

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CPT/Inf (2016) 28

## **Response**

### **of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary**

**from 21 to 27 October 2015**

The Hungarian Government has requested the publication of this response. The CPT's report on the October 2015 visit to Hungary is set out in document CPT/Inf (2016) 27.

Strasbourg, 3 November 2016

**Remarks of the Hungarian authorities to the  
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 21 to 27 October 2015**

As a general remark, the Hungarian authorities consider it important to make a distinction between asylum detention and detention of third-country nationals for immigration purposes (immigration detention) and would like to request the coherent use of the correct terminology.

Pursuant to the provisions of Act LXXX of 2007 on Asylum (hereinafter referred to as: Asylum Act) the refugee authority may order asylum detention for the purposes conducting the asylum proceedings or ensuring the Dublin transfer. The refugee authority may order asylum detention for not more than 72 hours, any extension of the detention falls within the competence of the District Court competent according to the place of detention. The **refugee authority** implements refugee detention in a facility specifically designated for the implementation of the detention, **otherwise known as a guarded asylum reception centre** (hereinafter referred to as GARC). The Békéscsaba site visited by the authors of this report is also a facility of this category.

Pursuant to Section 54 of Act II of 2007 on the Admission and Residence of Third-Country Nationals the immigration authority may order immigration detention **in order to ensure the removal**, while pursuant to Section 55 of the same Act the immigration authority may order detention in preparation of expulsion for the purposes of conducting **immigration proceedings**. In addition, the immigration authority may order detention for the purposes of removal pursuant to Section 51 of Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence. Pursuant to the Decree of the Minister of Justice and Law Enforcement No. 27/2007 (V. 31.) IRM on the rules of implementation of detention ordered in immigration procedures a detention order is implemented in **a detention facility operated by the Police**.

The statement of the report according to which in **each case detention** in the immigration procedure **is ordered by the Office of Immigration and Nationality is incorrect**. As the Police also have immigration ('aliens policing') competence, it may also order detention in an immigration procedure. The immigration detention may be ordered for 72 hours, which can be extended by the District Court, competent according to the place of detention until the implementation of the removal, but by not more than sixty days on each occasion (and not by periods of thirty days as indicated in the report). After six months the immigration detention may be further extended by not more than six months if the third-country national does not cooperate with the authorities or if the implementation of expulsion is delayed due to the proceedings of the authorities of the country of origin or the country obliged to re-admit the third-country national. In asylum and immigration procedures the period of police custody and withholding time referred to in footnote 6 is **not counted in** the first 72-hour period of the asylum or immigration detention.

In view of the above I believe that the term '*Békéscsaba guarded asylum reception centre*' should be used instead of '*Békéscsaba asylum reception centre*'.

In addition, the Hungarian authorities would like to suggest stronger distinction between the statements referring to the various facilities throughout the whole text of the report considering that **listing of findings relating the various facilities and often different in their final conclusions directly one after the other could be misleading.**

*The CPT stated in the executive summary of the report and in Points 39 and 44 that the CPT delegation gained a generally favourable impression at the Békéscsaba GARC in terms of free time activities of the detainees, yet proposed immediate measures to be applied in order to offer activities that suited the age of the children kept there. In addition the CPT remarked that only a limited number of detainees were able to take part in the free time activities. The CPT recommended developing regime activities for each detainee, including outdoor exercise for at least one hour a day.*

During asylum detention detainees kept at the GARC are provided the possibility to stay outdoors, take part in community programmes and use communal rooms from 6 a.m. to 11 p.m. The GARC offers cultural sports activities and language courses according to two-week schedules and organises activities for the detainees to have them spend their free time.

*In the executive summary the CPT expressed its concern because at the Békéscsaba GARC young children could not stay with their family members. In addition, the authorities separated the male members of a number of families too yet, according to the CPT whenever possible, children should not be separated from their parents and families should not be taken apart.*

It has to be noted that at the Békéscsaba GARC the detained families are placed in one specific residential unit in order to ensure family unity in compliance with the applicable laws and regulations. Children are not separated from their families and unaccompanied minors may not be detained. Pursuant to Section 2 j) of the Asylum Act, which is based on Article 2 j) of Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, adult family members are the parents and spouse of the applicant. Thus, pursuant to the Asylum Act individuals who are not classified as family members as they are actually more distant relatives of the applicant may be separated from the family with special consideration to the accommodation possibilities.

*The executive summary and Point 50 of the Report state that although in general the CPT obtained favourable experience in terms of the health facilities and general health services available for the detainees, they deemed psychiatric and psychological care insufficient and therefore made recommendation that adequate psychiatric and psychological care should be made available in each establishment.*

At each GARC, also including Békéscsaba psychological and psychiatric care is provided by a specialist physician employed by the Cordelia Foundation. The physicians providing primary care services at the site always report each case when special psychiatric and psychological care is required, in relation to which the aforementioned organisation will be involved or specific health care will be provided.

## Detailed remarks

1. In relation to Point 14 of the Report (page 11) it has to be noted that, according to Section 3 of the Asylum Act, the provisions of the Act have to be applied together with the Convention on the status of refugees, of 28 July 1951, the Protocol relating to the status of refugees of 31 January 1967 (hereinafter referred to as Convention) and the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

Article 31 (1) of the Convention also referred to by CPT states that refugees who enter or are present in the territory of a country without authorisation **cannot be punished** 'provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence'.

In our opinion, according to the above statement the Convention states the prohibition of imposing a penalty and not a prohibition to launch criminal proceedings. In line with the same statement, **Section 15 of Act C of 2012 on the Criminal Code** also declares the case defined in the Convention among the provisions excluding or limiting criminal culpability or the punishability for an action as another reason defined by law.

2. The Hungarian authorities do not consider the recommendation in Point 16 of the Report (page 14) justified.

According to the recommendation **“the CPT recommends that a clear message be delivered, through a formal statement from the relevant authorities, to all police officers and all armed guards working in asylum and immigration detention facilities that any form of ill-treatment of persons deprived of their liberty (including verbal abuse and other forms of disrespectful and provocative behaviour) is unacceptable and will be punished accordingly. Police officers and armed guards should also be reminded that, when carrying out an apprehension of a recalcitrant person or bringing a violent and/or agitated person under control, no more force than strictly necessary is to be used and, once the person concerned has been brought under control, there can be no justification for striking him/her.”**

Adequate treatment and right communication towards the detainees are part of the regular trainings, and therefore the staff involved in guarding the detainees are aware of those as well as the consequences of any ill-treatment. The official and armed security guard staff of the immigration detention facility have to take part in regular intercultural and psychological trainings since 2011. Pursuant to Section 11 (3) of the IRM Decree if the detainee's complaint concerns abusive, inhuman or derogatory treatment, the head of the detention facility shall forward the complaint immediately, but within a maximum of five days from the filing of the complaint, to the prosecutor overseeing the lawful operation of the detention facility.

The international and non-governmental organisations monitoring detention always consider any abusive treatment reported by foreigners facts without disputing whether the statements are factually correct or their background. During the closing meetings of the on-site visits and in their reports they make general references to abusive treatment without providing any specific information, implying that such procedures are accepted and general in immigration detention. However, it is a fact that the investigations performed relying on the analysis of the hearings and the recordings of security cameras usually lead to the conclusion that the

incident was triggered by the conduct of the third-country national and they feel the lawful, professional and proportionate coercive measures as 'ill-treatment'. Third-country nationals do not inform the non-governmental organisations of the circumstances leading the incident and their role in it, they only complain about the coercive measure or handcuffs used but do not mention that their own conduct, their passive or active resistance, led to the use of the coercive measures. Several times the alleged complainants cannot even be identified.

