

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 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.

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.