



Building a Europe
for and with children

Mr Viktor Orbán
Prime Minister
The Prime Minister's Office
1357 Budapest, Pf. 6.
Hungary

Strasbourg, 22 March 2017

Dear Prime Minister,

I have the honour to address you in my capacity as Chair of the Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), a treaty that Hungary ratified in 2015.

Since ratification, Hungary has made efforts to enhance the protection of children against sexual exploitation and sexual abuse, in particular by considering the adoption of the Barnahus/children's house model.

However, I am concerned by the adoption of the Bill "On the amendment of certain acts related to increasing the strictness of procedures carried out in the areas of border management" (Bill No. T/13976). I understand that the legal implications of these amendments will increase the already highly vulnerable situation of children on the move, exacerbating in particular the exposure of those aged 14 or more to sexual exploitation and sexual abuse.

Introducing these legal changes implies in particular that Section 4(1)c of the Act of Parliament XXXI of 1997 on the protection of children and guardianship administration, will no longer apply to unaccompanied children aged 14 or more. If this is indeed the case, instead of having access to a guardian and being able to benefit from the child protection system, these children will be considered as adult asylum applicants, placed in transit zones increasing the risk of becoming a victim of sexual exploitation and sexual abuse.

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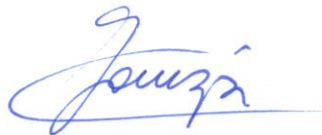
The Lanzarote Committee has just concluded an urgent monitoring round on "Protecting children affected by the refugee crisis against sexual exploitation and sexual abuse". In its [special report](#) adopted on 3 March, the Lanzarote Committee underlines that unaccompanied children are particularly exposed to sexual exploitation and sexual abuse. The higher vulnerability of these children to sexual crimes, particularly during times of crisis, calls for more protection, not less. In this context, guardians play a central role in informing unaccompanied children of the dangers of sexual exploitation and sexual abuse and they contribute to building the unaccompanied child's trust that may enable disclosure of possible sexual exploitation and sexual abuse (see §§ 95-97 of the special report).

I therefore respectfully call upon you to ensure that child protection measures benefit all children without exception (including adolescents below 18 years of age). In case of doubt as regards a person's age, the Lanzarote Committee has urged Hungary *"to take the necessary legislative or other measures to ensure that the principle of the benefit of the doubt is adequately applied and adequate protection and assistance measures are provided in line with the Lanzarote Convention to individuals pending verification of their age when there are reasons to believe that they are children"* (see §§ 17 and following of the special report).

As concerns reception conditions for unaccompanied children, I am concerned that some may *de facto* be deprived of liberty in the transit zones and lack the care and services provided in shelters. Alternatives to detention should be found for children in accordance with standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and as recently recalled by the Lanzarote Committee in its special report (see Appendix II).

In light of the above, and in compliance with Rule 28§1 of the [Lanzarote Committee's Rules of Procedure](#), I invite the Hungarian authorities to reply to the questions included in Appendix I within one month and provide the Committee with the information it needs to assess the situation and decide (see Appendix I) whether there is a need for a visit to Hungary in order to better understand the situation in cooperation with your authorities (as foreseen by Rule 28§3 of the Committee's Rules of Procedure).

Yours sincerely,



Claude Janizzi
Chairperson of the Lanzarote Committee

Appendix I

Questions addressed to the Hungarian authorities in the context of Rule 28§1 of the Lanzarote Committee's Rules of Procedure

- 1) Specify 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.
- 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.
- 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.

Replies to these questions should be sent to the Secretariat of the Lanzarote Committee (lanzarote.committee@coe.int) within one month from 22 March 2017.

Appendix II

Alternatives to detention of children

§91 of the Lanzarote Committee Special Report on "Protecting children affected by the refugee crisis against sexual exploitation and sexual abuse":

"The Lanzarote Committee recalls that the United Nations Committee on the Rights of the Child has found that "Children should not be criminalised or subject to punitive measures because of their or their parents' migration status. The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child". The case law of the European Court of Human Rights is also uncontroversial in this regard and the Council of Europe's Commissioner for Human Rights has thus repeatedly stated that "there are no circumstances in which detention of a child for immigration purposes, whether unaccompanied or with family, could be in the child's best interest. (...) Alternatives [to detention] are not only an essential tool in safeguarding the human rights of migrants. They are also helpful for states. If properly implemented, they can build trust (...) between the migrant and the state (...)". Building the child's trust (see section II.3.1) is particularly relevant under the Lanzarote Convention to help children affected by the refugee crisis to feel safe and create the conditions to enable their possible disclosure. As advocated by the Council of Europe's Parliamentary Assembly Campaign to End Immigration Detention of Children, alternatives to detention that respect a child's right to liberty and family should be sought."