The management of the detention facilities may receive information about any alleged ill-treatment not only from the detainees but also from the staff of the facility and the representatives of the international and non-governmental organisations visiting the facility and following these reports/signals the management takes steps to investigate each case. In addition, since 2011 detainees have been able to use a sealed complaint box provided for them to make their complaints and any other reports for cases when, inter alia the detainees do not wish to hand over their report directly to the individuals guarding them (when they intend to report e.g., ill-treatment). The officer in charge of the detention facility or his/her deputy empty the sealed complaint boxes each day and after their contents have been studied, assesses the requests falling in his/her competence or transfers them immediately to the authority having jurisdiction and competence.

The prosecutors supervising the detention facilities regularly make announced and unannounced visits to check the lawfulness and circumstanced of the implementation of detention. Interviewing or talking to foreigners is also part of such inspections. The reports of penitentiary prosecutors do not contain statements according to which ill-treatment would be a general or usual practice at the detention facilities. However, the CPT Report does not contain any reference to this supervision activity.

With regard to the police staff Section 15 of Act XXXIV of 1994 on the Police (hereinafter referred to as Police Act) prescribes the principle of proportionality. Pursuant to that provision from a number of alternative coercive measures, the one shall be selected that causes the least restriction, injury or damage to the person affected by the measure, while ensuring effectiveness of the measure. Section 16 of the Police Act states that a police officer may use any coercive measure only in compliance with the principle of proportionality and the coercive measure may not cause any disproportionate harm to the individual subjected to the measure. The use of the coercive measure must be stopped immediately when disobedience has ceased and the police action may also be achieved effectively without it.

For the armed security guards Section 10 (2) of Act CLIX of 1997 on the Armed Security Guard Service, Nature and Field Guard Services (hereinafter referred to as Armed Security Service Act) sets similar requirement in relation to the use of coercive measures. Pursuant to the applicable provisions of the Armed Security Service Act, an armed security guard may only use coercive measures against the perpetrator in order to terminate the activity that imposes a threat to security in compliance with the principle of proportionality.

At each police detention facility during the debriefing prior to the start of each shift the commanders instruct the police staff and the armed security guards to strictly comply with the above legislative provisions, and to refrain from inhuman or degrading treatment or communication and they inform about the legal consequences to be enforced against any guard demonstrating such conduct.

The incident taking place at the Nagyfa facility on 23 October 2015 was terminated peacefully without any violence; as a result of negotiations, the detainees decided not to proceed any further.

There was no ill-treatment or violence used by the police officers present at the Szeged High and Medium Security Prison towards the detainees and the prison service is not aware of any complaint in that regard. Furthermore, the Hungarian authorities are not aware of any information, data or facts that would raise any suspicion of ill-treatment by officers of the prison service.

It should be noted that a number of cameras are installed in the building serving immigration detention purposes and on the yard of Szeged High and Medium Security Prison, which are documenting the events. Following the incident of 23 October 2015 the members of the CPT delegation had the opportunity to watch the security camera recordings taken at the site, which did not include any sign of ill-treatment. In the course of the incident the prison staff did not notice any ill-treatment by the police and the Hungarian authorities have not received any report in that regard from the detainees either.

The camera recordings on the event were handed over to the Police for the purposes of assisting the investigation.

At the same time, it needs to be stressed that prison service staff have not violated the law either, and neither did the detainees present any complaint in that regard.

Moreover, the detainees also confirm during the regular visits by the Regional Representation for Central Europe of the UNHCR, the Hungarian Helsinki Committee, the Cordelia Association and the Menedék Association that they do not have any issue about the treatment or care provided in penitentiary institutions.

Regular training and guidance is provided to the prison service staff on the subject, the executive staff regularly checks the communication/ tone and treatment applied by the staff towards the detainees.

**In view of the above, the Hungarian authorities do not consider this CPT recommendation justified as it would present a false and negative image about the Police and the prison service. In addition, there is no need for a formal statement to highlight that the Police and the police staff as well as the prison service should comply with the fundamental requirements pertaining to their activities and that any violation thereof triggers sanctions as it is absolutely obvious.**

### 3. Point 17 of the Report (page 14)

The sentence according to which special units entered the establishment in the late hours of the evening after the delegation had left suggests the use of violence or that the police units met resistance also in the yard of the building, even though after opening the gate, they lined up in the yard without using any force. Furthermore, after negotiations the barricade was removed by the detainees themselves, who gave up their previous intention.

The camera recordings showed on 23 October 2015 the prison staff and the Police forces accompanying the detainees in the yard and it is clearly visible that no force was used while the law-enforcement officers accompanied the detainees.

As rightly stated in the Report, the cameras indeed do not cover all premises but it is intentionally so in order to protect the privacy of the detainees. The areas not covered by CCTVs are typically the cells, the toilets and the communal rooms in the sectors.

The police vehicles stopped in the street, which is a not guarded area, and the detainees entered them there. Cameras are used only in the guarded area but they do not cover any public area (e.g. the area outside the fence of the facility, also used by others).

The executive officers of the facility, including the commander, were also present in the course of the whole incident. The detainees decided not to continue their infringement specifically as a result of the negotiations conducted with the commander and thus no coercive measures had to be used.

The members of the prison staff, including the executive officers, have not detected any violations by the acting police forces.

#### 4. Point 19 of the Report (page 16)

The Hungarian authorities maintain the response to the preliminary report. According to the prison records during event concerned two persons were admitted to the detention facility of Csongrád County Police Headquarters. An interpreter of the native language of the detainees was present during the admission procedure. There is always a detailed examination, which has specifically cover the search for possible visual or tactile traces of external injuries. If an injury can be detected, a medical report has to be prepared about it. A medical report may be requested by the individual subjected to the measure, the proceeding authority or the physician conducting the examination. In this particular case neither of the parties requested it moreover the physician, a certified forensic expert, has not come across any injury that should have been recorded. During the examination the physician certified, with her signature, being aware and having acknowledged the provisions Order No. 22/2010 (OT 10) ORFK of the Chief of Police on the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). According to the administrative records in respect of to the same event no medical report was requested in relation to any other potential injury either.

#### 5. Point 20 of the Report (page 16)

Every event involving the use of coercive measure has to be and is immediately followed by an investigation by the commander. In the particular case no data emerged suggesting any ill-treatment by the police. Based on the submission of the preliminary CPT findings, the officer in charge of Csongrád County Police Headquarters filed a report to the competent authority, the Central Investigative Prosecution General, Szeged Regional Department on 1 December 2015. According to the received verbal information the investigation was ordered and is currently in progress. Official and detailed information of the measures taken during the criminal proceedings and of the results can be provided by the prosecution conducting the investigation.

