 January 2018)", <https://rm.coe.int/1680784277>.

³⁹ I.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

It is generally accepted that it can be difficult to estimate a person's age. However, in the CPT's view, it is unreasonable to expect military doctors of varying disciplines to assess the age solely on the criteria mentioned above. Age assessments should be multidisciplinary and involve social work and psychological staff as well as a paediatrician. The use of x-ray for age assessment can be a possible supplementary tool, but should not replace the multidisciplinary approach.⁴⁰

The Committee recommends that the Hungarian authorities review the existing age assessment procedures, in the light of the above remarks.

d. other issues

62. The CPT acknowledges the efforts made by the Hungarian authorities to facilitate in both transit zones foreign nationals' contact with the outside world. Contrary to the situation found in several immigration detention facilities during the 2015 visit, foreign nationals were allowed to keep their mobile phones.

In addition, a Wifi Internet connection had been installed in both transit zones, in order to allow foreign nationals to communicate with relatives and friends outside Hungary free-of-charge, including through Voice-over-Internet-Protocol (VoIP) calls.

However, the delegation received many complaints from foreign nationals (especially at Tompa) about the weakness of the Wifi signal and consequent frequent unavailability and/or disruption of communications. In both transit zones, the management acknowledged the existence of technical problems and indicated to the delegation that appropriate steps would be taken to resolve them as soon as possible. **The CPT would like to receive confirmation this has been done.**

63. The delegation met a number of foreign nationals who were not in possession of a mobile phone. Due to the lack of fixed telephone lines for foreign nationals, the persons concerned were thus not able to make any telephone calls. **The CPT recommends that the Hungarian authorities take steps to ensure that, in both transit zones, all foreign nationals are able to make telephone calls and that those who are indigent are offered a free-of-charge telephone call upon admission to the transit zone and on a regular basis thereafter.**

64. In principle, foreign nationals could send/receive letters without any restrictions and were allowed to receive visits every day. However, given their situation, they were not usually in a position to make use of these possibilities. In consequence, access to the telephones and the Internet (if and when available) were the only real means of contact with the outside world.

65. In both transit zones, staffing levels appeared to be sufficient. In each transit zone, approximately 50 *uniformed police staff* were on duty at all times. They were deployed outside the sections, from where they could permanently visually supervise all accommodation containers and the courtyard of each section. In addition, they escorted foreign nationals during any movements outside the respective section (within and outside the transit zone).⁴¹

⁴⁰ See also para. 31 (A) of the General Comment No. 6 of the United Nations Committee on the Rights of the Child.

⁴¹ See, in this regard, also paragraph 40.

In addition, *civilian staff* (social workers) worked inside the sections. They were primarily responsible for the distribution of food and hygiene products, as well as the collection of purchase orders, and provided assistance in organising activities for children. Many foreign nationals interviewed by the delegation spoke positively about the manner in which social workers interacted with them.

6. Conditions of detention in the other establishments visited

66. Material conditions in the three holding cells (used for up to twelve hours) at the detention facility of the Csongrád County Border Police Division in Szeged (Moscow Street) remained on the whole adequate and do not call for any particular comments. Further, the CPT welcomes the fact that the ad hoc detention facilities in former garages on the premises of the police station were taken out of service after the 2015 visit. Several empty containers which had been installed in 2015 as temporary holding facilities were still present at the time of the 2017 visit but had not been used since July 2016.

67. Conditions were also adequate in the holding cell at the border post at Rösztke, which was intended for short periods of custody (up to a few hours), usually while the documents of apprehended persons were being verified. The cell was of a reasonable size (some 10 m²), had good access to natural light and artificial lighting and was equipped with three chairs and a table.

APPENDIX

**List of the national authorities, other bodies and organisations
met by CPT's delegation**

A. National authorities

Sándor Pintér	Minister of the Interior
László Felkai	State Secretary, Ministry of the Interior
Mátyás Hegyaljai	Deputy State Secretary, Ministry of the Interior
Gábor Tóthi	Head of Department, Ministry of the Interior
János Iványi	Legal Expert, Ministry of the Interior
Zsuzsanna Végh	Director General, Immigration and Asylum Office
Gabriella Pálffy	Head of Department, Immigration and Asylum Office
Tamás Tóth	Director General, National Prison Service
János Schmehl	Deputy Head, National Prison Service
Mihály Kovács	Head of Service, National Prison Service
Zsolt Halmosi	Deputy Director General, National Police Headquarters
Csaba Borsa	Head of Division, National Police Headquarters
András Szűcs	Head of Division, Office of the Prosecutor General, CPT's liaison officer

B. Other bodies

Office of Commissioner for Fundamental Rights (Ombudsman)

László Székely	Commissioner for Fundamental Rights (Ombudsman)
Miklós Garamvári	Secretary General of the Office
Gergely Fliegau	Head, OPCAT-NPM Department
Katalin Haraszti	Deputy Head, OPCAT-NPM Department
Boglárka László	Head, Department of International and Public Relations
Ms Katalin Szajbély	Deputy Head, Department of Public Law

C. International Organisations

Regional Representation for Central Europe of the United Nations High Commissioner for Refugees (UNHCR)

D. Non-governmental organisations

Hungarian Helsinki Committee (HHC)

Belgrade Centre for Human Rights (BCHR)

Humanitarian Centre for Integration and Tolerance (HCIT)

Médecins du Monde (MDM)