

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CPT/Inf (2016) 27

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

The Hungarian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2016) 28.

Strasbourg, 3 November 2016

CONTENTS

Copy of the letter transmitting the CPT's report.....	3
EXECUTIVE SUMMARY	4
I. INTRODUCTION.....	7
A. Dates of the visit and composition of the delegation	7
B. Context of the visit and establishments visited.....	8
C. Consultations held by the delegation and co-operation encountered.....	9
D. Immediate observations under Article 8, paragraph 5, of the Convention	10
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	11
1. Preliminary remarks	11
2. Ill-treatment	14
3. Conditions of detention	17
a. police holding facilities	17
b. immigration and asylum detention centres	20
c. transit zones.....	23
4. Health-care services in immigration and asylum detention centres	24
5. Safeguards	27
a. fundamental safeguards against ill-treatment in the context of police custody	27
b. legal safeguards during immigration and asylum detention	29
c. safeguards to protect foreign nationals against <i>refoulement</i>	30
6. Other issues.....	33
APPENDIX:	
List of the national authorities, other bodies	
and organisations met by the CPT's delegation	35

Copy of the letter transmitting the CPT's report

Mr András Szűcs
Office of the Prosecutor General
1055 Budapest, Markó u. 16.
Hungary

Strasbourg, 13 April 2016

Dear Mr Szűcs,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Hungarian Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Hungary from 21 to 27 October 2015. The report was adopted by the CPT at its 89th meeting, held from 7 to 11 March 2016.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold type in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Hungarian authorities to provide **within three months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Hungarian authorities to provide, in their response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in Hungarian, that it be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Mykola Gnatovskyy
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

EXECUTIVE SUMMARY

The purpose of the 2015 ad hoc visit to Hungary was to examine the treatment and conditions of detention of foreign nationals deprived of their liberty as well as the legal safeguards offered to them. To this end, the delegation visited several detention centres for foreigners, police detention facilities and a prison, as well as two so-called “transit zones” located at the border with Serbia. The visit took place in the context of an unprecedented influx of foreign nationals in Hungary, in reaction to which the Hungarian Parliament adopted several legislative amendments concerning in particular asylum and criminal legislation. In addition, a legal basis had been provided for the construction of a border barrier and the creation of so-called “transit zones”. At the outset, the CPT acknowledges the particular challenges faced by the Hungarian authorities in the given context but emphasises that the situation cannot absolve the authorities from their international human rights obligations as regards the treatment of foreign nationals deprived of their liberty.

Throughout the visit, the delegation received generally very good co-operation from both the national authorities and staff at the establishments visited.

The majority of detained foreign nationals interviewed by the delegation stated that they had been treated correctly by police/prison officers and/or armed guards. That said, a considerable number of foreign nationals claimed that they had been subjected to physical ill-treatment by police officers at the moment of apprehension, during transfer to a police establishment and/or during subsequent police questioning. It is of particular concern that some of these allegations were made by foreign nationals who claimed to be unaccompanied minors. In addition, a few allegations were received of physical ill-treatment by police officers and/or armed guards working in immigration or asylum detention facilities. Moreover, some allegations were received of verbal abuse and disrespectful behaviour on the part of police officers and armed guards. 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 is unacceptable and will be punished accordingly.

Particular reference is made to an incident which occurred at the Nagyfa Prison Unit on 23 October 2015 when a large number of foreign nationals staged a protest by damaging the premises and equipment of the detention unit and by barricading themselves in two rooms. When later interviewed by the CPT’s delegation, many of them made consistent and detailed allegations of physical ill-treatment by the special police forces who had intervened in the prison unit and by local police officers in police stations to which the foreign nationals concerned had been transferred. The Committee urges the Hungarian authorities to take steps without further delay to ensure that a thorough and independent inquiry is carried out into the manner in which the foreign nationals involved in the aforementioned incident were treated by the police at the Nagyfa Prison Unit and following their transfer to police establishments.