## 6. The recommendation in point 21 of the Report (page 17)

In point 21, the report states that **“in the CPT’s view, following a violent incident or use of force within an establishment, it is imperative for a thorough medical examination to be conducted on all detained persons involved in such events.”**

In this respect it has to be noted that prior to the admission to a detention facility, each detainee goes through a medical examination. Pursuant to Section 2 (2) of the *Decree of the Minister of Interior No. 8/2015 (III. 24.) BM on the public health requirements and public health controls pertaining to asylum detention facilities, reception centres and community shelters operated by the Office of Immigration and Nationality and to detention centres used for detention ordered in immigration procedures operated by the Police as well as on the order of cooperation with health administrative agencies*, the physician conducting the examination performs a general internal medicine examination and records the current health condition of the detainee in the medical report in writing. The medical report shall cover the technical data of operation of the vital organs of the detainee, established with measurable and physical methods, the body weight of the detainee, the description and causes (medical report) of any external injury of the detainee or the report has to record that the detainee does not show any signs of external injury. The physician shall keep the examination records among the medical documentation, which may not be scrapped. Any admitted detainee may join the community only after a preliminary medical check, with the written consent of the physician conducting the examination.

Pursuant to Section 5/A (3a) of the IRM Decree if due to the violation of the rules of the detention facility by the detainee there is a threat to physical integrity (of the detainee or other detainees or the staff), based on the opinion of the medical staff the detainee may be placed in isolation. The detainee shall be placed in the isolation room for the shortest period possible but for a maximum period of 24 hours. The detainee shall be informed immediately about the reasons for the isolation in his/her mother tongue or in a language he/she understands. During the period of isolation, the medical staff of the detention facility shall continuously monitor the detainee’s state of health. Once the issue upon which the measure was ordered has been resolved, the leading official on duty shall put the detainee back into the community after a medical examination.

If participants of any disobedience are placed in a police detention facility due to their conduct, then Section 15 (1) of the Decree No. 56/2014 (XII. 5.) BM of the Minister of Interior on the procedures in police detention facilities states that a detainee may be admitted into police detention facility only if a physician conducts a preliminary medical examination and concludes that the person is fit to be kept in the police detention facility in view of his/her medical condition. Pursuant to Paragraph (2) of the referred Section a detainee may only be admitted if during the medical examination signs of any external injury are recorded in writing together with a medical opinion concerning the circumstances of their origin or record shall state that the detainee does not show any signs of external injury.

Consequently, the provisions referred to above prescribe a compulsory medical examination and the Police implement these provisions and proceed accordingly.

7. The recommendation in point 23 of the Report (page 17)

**‘The CPT recommends that the Hungarian authorities take steps to ensure that the custody cell at the Detention Facility of the Border Police in Szeged is equipped with a means of rest and that every detained person held overnight is provided with his/her own bed with a clean mattress and clean bedding. It is imperative that the maximum number of persons held in this cell overnight is significantly reduced; the aim should be to offer at least 4 m<sup>2</sup> per person.’**

Illegal migrants cross the state borders illegally at any part of the day, in any hour of the day therefore they may be apprehended and brought to the authorities at any time during the day. The period available for the restriction of liberty begins at the time of apprehension and the competent authority has to adopt its decision during the available period. During the period of bringing individuals to the authorities and their retention primarily the prescribed procedural actions have to be taken; resting of foreigners is permitted only when it does not impede the procedural actions. In the light of the afore-mentioned, the administration cannot be broken down to parts of the day. During the period of appearing in front of the authorities and retention apprehended illegal migrants may have a shower only in order to treat any infection (e.g., scabies).

The Police regularly explore the possibilities of providing the most humane approach during the unprecedented illegal migration pressure and implemented a number of measures in this respect. In order to ensure that the individuals brought to the authorities spend the shortest possible time in the facilities serving this purpose (i.e. of bringing the foreigners to the authorities) and to accelerate the administration time, the Police transferred significant number of officers, technical equipment and vehicles from other police units, less involved in migration management and transferred foreigners elsewhere in the country for processing their cases.

There is no police detention facility at the Border Police Branch in Szeged, measures to increase the reception capacity included the conversion of premises previously used for other functions, renting of containers and setting up tents. Each migrant received a clean blanket and mattress after admission. The Police did not have any facility that could have provided adequate accommodation for the daily arrival of hundreds, often more than 1,000 foreigners brought to the authorities. As the reception capacity of the Border Police Branch in Szeged, most strongly involved in migration management is limited, the Police examined the options of creating a high capacity collection point in the vicinity of Szeged serving the immediate collection, accommodation, care and planned and organised subsequent transfer of the apprehended third-country national. This collection point functioned in Rösztke, in a building rented by the Police from 9 February 2015, where hundreds of beds were available for illegal migrants to have a rest.

To the extent permitted by the number of individuals brought to the authorities simultaneously, families are kept in one room. If it is not possible due to the high number of third-country nationals brought to the authorities, children are temporarily placed with at least one person responsible for their custody, i.e., when the mother is present, with their mother, for the period of the procedure. The administration of the members of the family are still conducted jointly and families are brought to the asylum or immigration authorities or are transported further together, as a unit. The Police pay special attention to maintaining family unity and to the treatment of families and assisted the police officers in their actions by issuing guidelines.

In the light of the above, the **Hungarian authorities do not consider this recommendation justified.**

8. Point 24 of the Report (page 17)

**‘The CPT reiterates its recommendation that the Hungarian authorities take steps to ensure that all detained persons held for 24 hours or more in police custody are offered daily outdoor exercise.’**

The **purpose of bringing the foreigners to the authorities is to adopt a decision on the foreigners’ case as soon as possible**, which process naturally takes place by respecting family unity and human needs.

It is true that there is no external yard at the Border Police Branch in Szeged specifically established for outdoor exercises for the detainees (there is no legal obligation to establish such external yard anyway) but the natural ventilation in each part of the building used for bringing foreigners to the authorities is ensured and there is a room where the full front wall may be opened up completely. Bringing foreigners to the authorities is a measure that entails a short-term restriction of liberty, in the course of which at the Border Police Branch in Szeged the administration takes place in other rooms of the facility, designated specifically for each stage of the administration activities and not in the premises created for guarding the foreigners. The foreigners can access these other rooms being accompanied through the yard, i.e., they do not need to spend the time of the restriction of their liberty in one room, without any physical exercise or being in the open air.

The police detention facility operated in the building of the Szeged Municipal Police includes an exercise yard specifically designated for the individuals admitted there to be used for outdoor exercises and other open-air activities. Outdoor exercises are available for all individuals kept in the police detention facility.

**At least one hour of outdoor exercise is available** in each immigration detention facility. According to the legislation in force detainees have the right to outdoor exercises for at least an hour each day. That requirement can be met differently depending on the building specificities of the detention facilities situated in different locations and the compliance with the rules of separation. Where possible, the detainees can decide when they wish to take that option as at some places they may constantly be in open air whilst complying with the daily regime. In other facilities where outdoor exercises can only be provided to detainees kept in different sectors only according to a specific schedule or which have access to an outdoor

facility only when accompanied by a guard, the outdoor exercises for at least one hour are also guaranteed. It must be stressed that outdoor exercise is the right but not the obligation of the detainees and therefore it cannot be enforced. Each detainee can decide whether or not they require outdoor exercises. The competent prosecutor regularly monitors that the rights of the detainees, which also include outdoor exercises, are respected.