Factsheet on "Immigration detention" issued on 13 March 2017 by the Executive Secretary of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), (see, in particular, its last section which outlines standards concerning care of vulnerable persons (in particular children):

"10. Care of vulnerable persons (in particular children)

- Specific screening procedures aimed at identifying victims of torture and other persons in situation of vulnerability should be put in place and appropriate care should be provided. In this context, the CPT considers that there should be meaningful alternatives to detention for certain vulnerable categories of person. These categories include *inter alia* victims of torture, victims of trafficking, pregnant women and nursing mothers, children, families with young children, elderly persons and persons with disabilities.⁷⁰
- The CPT wishes to recall its position that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child.⁷¹
- When, exceptionally, children are held with their parents in a detention centre, the deprivation of liberty should be for the shortest possible period of time. Mother (or any other primary carer) and child should be accommodated together in a facility catering for their specific needs.⁷²

⁷⁰ Hungary: 2015 visit, paragraph 51; Denmark: 2014 visit, paragraphs 77-79; Cyprus: 2013 visit, paragraph 33; United Kingdom: 2012 visit (September), paragraphs 132 and 133; 19th General Report of the CPT's activities, paragraphs 75 and 76; Malta: 2008 visit, paragraph 68.

⁷¹ 19th General Report on the CPT's activities, paragraph 97.

⁷² Cyprus: 2013 visit, paragraph 36; Czech Republic: 2014 visit, paragraph 32.

- The CPT concurs with the United Nations Committee on the Rights of the Child which considers that “[i]n application of article 37 of the Convention [on the Rights of the Child] and the principle of the best interest of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof”.⁷³ Further, other Council of Europe bodies, such as the Parliamentary Assembly⁷⁴ and the Commissioner for Human Rights,⁷⁵ have stated that unaccompanied children should not be detained.⁷⁶
- As soon as possible after the presence of an unaccompanied minor becomes known to the authorities, a professional qualified person should conduct an initial interview, in a language the child understands. An assessment should be made of the child’s particular vulnerabilities, including from the standpoints of age, health, psychosocial factors and other protection needs (including those deriving from violence, trafficking or trauma).⁷⁷ Every effort should be made to facilitate their immediate release from a detention facility and their placement in more appropriate care.⁷⁸
- Any unaccompanied or separated child deprived of their liberty should be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a guardian or legal representative⁷⁹ who keeps them informed of their legal situation and effectively protects their interests. Review mechanisms should also be introduced to monitor the ongoing quality of the guardianship.⁸⁰
- Children should only be held in centres designed to cater for their specific needs and staffed with properly trained men and women.⁸¹
- In order to limit the risk of exploitation, special arrangements should be made for living quarters that are suitable for children, for example, by separating them from adults, unless it is considered in the child’s best interests not to do so. This would, for instance, be the case when children are in the company of their parents or other close relatives. In that case, every effort should be made to avoid splitting up the family.⁸²
- Children deprived of their liberty should be offered a range of constructive activities (with particular emphasis on enabling a child to continue his/her education).⁸³

⁷³ Committee on the Rights of the Child, General Comment no. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, paragraph 61

⁷⁴ Parliamentary Assembly of the Council of Europe, Resolution 1707 (2010) on detention of asylum seekers and irregular migrants in Europe, 28 January 2010, paragraph 9.1.9, and Resolution 2020 (2014) on the alternatives to immigration detention of children, 3 October 2014, paragraph 3

⁷⁵ Commissioner for Human Rights, Positions on the rights of minor migrants in an irregular situation, CommDH/PositionPaper(2010)6, 25 June 2010.

⁷⁶ Finland: 2014 visit, paragraph 29.

⁷⁷ 19th General Report on the CPT’s activities, paragraph 98.

⁷⁸ Denmark: 2014 visit, paragraph 77.

⁷⁹ “The former Yugoslav Republic of Macedonia”: 2014 visit, paragraph 122.

⁸⁰ 19th General Report on the CPT’s activities, paragraph 98.

⁸¹ Greece: 2015 visit, paragraph 108.

⁸² 19th General Report on the CPT’s activities, paragraph 100.

⁸³ 19th General Report on the CPT’s activities, paragraph 99.