



MINISTRY OF INTERIOR

SÁNDOR PINTÉR

Minister

Courtesy translation

Mr. Claude Janizzi

**Chairperson of the Lanzarote Committee
Council of Europe**

Strasbourg

Budapest, 26 April 2017

Dear Chairperson Janizzi,

I have received your letter on behalf of the Lanzarote Committee of the Council of Europe regarding the child protection aspect of the amendment of the Hungarian border management laws. I have examined the matter with the involvement of the national authorities concerned, and I would like to inform you of the following.

First of all, it should be stressed that the new rules that entered into force in March 2017 are only applied during a crisis situation caused by mass immigration. Legal capacity in the asylum procedure is also granted to asylum seekers between the age of 14 and 18, therefore this age group is placed in the transit zone for the duration of their asylum procedure. However, special provisions were introduced given their need for special treatment. A guardian is appointed without delay by the guardianship authority closest to the transit zone and the unobstructed contact between the guardian and the unaccompanied minor placed in the transit zone is ensured. Persons who may be appointed as guardians all have experience in victim protection, child protection and guardianship, and their training, practical experience and guidance received from the relevant authority enables them to perform their duties well. Unaccompanied minors under the age of 14 will continue to be placed in child protection institutions.

Three meals a day, clothing if necessary, health care and education are provided, and the free practice of religion is ensured for unaccompanied minors between the age of 14 and 18 in the transit zone. Their supervision is ensured by social workers who are present in the transit zone 24 hours a day. If the unaccompanied minor above the age of 14 is granted international protection in the asylum procedure, the asylum authority immediately takes care of the temporary placement of the child in a children's home providing child protection services, where he or she is entitled to the same benefits as a Hungarian national. When the child reaches the age of majority, s/he, upon request, will be eligible for after-care up to age of 25 if his/her livelihood is not secured or s/he wants to study.

The identification of potential victims of sexual exploitation and abuse begins when they first come into contact with the officials of the authorities. In order to enable early identification of victims of trafficking, child trafficking, sexual exploitation and abuse and to facilitate the sharing of experience, the training of front-line professionals is ensured through the National Anti-Trafficking Strategy, various national and EU-funded projects (such as Széchenyi 2020, EFOP, ISF), as well as expert working groups.

In the transit zone, we pay special attention to the care of people with special treatment needs. To prevent sexual exploitation, abuse and any kind of violence, twenty-four-hour health and social service are provided on an established schedule. Moreover, continuous security service and camera surveillance are also in place. By establishing different and separated accommodation for unaccompanied minors between the age of 14 and 18, single man, single women and families, we ensured that the different needs of these groups are taken into account.

Since the beginning of the migration crisis, Hungary has made a significant effort to only allow those to enter the country, and thus the European Union, who are indeed eligible for international protection. It should be emphasized that the right to enter a country, as a basic human right, does not exist. At the same time, in our view, Hungary provides necessary and adequate protection as well as assistance to those who are entitled to it while respecting the practice of other Member States and the applicable legal framework.

When a foreign national who does not want to submit a request for asylum is intercepted in the territory of Hungary, his/her personal data are registered and checked in the available records, and a medical examination is performed to determine his/her probable age. With the exception of unaccompanied minors under the age of 14, these nationals are either escorted through the temporary security border barrier or are transferred under a readmission agreement in aliens policing procedure. Unaccompanied minors under the age of 14 are always placed in a child protection institution until being handed over.

Yours sincerely,

Sándor Pintér

Background note

to the letter addressed to Mr. Claude Janizzi, Chairperson of the Lanzarote Committee

1. Please provide information on what action will be taken to ensure that unaccompanied children, be they above or below 14 years of age, may benefit from effective child protection measures, including reference to means to identify and protect victims of sexual exploitation and abuse.

With regards to the question above, it is important to highlight that in case a crisis situation caused by mass immigration is not in place, all unaccompanied minors will be placed in the child protection system. In this case the legal representation of the child will be provided by a guardian, appointed by the guardianship authority within 8 days. As an acknowledgement of the rights and special needs of unaccompanied minors, an implementation act – defining the content with regards to placement and care – entered into force in 2015.

Statements, claiming that asylum seekers between the age of 14 and 18 will be treated as adults by the authorities, are misleading, since no amendments were adopted to this end. The provisions, entered into force recently, are only applicable in case of a crisis situation caused by mass immigration. According to the general rules, applicants between the age of 14 and 18 will undergo an asylum procedure that takes into account their diminished capacity and they will be placed in the transit zone until their procedure is conducted. Unaccompanied minors below the age of 14 will be accommodated in child protection institution even during a crisis situation caused by mass immigration. Unaccompanied minors below the age of 14 will receive the same child protection measures as Hungarian citizens, including the appointment of a child protection guardian and the provision of accommodation in a children center.