In view of the above **Hungarian authorities do not consider the recommendation concerned as justified.**

9. Point 25 of the Report (page 17)

At the time of the visit of the CPT, there were no seats or benches suitable for resting in the waiting rooms at the building of the Szeged Municipal Police at Kálvária avenue. Following the visit, the Csongrád County Police Headquarters provided seats and benches in the waiting rooms as specified in Chapter VII of the ORFK Order No. 14/2015 (VII. 21) on the Rules pertaining to Building Police Detention Facilities.

10. The recommendation in point 31 of the Report (page 19)

**‘The CPT recommends that the detention rooms in the former garages at the Detention Facility of the Border Police in Szeged are no longer used for overnight accommodation of families with children and/or unaccompanied minors; and, in respect of any detainee, for no longer than 36 hours.**

Further, **the Committee recommends that the Hungarian authorities ensure that in the ad hoc detention facilities at the Detention Facility of the Border Police in Szeged and, where appropriate, in other law enforcement establishments:**

- **detention rooms are properly heated/ventilated and equipped with a means of rest;**
- **an adequate amount of living space is provided to detained persons held overnight;**
- **detained persons have access to adequate washing facilities.’**

The Csongrád County Police Headquarters was striving not to place families and unaccompanied minors in the former garages whenever it was possible taking into account the number of the apprehended migrants and not to use the former garages for any stay longer than 36 hours as well as to reduce the administration period of the individuals kept there. For security reasons outdoor exercises and adequate hygiene facilities cannot be provided for the foreigners brought to the authorities in the yard of Border Police Branch in Szeged. Third-country nationals have access to these services once they have been transferred to police detention facilities, immigration detention facilities, reception centres or asylum detention facilities.

Each room at the Border Police Branch in Szeged is heated and also has natural or artificial ventilation. At present the premises are equipped with the required quantity of toilets, mobile toilets and hand wash facilities. If large numbers of illegal migrants arrive again, the Police will provide adequate hygiene facilities, further mobile toilets and hand wash facilities for them.

See also the remarks for the recommendations in Points 23 and 24.

11. Point 32 of the Report (page 19)

**‘The CPT wishes to stress that, as a matter of principle, women held in police custody should always be accommodated separately from unrelated male detained persons.’**

The Hungarian authorities would like to underline that for the whole period while foreigners are brought to the authorities, men must be separated from women, the only exception under this obligation is for the purposes of maintaining family unity. Once the apprehended foreigners are brought to the authorities, the Police ask each individual, in the language indicated by them as a language they understand, with the help of an interpreter, to provide their personal data as well as information on their family members, apprehended at the same time with them. However, the reception capacity of the police facilities serving this purpose is limited, and therefore situations may occur when families are not provided with accommodation in a separate room. To the extent the number of individuals brought to the authorities simultaneously permits, families are kept in one room. If it is not possible due to the high number of foreigners brought to the authorities, and several families must be accommodated at the same time, then men are placed in rooms used by men and children are temporarily placed with at least one person responsible for their supervision, i.e., when the mother is present, with their mother, for the period of the procedure (with reference to respecting the family unity this practice was previously criticized by the Hungarian Helsinki Committee, interviewed by the CPT). The administration of the cases of the family are still conducted on jointly and families are transported the asylum or immigration authorities together, as a unit. The Police pay special attention to maintaining family unity and to the treatment of families and assisted the police officers in their actions by issuing guidelines.

In light of the above **the Hungarian authorities do not agree with the recommendation.**

12. Point 33 of the Report (page 20)

**‘Material conditions ... were on the whole acceptable at the *Unit Kárpát 2 (family unit)* and the *Unit at Mártírok street of Kiskunhalas Guarded Shelter* ... rooms usually offered sufficient living space.’**

During the creation of each premise of the detention facility the provisions of the building regulations in force were observed. Consequently, more than 5 m<sup>2</sup> room and 15 m<sup>3</sup> airspace is available per detainee.

**‘The CPT recommends that material conditions at Békéscsaba Asylum Reception Centre, as well as in Unit Kárpát 2 and the Unit at Mártírok street of Kiskunhalas Guarded Shelter, be improved in the light of the above remarks. In particular, steps should be taken to ensure that:**

- all accommodation areas, including sanitary facilities, are kept in an adequate state of repair and hygiene and are properly heated/ventilated;**
- privacy is ensured when detained persons use showers;**
- all detention rooms are suitably equipped, including with benches/chairs, tables and shelves/cupboards.’**

The Police is continuously refurbishing the detention facilities by using the available financial resources. The Mártírok útja building of the Kiskunhalas immigration detention facility and the immigration detention facility of the Airport Police Directorate were refurbished in the previous years. It was followed by the refurbishment of the Nyírbátor immigration detention facility with a view to providing more humane detention conditions. The building designated to accommodate persons with special needs was completed in one of the wings of the Kiskunhalas, Kárpát utca facility by 30 June 2014. The refurbished facility in Fazekas utca was opened on 20 July 2015 and the detention facility in Győr was fully refurbished by 1 October 2015.

The minimum room and air space required by legislation per each detainee are provided at the detention facilities managed by the Police; all premises are sufficiently equipped, each detainee has a bed, table, chair and furniture for storing their personal belongings.

Any breakdown/failure resulting from the everyday use of the living area is repaired regularly at the detention facilities. The repairs under guarantee including the sanitary blocks of the family units were completed at the facility II at Kiskunhalas, Kárpát utca, at the Fazekas utca facility in April 2016.

### 13. Point 34 of the Report (page 20)

Apart from the floor area also indicated in the Report, providing bunk beds ensures adequate space. The cells include a table and cupboards for each detainee as well as mattresses of standard thickness, as provided in other penitentiary institutions. Adequate temperature (approximately 21-23C) is ensured in the rooms used by the detainees, but in a number of rooms the detainees themselves broke the glass of the windows and that led to the decrease of temperature. As the detainees themselves damaged the heating pipes in the accommodation premises, the heating had to be switched off for the period of the repair. The damage was repaired already during the night, the heating was switched back on moreover, the detainees accommodated there were transferred elsewhere for the time of repair. Contrary to the Report not two wings but two dormitories and their front rooms of the sector indicated above were damaged as a result of the vandalism. It may be concluded that the accommodation problems indicated by CPT were the result of the unlawful conduct of the detainees.

14. The recommendation in point 36 of the Report (page 20)

**‘In case Nagyfa Prison Unit and the Unit Kárpát 1 of Kiskunhalas Guarded Shelter continue to be used in the future as detention facilities, the CPT recommends that the Hungarian authorities carry out a complete overhaul of the detention conditions in both establishments, in the light of the remarks made in the preceding paragraphs.’**

Foreigners may be placed in the detention facility at Kárpát utca 1 only when necessary due to the high number immigration detention orders and therefore the facility is vacated as soon as there are free spaces available in other facilities. The crisis caused by mass migration made accommodation in this facility unavoidable, but after 24 October 2015 no detainees were kept there.

In terms of the Nagyfa facility it may be concluded that the accommodation problems indicated by CPT were the result of the unlawful conduct of the detainees. The cost of reconstruction of the damage caused by the detainees exceeded HUF 500,000. In order to provide humane conditions, the damages resulting from vandalism were repaired immediately.

15. Recommendation in point 37 of the Report (page 20)

**‘The CPT recommends that a supply of drinking water of adequate quality be ensured at Unit Kárpát 1.’**

The Hungarian authorities wish to underline that similarly to the other facilities of the town used by the residents, the buildings of the detention facility are supplied with drinking water from the water network of the town, which is regularly controlled by the National Public Health and Medical Officer’s Service. The cleanliness and quality certificate of Hungarian drinking water prescribes one of the strictest requirements in the European Union and its quality complies with the general European requirements. There is a sanitary block in each detention sector, the detainees can use drinking water from the taps available in the sanitary blocks any time during the day.

The health administration unit of the Police has not received any complaint about the drinking water supply of the detention facility.

For this reason, **the Hungarian authorities do not accept this recommendation.**

16. In relation to Point 39 of the Report (page 21) it is important to stress that at Békéscsaba GARC all detainees have access to leisure time activities, with the only limit being the number of the available equipment.

17. Point 40 of the Report (page 21)

*‘At Units Kárpát 1 and Mártírok street of Kiskunhalas Guarded Shelter, as well as at the Nagyfa Prison Unit ... hardly any sports or other recreational activities were offered, nor were detainees provided with board games or reading material.’*

At the immigration detention facility detainees have access to the Internet and can watch TV. The Unit II in Kárpát utca as well as the facility on Mártírok útja both have a TV set. Activities for the detainees – with a special view to the needs of the minors accommodated in the facility – are organised regularly with the help of Menedék – Migránsokat Segítő Egyesület (Refuge - Migrant Assistance Association) (hereinafter: Menedék Association) since 8 February 2016.

18. Point 41 of the Report (page 21)

As a general experience it should be noted that the detainees do not respect their environment as they deliberately vandalise their furniture as well as other equipment serving meaningful activities. The management of Szeged High and Medium Security Prison informed the members of the CPT delegation about that at their meeting held in Nagyfa on 23 October 2015 and simultaneously presented photos recording such damages.

The equipment provided for leisure activities (balls, table football) had been regularly replaced at the institution prior to the visit but as the last vandalism occurred on 22 and 23 October the replacement happened to be in the progress of being purchased. Considering that 23 October is a national holiday in Hungary, for objective reasons it was impossible to purchase the items as quickly as it would have been possible on working days. The equipment was replaced immediately after the public holiday.

19. Recommendations in points 42 (page 21) and 73 (page 31) of the Report

**‘The Committee recommends that the Hungarian authorities develop regime activities for foreign nationals in all immigration and asylum detention centres, including outdoor exercise for at least one hour (and preferably considerably more<sup>23</sup>) per day, access to television and other appropriate means of recreation (e.g. board games, table tennis, sports, etc.), as well as access to reading material in the most frequently spoken foreign languages. The longer the period for which foreign nationals are detained, the more varied the activities which are offered to them should be.’**

**‘The CPT recommends that steps be taken to ensure the regular presence of social workers in each unit of the Kiskunhalas Guarded Shelter and, where appropriate, in other asylum/immigration detention centres.’**

In the framework of projects implemented in partnership with Menedék Association and co-financed from the European Return Fund (RF), between 2011 and 30 June 2015 social and community workers assisted the authorities at the detention facilities in providing information to detained third-country nationals and helping them spending their leisure time with useful activities. The Police was regularly reviewing the opportunities of employing assistance for the temporary period until the projects will be eligible for co-financing from the Asylum, Migration and Integration Fund (hereinafter referred to as AMIF) that replaced the RF as a result of which staff of the Menedék Association began its activities at penitentiary institution

designated for implementing immigration detention in December 2015 and January 2016 and at the immigration detention facility in Nyírbátor on 12 January 2016. At present, this activity is performed continuously at the detention facilities operated by the Police and the recreation programmes and foreign language books referred to in the recommendation are available for all detainees.

During the period in the past vandalism occurred regularly at the Nagyfa facility therefore the penitentiary institution had to purchase new sports items and other equipment on ten occasions. The most preferred sports activity of the detainees is football they can play it regularly according to an established schedule.

In light of the above, the Hungarian authorities are of the view that they are already implementing the recommendation.

20. Point 43 of the Report (page 22)

The CPT report states that ‘... the outdoor exercise yard at Mártírok street had neither a shelter against inclement weather nor a means of rest’.

It has to be noted that in addition to provide one hour of outdoor exercises a day for each detainee, the rules of immigration detention do not stipulate any further special requirement.

21. Point 44 of the Report (page 23)

**‘The CPT recommends that the Hungarian authorities ensure that these precepts are effectively implemented in practice. More particularly, immediate steps should be taken at Békéscsaba Asylum Reception Centre and Unit Kárpát 2 of the Kiskunhalas Guarded Shelter to provide young children with appropriate care and activities suitable for their age.’**

As explained above, the Police pay outstanding attention to protecting family unity and in each immigration procedure conducted by the Police families are accommodated in the same place. At the Unit II in Kárpát utca, Kiskunhalas the social and community workers organise programmes appropriate to the age of the children accommodated there. All children are cared for according to their age and are supplied five meals a day appropriate to their age. Other items indispensable to satisfy the needs of children are also available there.

The Unit II in Kárpát utca, Kiskunhalas was refurbished and transformed into a building meeting the needs of detainees belonging to vulnerable groups. The building section was refurbished and converted within the framework of a project co-funded by the European Return Fund. This building section was designed with the main objective of making sure that vulnerable detainees meet as few guards as possible, yet the guards should be able to monitor everything that is happening in the parts used by the detainees and intervene only when and where necessary.

The part of the building designed for vulnerable detainees provides accommodation inter alia for families (parents and their children).

In this context the word ‘in principle’ inserted into the sentence concerning the detention of children with families suggests that despite the legislation in force in practice families with minor children could be detained for more than 30 days. The (asylum or immigration) detention is implemented in each case in compliance with the legislation and when the conditions for ordering detention no longer prevail, detention is terminated immediately.

*Moreover, concerning Békéscsaba GARC it has to be highlighted that Decree No. 29/2013 (VI. 28.) BM of the Minister of Interior on the Implementation Rules of Asylum Detention and Asylum Bail prescribes that each GARC has to employ a social worker who is public servant with a teacher (child pedagogue) qualification. The Békéscsaba GARC meets that requirement, moreover under the control of their coordinator the social workers have developed a technical material intended for internal use that provides adequate quality educational and training assistance for children of kindergarten age. At the Békéscsaba GARC an learning corner was created for the children and another room has been allocated which can be used for educating and training children of kindergarten age. In line with Section 18 of Decree No. 29/2013. (VI. 28) BM of the Minister of Interior, GARCs accommodating school-age children always contacted and are contacting the public education institution designated by Klebelsberg Institution Maintenance Centre by providing the data of school-age children simultaneously. In the case of children falling under the scope of the Act on Public Education these educational tasks could be performed only by the designated institution.*

## 22. Point 48 of the Report (page 24)

In the report, the CPT noted ‘further, personal medical files had been opened for every foreign national. That said, the records of medical consultations were often rather cursory, lacking details, in particular when it came to the recording of injuries. Moreover, it remained somewhat unclear to the delegation to what extent allegations of ill-treatment and related injuries were reported to the management and relevant authorities.’

In the course of medical examinations (during admission/ for other reasons) the findings of the examination and other information provided by the detainee (former diseases, injuries, operations, etc.) are recorded in the presence of physician. On the basis of that information the physician decides on the subsequent measures (hospital/special examinations, isolation or inclusion of the individual to the community of detainees). Naturally, subject to the request of the detainee, their special (sensitive) data are provided to their legal representative.