With regards to applicants above the age of 14, a legal guardian will be appointed for the asylum procedure, furthermore, procedural and reception guarantees will be ensured for applicants between the age of 14 and 18 accommodated in the transit zone. A further guarantee is the possibility to request a medical opinion, and in the event of uncertainty, the benefit of the doubt principle will be applied.

Act LXXX of 2007 on Asylum includes special provisions on vulnerable persons – and as such on unaccompanied minors, regardless of their age – furthermore it also sets that the special needs of vulnerable persons shall be taken into account (Article 29.)

In accordance with Government Decree 70/2017 (hereinafter: Government Decree) - on amendments of government decrees to strengthen the procedures in the field of border surveillance were adopted and entered into force on 31th March 2017 – in case of crisis situation caused by mass immigration an ad hoc guardian shall be appointed for unaccompanied minors under the age of 14 in the transit zone.

Regarding unaccompanied minors above the age of 14 and placed in the transit zone the governmental representative of the territorially competent office, authorised for carrying out legal assistance in the transit zone, shall be appointed, which guarantees the availability of the appointed legal representative for unaccompanied minors without any difficulties.

While assigning the first instance guardianship authority designated by Government Decree for appointment of the ad hoc guardian to provide legal representation for the unaccompanied minors, special attention was paid to the location of the guardianship authority supervising the appointed ad hoc guardian. Hence, Szeged District Authority acts as an appointed child protection and guardianship body in the name of Government Office of Csongrád County.

The appointed guardianship office after thorough consideration assembled a list of competent professionals with victim, child protection background who can be appointed as ad hoc guardian. Accordingly, it can be stated that the appointed guardians possess the needed special competencies and knowledge thus able to represent the minor's best interest. The preparation for this duty was supported by the Ministry of Human Capacities who is responsible for the sectoral supervision of the public guardianship administration. In the framework of the preparation meetings and workshops were organized where professional experts shared their experiences in the field of child protection.

In the transit-zones for unaccompanied minors below the age of 14 three meals a day, for unaccompanied minors above the age of 14 five meals a day, as well as clothing, healthcare, education and free practice of religion is ensured. Their supervision is provided by social workers who are present in the transit zone 24 hours a day. During the reception, every applicant has to undergo a medical examination, where their health status is assessed, and they can get the necessary health care. If the applicant indicates or the health personnel recognize the marks of former sexual exploitation/violence, the health personnel or the asylum authority will take the necessary steps.

If as a result of the asylum procedure an unaccompanied minor over 14 receives international protection, the asylum authority immediately ensures the temporary placement of the child in a children's home where the necessary child-protection provision is provided. After this, the guardianship authority designates a child-protection guardian and ensures the short-term foster care of the child, and on the basis of this decision the unaccompanied minor is entitled to the same benefits as a Hungarian national. After reaching the age of majority, at their request unaccompanied minors are entitled to after-care provision, if their livelihood is not assured, or if they would like to follow studies until the age of 25.

With regards to human trafficking and sexual exploitation, Hungary is both a country of source and a country of transit. The identification of potential victims of sexual exploitation or abuse begins with the experts of the authorities who first come into contact with them (hereinafter: first-line workers); so immediately after entering and submitting their asylum request in the transit-zones. During their communication with their occasional guardian, the behavior of the children can clearly indicate that they can be victim of such criminal offences. The first-line workers will receive trainings the main aim of which is to acquire competences to early identify

the victims of trafficking in human beings and sexual abuse – in particular in view of asylum seekers.

2. Indicate the specific measures taken in the context of the new Bill No. T/13976 to prevent that children affected by the refugee crisis, unaccompanied or not, may become victims of sexual exploitation and sexual abuse or are placed in conditions increasing their vulnerability to become so; also specify where children arriving with their families are placed.

Within the framework of the Széchenyi Programme, the VEKOP¹-7.5.1-16 project and the EFOP²-3.8.2-16 project, both titled “Developing Human Capacities in Social Services” focus on providing training to professionals working in child protection. Specific training programs will be developed on the sexual exploitation of children and their vulnerability to sexual violence.

Moreover, the General Directorate of Social Affairs and Child Protection established a working group on child prostitution. The working group, in which 26 organizations participate, assesses the risk of prostitution amongst children in child protection institutions, and develops procedures and protocols that aim at reducing and preventing child prostitution. The working group is expected to finish its work and publish the procedures developed by the summer of 2017.

Section B.1.5.-B.2.5 of the 2013-2016 National Strategy against Human Trafficking recognizes that children and minors are especially vulnerable to human trafficking. The Strategy also provides that professionals working with victims have a key role, thus their regular participation in training programs should be promoted, and the establishment of workshops both on the specific aspects of trafficking and on trafficking in general must be supported.