During the period of detention each detainee has a several possibilities to make objections and complaints about any assumed ill-treatment to the health staff or physicians conducting the examination during the admission procedure; by using the complaint box for detainees, by using public phones; via the Internet and, last but not least, by requesting a personal consultation during the regular monitoring visits by the prosecutor. The statement in the CPT report that ‘**it remained somewhat unclear to the delegation to what extent allegations of ill-treatment and related injuries were reported to the management and relevant authorities**’ suggested a negative opinion and implied that the Police or the Office of Immigration and Nationality do not do everything they can in order to ensure the enforcement of the rights of the detainees. The Hungarian authorities strongly reject such implications.

**‘The CPT recommends that the authorities take the necessary measures to ensure that, in all immigration and asylum detention centres in Hungary the record drawn up after a medical examination of a foreign national (whether newly-arrived or not) contains: i) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries), ii) a full account of statements made by the person concerned which are relevant to the medical examination (including a description of his/her state of health and any allegations of ill-treatment), and iii) the doctor’s observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings. In addition, the results of every examination, including the above-mentioned statements and the doctor’s observations, should be made available to the foreign national and his/her lawyer.**

**Moreover, the authorities should ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the foreign national concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned.’**

Prior to admission to a detention facility, each detainee goes through a medical examination. Pursuant to Section 2 (2) of the *Decree No 8/2015. (III. 24.) BM of the Minister of Interior on public health requirements and public health controls pertaining to asylum detention facilities, reception centres and community shelters operated by the Office of Immigration and Nationality and to detention facilities used for detention ordered in immigration procedures operated by the Police as well as on the order of cooperation with health administrative agencies* the physician conducting the examination performs a general internal medicine examination and records the current health condition of the detainee in the medical report in writing. The medical report shall cover the technical data of operation of the vital organs of the detainee, established with measurable and physical methods, the body weight of the detainee, the description and causes (medical report) of any external injury of the detainee or the report has to record that the detainee does not show any signs of external injury. The physician shall keep the examination records among the medical documentation, which may not be scrapped. Any admitted detainee may join the community only after a preliminary medical check, with the written consent of the physician conducting the examination.

Pursuant to Section 5/A (3a) of the IRM Decree if due to the violation of the rules of the detention facility by the detainee there is a threat to physical integrity (of the detainee or other detainees or the staff), based on the opinion of the medical staff the detainee may be placed in isolation. The detainee shall be placed in the isolation room for the shortest period possible but for a maximum period of 24 hours. The detainee shall be informed immediately about the reasons for the isolation in his/her mother tongue or in a language he/she understands. During the period of isolation, the medical staff of the detention facility shall continuously monitor the detainee’s state of health. Once the issue upon which the measure was ordered has been resolved, the leading official on duty shall put the detainee back into the community after a medical examination.

Under Section 3, paragraphs (10)-(11) if marks of physical injury can be found on the detainee’s body, this fact shall be recorded by the head of the detention facility in the form of a protocol and shall allow the detainee to make a statement on the reasons for the injury and the circumstances in which it was caused.

The statement, and also any refusal to make a statement, shall be recorded by the head of the detention facility in writing in the form of a protocol. The medical findings and the minutes shall be sent to the prosecutor supervising the lawfulness of the detention facility. Each detainee placed in the Nagyfa facility goes through a medical examination immediately at the time of their admission where an interpreter is also available. This information was provided during the visit to one of the members of the Committee by the physician of the facility in detail. The physicians have not come across any injury of the detainees therefore there was no need to apply the aforementioned legal provisions in the detention facility.

The rules of the medical examination to be conducted at the time of admission to a GARC are defined in the Decree No. 8/2015 (III. 24) BM of the Minister of Interior *on public health requirements and public health controls pertaining to asylum detention facilities, reception centres and community shelters operated by the Office of Immigration and Nationality and to detention facilities used for detention ordered in immigration procedures operated by the Police as well as on the order of cooperation with health administrative agencies*. The examination during admission includes to writing a medical report describing marks of external injury but the report the report has to record that the detainee does not show any signs of external injury. The medical report has to be filed in the medical documentation and may not be scrapped.

Pursuant to Sections 13 and 14 of Decree No 29/2013 (VI. 28.) BM of the Minister of Interior if the complaint of the applicant for asylum refers to physical ill-treatment or inhumane or degrading treatment suffered at GARC, the head of the GARC shall transfer the complaint to the prosecutor monitoring the lawful operation of the GARC immediately but not later than within five days from the submission of the complaint. The same also applies in cases when marks of injuries can be found on the detainees. The prosecutor monitoring the lawful operation of the checks the facility at least once in every month by several unannounced visits as well. During those inspections the prosecutor constantly monitors the care provided to detainees and interviews the foreigners detained about the care and treatment by the staff of the detention facility. During and following these interviews the prosecutor has not come across any information suggesting incorrect application of the law.

### 23. Point 49 of the Report (page 25)

According to Point 49 of the Report *'it remained somewhat unclear to what extent interpretation was provided during medical consultations at Békéscsaba. The CPT would like to receive further clarification on this matter.'*

At the Békéscsaba facility all contracted internal medicine physicians speak English. In the case of other languages, such as Arabic, Serbian, French, German, Russian, social workers provide interpretation or communication is ensured with the detainees through cross interpretation, while respecting the right to privacy during the consultation (the interpreter stands behind a curtain or a screen). In addition, a remote interpretation network with several end-points in the country is also available in the GARC if an interpreter of the required language is not available in person.

24. Recommendation in point 50 of the Report (page 25)

**‘The CPT recommends that the Hungarian authorities take the necessary measures to ensure in all immigration and asylum detention centres the regular presence of a psychologist as well as the provision of psychiatric care and support for immigration detainees, when necessary. Psychologists should work closely with health-care staff.’**

Psychologist care of the detainees in immigration detention facilities falls within the responsibilities of the psychologists employed by the Police. In addition, within the framework of projects implemented in partnership with the Menedék Association for several years, psychologists and psychiatrists can be involved to providing care to the foreigners in need of it. Furthermore, with the help of experts the staff of the Cordelia Foundation also provides regular therapy in detention facilities and in penitentiary institutions where immigration detention is implemented. If necessary, psychiatric care in hospitals is also available for the detainees.

The psychologist of the Nagyfa facility as well as the psychiatrist of the chronic follow-up unit have always been and are available for the detainees nevertheless, despite receiving informed about this possibility, detainees have not signalled any request for consultation or treatment.

As stated above, in each GARC, including Békéscsaba psychological and psychiatric care is provided by a specialist physician (psychiatrist) employed by the Cordelia Foundation. The physicians providing primary care services at the site always report each case when special psychiatric and psychological care is required, in relation to which the aforementioned organisation will be involved or specific health care will be provided.

25. The recommendation in point 52 of the Report (page 25)

**‘The CPT recommends that the Hungarian authorities take the necessary measures to ensure that, in all immigration and asylum detention centres, medical examinations are always conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial staff.’**

Pursuant to Section 23 (1) of the IRM Decree guarding the detainees during the examinations or treatments at the outpatient care shall be the responsibility of the detention facility.

Considering that the detainees come from a culture different from the European culture where everyday contact especially between men and women is different and could become the source of conflicts, the presence of custodial staff is required during the medical consultations in order to protect the health staff (whose members are mainly female and requested the presence of the custodial staff). This supervision does not hinder the examinations, and is never conducted in an indecent manner furthermore specific attention is paid to the protection of (sensitive) health data during the examination.

The presence of members of the custodial staff in the medical consultations held during the detention is following a security risk analysis or upon the specific request of the medical staff. In all other cases custodial staff is not present during the consultations but they are available nearby so that they could easily intervene if necessary.

**In the light of the above the Hungarian authorities cannot accept this recommendation.**

26. Points 57-60 and 62-63 of the Report (pages 28-30)

**‘The CPT recommends that the Hungarian authorities take the necessary steps to ensure that all foreign nationals detained by the police, for whatever reason, have an effective right, as from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with the police), to inform a person of their choice of their situation and to have access to a lawyer (including through the provision of free legal aid for foreign nationals who cannot afford to pay for a lawyer) and a medical doctor.’**

**‘The CPT recommends that the Hungarian authorities take the necessary steps to ensure that in all law enforcement establishments, foreign nationals are expressly informed, without delay and in a language they understand, of all their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with (and allowed to keep a copy of) the above-mentioned documents setting out this information. The persons concerned should attest that they have been informed of their rights, in a language they can understand.’**

**‘The CPT recommends that the Hungarian authorities take the necessary steps to ensure that foreign nationals deprived of their liberty by the police are not obliged to sign documents they do not understand and that they receive a written translation in a language they understand of the conclusions of formal decisions that concern them, including information on the modalities and deadlines to appeal against such decisions.’**

**‘The CPT recommends that the Hungarian authorities ensure that unaccompanied foreign nationals who are minors and who are deprived of their liberty for whatever reason are immediately provided with free legal aid. Further, persons who claim to be juveniles should be treated as such until proven otherwise, unless the claim is manifestly unfounded.’**

**‘The recommendation made in paragraph 58 is equally applicable to foreign nationals held in immigration/asylum detention facilities. Further, immigration/asylum detainees should not be obliged to sign documents they do not understand.’**

**‘The CPT recommends that the Hungarian authorities take the necessary steps to ensure that clear information about access to legal assistance is made available to all immigration/asylum detainees and that they are fully informed of their situation and the stage of the proceedings in their case.’**

Following the apprehension of the illegal migrants, the immigration procedure (hearing, medical examination, announcement of the detention order) is conducted in the presence of an interpreter. At the beginning of the procedure information is provided to the foreigner about his/her rights and obligations with the help of an interpreter and which is verified in writing signed by both the foreigner and the interpreter. Although there is no legal requirement for it, the information on the rights and obligations is available in Albanian, Arabic, Croatian, English, French, German, Italian, Pashtu, Persian (Farsi), Romanian, Russian, Serbian, Turkish and Ukrainian languages. At the detention facilities information is provided on the daily schedule, house rules and the rights and obligations of illegal migrants during the admission procedure. This information is also available on the computers accessible by the

detainees, together with the contact details of international and non-governmental organisations active in Hungary. The computers available for the detainees have Internet access in order to ensure contacts with the external world free of charge and each detention facility is equipped with phones installed in the residential area which can be used 24 hours a day. Adequate information is also ensured by the provision of consultation time with the immigration authorities at the detention facilities and regular visits by international and non-governmental organisations which are permitted to maintain uncontrolled contact with the detainees but subject to security supervision by the authorities implementing the detention. Pursuant to the Memorandum of Understanding between the Police and the Hungarian Helsinki Committee, representatives of the Hungarian Helsinki Committee have been providing legal aid to detainees regularly since 2002. Moreover social workers working at detention facilities are also contribute to providing information to the foreigners. In addition, information is also provided by pictograms displayed at the detention facilities.

Against the expulsion decision The foreigner may request the judicial review of the expulsion decision within 8 days of the receipt of the decision. When requesting a judicial review the foreigner may request for free legal aid, the request should be submitted on a specific form. Similarly, legal representation in the court procedure relating to the extension of the immigration detention is also free of charge, the free legal representation is ensured by the court when there is no legal representative appointed by the foreigner.

According to the legislation in force there is no requirement to present the decisions adopted in immigration procedure to foreigner concerned in a language spoken by them, nevertheless, each decision is announced with the help of an interpreter. This fact is recorder in writing with the signatures of the illegal migrant, the interpreter and the representative of the authority. Information on the legal remedy is included in the operative part of the decision and in the information sheet handed over to the foreigner. The immigration authority does not oblige the foreigner to sign the decision, if he/she is refusing to sign the decision, this fact is recorded on the document in the presence of administrative witnesses.

Unaccompanied minors are assigned a guardian at the time of launching the immigration procedure. If assessed age period could be 18 or over according to the expert opinion of the physician (e.g., according to the medical report the foreigner is between 17 and 20) the authority decides for the benefit of the foreigner and proceeds according to the rules pertaining to minors.

Providing information to foreigners subject to immigration proceedings constitutes a major challenge for the authorities. Illegal migrants have only one objective, i.e. to reach the country of destination as soon as possible. That is why, they ignore any information received through various channels: from the authorities, non-governmental organisations, written information displayed on the wall of the facilities or accessible on computer, and try to claim that they do not have any information about the procedure or their situation and their future.

The criticism expressed in the report concerning the Nagyfa facility is not unjustified. During the admission to the facility the detainees were provided information in groups about their rights and obligations as well as on the daily and weekly schedule and the services provided with the help of an interpreter.

In addition, during the registration procedure each foreigner was admitted separately and they verified with their signature the receipt of the necessary information in written form in the presence and with the help of an interpreter.

As regards asylum detention, admission to GARC facilities takes place pursuant to the Section 5 (1) of Decree No 29/2013 (VI. 28) BM of the Minister of Interior. During the admission procedure the detainees are informed about the daily regime of the GARC, their rights and obligations, on the possibilities of the authorities to apply coercive measure against them and on their right to legal remedy in their native language or in another language that they understand, usually English. The receipt of the written information and of the oral information is verified with the signature (or, in case of an illiterate foreigner, with the initials) of the detainee. During the admission procedure detainees are provided with a copy of the written information in a foreign language they understand from the social worker, the information is also displayed at the Békéscsaba GARC facility and, as the report also mentions it even in the communal rooms of the facility. The prosecution referred to above monitors the provision and availability of the information and it found the applied practice in conformity with the law. Taking into account that pursuant to Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, the official language of administrative proceedings in Hungary is Hungarian, the written information provided to the detainee is recorded in Hungarian in the files.

#### 27. Point 64 of the Report (page 30)

The Hungarian authorities would like to underline that before ordering to the expulsion of third-country nationals illegally staying in Hungary, the Police always requests the Office of Immigration and Nationality to establish the applicability of the principle of non-refoulement and adopts the expulsion decision only when the risk of refoulement does not prevail.

#### 28. Point 69 of the Report (pages 32-33)

In Point 69 of the Report the CPT expresses criticism concerning ‘the expediency of border asylum procedures, the lack of automatic suspensive effect of appeals against administrative decisions rejecting asylum applications as inadmissible, the absence of an obligation to hear the person by court and the impossibility to present new facts as evidence before the court’.