In order to enhance the identification of trafficking victims, two ISF (Internal Security Fund) funded projects will provide training on human trafficking for professionals who work with victims or are likely to come into contact with victims in 2017. The National Police Headquarters’ project titled “*BBA-5.3.4-16 – Providing training programs on the protection of victims in relation to the fight against human trafficking*” will implement a large-scale training program on the identification and referral of trafficking victims for police officers working on the detection and investigation of trafficking cases, as well as for professionals protecting and supporting victims. The training program will cover all 20 counties and is expected to be attended by 600 professionals. Training on human trafficking will also be provided for migration officials in the framework of the Immigration and Asylum Office’s project titled “*BBA-5.3.4-16 – Successful identification of trafficking victims during the Immigration and Asylum Office’s procedures*”. The training is expected to enhance the efficiency of identification of trafficking victims during the asylum procedures.

¹ Competitive Central Hungary Operational Programme

² Human Resources Development Operational Programme

The Immigration and Asylum Office will ensure that unaccompanied minors above the age of 14 are accommodated separately from adults. The protection of children against sexual exploitation is guaranteed by the following measures: security guards are present at all times in the transit zone, social workers are working in the transit zone 24/7, specialized officials conduct the hearing of children, 24/7 medical and health service is available, guardianship and legal advice service is available free of charge. It should be highlighted that a social worker working exclusively with children is present at all times in the transit zone. He/she also organizes extracurricular education programs (language, cultural and development programs) for the children. This ensures the protection of children and allows the formation of a relationship based on trust between the children and the social workers.

To facilitate the participation in education, the necessary conditions for nursery care and education are ensured in the transit zone during the asylum procedure for those asylum seekers who fall under the scope of the Act on Nursery Education and the Act on Public Education, in accordance with section 99/E. (1) of the Government Decree 301/2007 on the implementation of the Act on Asylum.

During the establishment of the transit zone, Hungary paid particular attention to the different needs of those who will be placed there, thus different and separated accommodations were built for families, single men, single women and unaccompanied minors between the age of 14 and 18. All four types of accommodations have its own canteen, community room, storage container and containers used for providing social services.

3. Since the legal changes concern only asylum-seeking children, provide information about the situation of children on the move that do not request asylum, in particular by indicating what measures are taken to prevent and protect them from sexual exploitation and sexual abuse.

Since the beginning of the migratory crisis, Hungary is taking significant efforts to control the entry of people in the territory of the Union in order to let in only those who are entitled for international protection. Under recent legislation, in a crisis situation caused by mass immigration, applications for asylum may only be submitted personally before the asylum authority and exclusively in a transit zone, and applicants for international protection are obliged to stay there until the final decision on their request.

It shall also be stressed that the right to entry in the territory of a state, as fundamental human right, does not exist. Every state has its own right – moreover Hungary is obliged – to examine, in respect of the Schengen Border Code, whether someone is or not entitled to enter in its territory and thus the territory of the Union.

If a third country national cannot prove his or her right to stay in the territory of Hungary, and he/she does not submit an application for asylum, the acting refugee authority shall initiate an alien policing procedure.

The aliens policing authority shall without any delay, request the guardianship authority to appoint a guardian for the case. The asylum authority shall make arrangements forthwith for the

temporary placement of such child and shall at the same time contact the guardianship authority and the consulate of the unaccompanied minor's state of nationality, located in the territory of Hungary. During the aliens policing procedure, the authority considers whether the minor arrived to Hungary with or without the company of an adult, in the latter situation informs the guardianship authority and initiates the temporary placement of the unaccompanied minor. During the procedure, the guardian shall represent the best interest of the minor. If the unaccompanied minor is a victim of trafficking in human beings, the authority will accordingly arrange the temporary residence permit to be issued.

Third country nationals, who cannot prove their right to stay in the territory of Hungary, will be apprehended by the police. During the apprehension their personal data shall be recorded and checked in all available databases, if necessary age assessment procedure will be carried out as well. Based on the available information and data, these persons – with the exception of unaccompanied minors under the age of 14 – are escorted across the temporary border protection device or they are returned based on readmission agreement in the framework of aliens policing procedure. The unaccompanied minor shall be placed at child protection institute until the time of return. Unaccompanied minors under the age of 14 are placed – with the appointment of an ad hoc guard – in child protection institute in every case.

According to Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and Act CXXXV of 2005 on Crime Victim Support and State Compensation, one month is provided for foreign victims of trafficking in human beings to decide whether they are willing to cooperate with the authorities. For this one-month period, a temporary residence permit shall be issued by the aliens policing authority. Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals sets out as guarantees that victims of trafficking in human beings may be expelled from Hungary only if his/her continued residence represents a serious threat to the public policy, the national security or the public health interest of the country. If after this one month reflection period, the third country national who was victim of trafficking in human beings indicates his/her willingness to cooperate with the authorities, the aliens policing authority gives her/him a residence permit on humanitarian grounds, which is valid for 6 months.