In relation to the expediency of the asylum proceedings conducted on the border and in connection with Point 69 the Hungarian authorities would like to stressed that *Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection* states that the procedure must be conducted within a ‘reasonable time’, the eight-day deadline was introduced with a view to this provision. If it can be unequivocally established that any of the reasons of inadmissibility defined in the exhaustive list prevails, the authority shall adopt a decision within that deadline.

In relation to the lack of automatic suspensive effect of appeals against administrative decisions rejecting asylum applications it needs to be highlighted that in such cases the asylum applicant may request the suspension of execution of the decision in the application for a judicial review against the decision rejecting the application. According to the experience of the Hungarian authorities the court granted such requests in all cases. If the execution of the administrative decision is suspended, the expulsion cannot be implemented the decision becomes final (non-appealable).

Concerning the absence of an obligation to hear the person by court the Hungarian authorities would like to note that the asylum applicant may request to be heard in court and, the Asylum Act also allows the court where necessary to organise the hearing even in the absence a specific request of the asylum seeker. In such cases the consideration of the need for a hearing falls within the discretion of the judge.

In relation to the impossibility to present new facts and evidence before the court the Hungarian authorities wish to underline that in an administrative procedure the asylum applicant is obliged to cooperate with the asylum authority and shall provide all facts, data and evidence to the authority as it is indispensable in order to adopt a duly substantiated decision.

In the second paragraph of Point 69 of the Report the CPT criticised the practice in relation to Serbia as a safe third country. In this context the Hungarian authorities consider important to stress that in several cases the four weeks following the lodging of the application has passed after the annulment of the decision of the asylum authority on the expulsion to Serbia and the launch of new proceedings therefore the authorities permitted the applicants to enter the territory of Hungary and the asylum proceedings were conducted according to the general rules.

In the third paragraph of Point 69 the CPT referred to the opinion No. 2/2012 (XII. 10.) of the Administrative and Labour Department of the Curia of Hungary according to which in the judicial review of administrative decisions regarding the application of the safe third country concept, courts should always take into consideration the country information provided by UNHCR. Pursuant to opinion No. 1/2016 (III. 21.) of the Administrative and Labour Department of the Curia of Hungary the Curia decided not to apply the opinion No. 2/2012 (XII. 10.) *on certain issues of the application of the safe third country concept* in the future considering that the EU law in force and its amendments defining the framework of national legislation of the member states provided the possibility form member states to establish a national list of safe third countries and overturn the burden of proof in the asylum proceedings.

28. Point 70 of the Report (page 33)

**‘The CPT welcomes these initiatives and encourages the Hungarian authorities to introduce such a system also in other immigration/asylum detention centres in the country. Further, the Committee invites the Hungarian authorities to offer at least one free telephone call per month to indigent immigration/asylum detainees and the first of these should be immediately or shortly after arrival at the detention centre. Moreover, it invites the Hungarian authorities to allow detainees at least to have regular access to their mobile phones.’**

The Police and the Office of Immigration and Nationality provide detainees with Internet free of charge even if they are not obliged to do so by the law. Although detainees may not use their mobile phones to make calls, they can extract data from them.

Since 15 October 2015 four work stations with an Internet connection have been established at the Nagyfa facility the detainees are using them continuously from the very start. With the help of the Internet the detainees can use Voice over Internet Protocol (VoIP) programmes (Skype) to talk to their relatives free of charge. All necessary conditions for the use of the application are in place, thus free phone calls referred to in the report are available. In addition, the penitentiary institution implementing the immigration detention earlier offered the opportunity to the detainees to use their own mobile phones but the detainees did not do so given the high charges they would have to pay while using the foreign SIM cards of their phones.

29. Recommendation in point 71 of the Report (page 34)

**‘The Committee recommends that the visiting facilities at the Unit at Mártírok street of Kiskunhalas Guarded Shelter and, where appropriate, in other immigration/asylum detention centres in Hungary, be modified accordingly.’**

The specificities of the buildings serving detention purposes make it impossible to receive visitors in an open system in the majority of the immigration detention facilities. When establishing new or refurbishing existing detention facilities in the future, the Police will take into account this need already at design phase.

30. Point 72 of the Report (page 34)

In order to prevent any (including religious) conflict arising from the migration pressure, the Hungarian Prison Service Headquarters issued and provided the staff with a circular about the Islam religion and Islamic manners/habits. In addition, the management of the facility organised regular consultations with Islamic religious leaders which also led to actual measures when required. A number of members of the staff speak foreign languages. The presence of interpreters and staff the Office of Immigration and Nationality was ensured in the facility and non-governmental organisations also regularly assisted the detainees in their everyday activities and the staff in their work. The penitentiary institutions and the Police proceeded to the best of their abilities and possibilities in order to manage the problems arising from (the shortage of) language competencies.

Continuous multicultural training is provided for the staff of immigration detention facilities and currently language training is planned for the immigration police and detention facility staff. In addition, communication between the staff and illegal migrants is also assisted by translations, pictograms, illustrated information sheets/booklets and other communication aids.

31. Point 74 of the Report (page 34)

**‘The Committee recommends that these precepts be effectively implemented in all immigration and asylum detention centres in Hungary.’**

The IRM Decree does not contain provisions on the application of coercive measures, and therefore in that regard the provisions of Section 17 (2) Point b) of Act CVII of 1995 on the Prison Service shall be applied in relation to the detainees detained in penitentiary institutions, according to which coercive measures, including a truncheon, may be applied against individuals whose conduct in the territory of a penitentiary institution qualifies a violation of or threat to the order or security of the penitentiary institution.

At the time of the visit the detainees disobeyed that posed a threat to the order and security of the facility, they behaved aggressively, and therefore it was necessary to carry a truncheon (stipulated in the legislation as stated above) in that situation. Nonetheless, it is important to use this opportunity to stress that neither the truncheons were used, nor other coercive measures were applied on that occasion either.

The Hungarian authorities would like to note that the recommendation suggesting hiding the truncheons is practically not feasible given the physical features or size of a truncheon.

-----

Furthermore, the Hungarian authorities would like to suggest correcting the Report in the following points:

In point 3, second paragraph, second sentence (page 8) - the Hungarian-Croatian state border was closed on 17 October 2015 and not on 1 October 2015 as stated in the Report.

In point 3, third paragraph, third sentence (page 8) - The correct punishments of the crimes committed in relation to the border barrier defined in the Penal Code are as follows:

- prohibited crossing of the border barrier - three years,
- vandalising the border barrier - five years,
- obstructing the construction works related to the border barrier - one year (contrary to the three years indicated in the Report).

Point 6 (page 9), Point 15 (page 12) - The name of the Kiskunhalas detention facility correctly is Detention Facility of the Bács-Kiskun County Police Headquarters, Law Enforcement Directorate, Kiskunhalas.

Point 12, second paragraph - The name of the Office of Immigration and Nationality needs to be corrected (it does not belong to the Ministry of Justice and therefore the Ministry of Justice part of its name).

Point 15 (page 12) - The detention facility on Mártírok útja in Kiskunhalas was not built in 2007, but its reconstruction was completed that year. The Police has been using the facility referred in the Report as Kárpát 1 facility as an immigration detention facility since 2010, nevertheless it has to be stressed that the facility is only used for a temporary period, subject to availability and as soon as the illegal migrants can be transferred to other detention facilities it is vacated and closed down. At present detention is not implemented in the facility.