Material conditions in *ordinary police holding facilities* were on the whole adequate. However, recommendations are made as regards the equipment of cells, the minimum space to be provided to persons held overnight and access to outdoor exercise. Further, several shortcomings are described and recommendations are made as regards *ad hoc detention facilities* (i.e. containers and garages) created at the Detention Facility of the Border Police in Szeged. Moreover, the CPT is seriously concerned that mothers with young children and unaccompanied minors were held in one of the former garages under very cramped conditions for four days prior to the visit by the CPT, without

being offered any outdoor exercise and without being able to take a shower. The Committee recommends that the detention rooms in the former garages no longer be used for overnight accommodation of families with children and/or unaccompanied minors; and, in respect of any detainee, for no longer than 36 hours.

As regards *immigration and asylum detention centres*, material conditions varied considerably from one establishment to another. They were on the whole acceptable at the Békéscsaba Asylum Reception Centre, as well as at Unit Kárpát 2 (family unit) and the Unit at Mártírok street of Kiskunhalas Guarded Shelter. However, recommendations are made to ensure in particular that all accommodation areas, including sanitary facilities, are kept in an adequate state of repair and hygiene and are properly heated/ventilated and that all detention rooms are suitably equipped. A number of serious shortcomings concerning material conditions are described in respect of Nagyfa Prison Unit and Unit Kárpát 1 of Kiskunhalas Guarded Shelter, and the CPT recommends that the Hungarian authorities carry out a complete overhaul of the detention conditions in these establishments.

The CPT's delegation gained a generally favourable impression of the regime offered to foreign nationals at Békéscsaba Asylum Reception Centre. At Unit Kárpát 2 of Kiskunhalas Guarded Shelter, foreign nationals benefited from an open regime and could access a communal room and a garden-like outdoor yard during the day. That said, it is regrettable that they were not offered any organised activities or provided with any reading material. 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. As regards outdoor exercise, the delegation received numerous allegations from foreign nationals held in Units Kárpát 1 and Mártírok street of Kiskunhalas Guarded Shelter that they were not offered outdoor exercise every day and when they were allowed to go outside it was often for significantly less than one hour. 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) per day.

The CPT is concerned that hardly any arrangements were in place to cater for the needs of young children held with their families at the Békéscsaba Asylum Reception Centre and at Unit Kárpát 2 of the Kiskunhalas Guarded Shelter. Further, several husbands had apparently been separated by the authorities from the rest of their families. The Committee considers that, as a matter of principle, the placement of minors with their parents in a detention centre should only occur as a last resort, and if, in exceptional circumstances, such placement cannot be avoided, its duration should be as short as possible and children should be provided with appropriate care. Every possible effort should be made to avoid separation of children from their parents and splitting up the family.

As regards health-care services in immigration and asylum detention centres, the CPT's delegation gained a generally favourable impression of the health-care facilities and the general health care provided to foreign nationals in all the establishments visited. Further, newly-arrived foreign nationals were usually subjected to medical screening by a doctor or nurse within 24 hours of arrival. However, the provision of psychological and psychiatric care was clearly insufficient, if not non-existent, and the CPT recommends that the regular presence of a psychologist and adequate psychiatric care be arranged in all immigration/asylum establishments. A specific recommendation has also been formulated with a view to guaranteeing the confidentiality of medical examinations.

Concerning fundamental safeguards against ill-treatment in the context of police custody, the findings of the visit suggest that whenever foreign nationals detained by the police were in need of medical care, a doctor was called without delay. Further, the CPT welcomes the existence of information materials in the various police establishments visited and the arrangements made concerning interpretation. That said, the Committee puts on record that complaints were received about delays in the enjoyment of the right of notification of custody to a third person, about a lack of information on the right of access to a lawyer, the inability to consult a lawyer before being questioned by the police or before a court hearing or about a lack of information on the right of access to a doctor. Moreover, many foreign nationals complained about the quality of interpretation services and in particular that they were made to sign documents which they did not understand. The Committee formulates several recommendations with a view to ensuring the effective operation in practice of fundamental safeguards against ill-treatment.

The CPT notes the efforts made to provide information and legal assistance to foreign nationals in immigration and asylum detention. However, a lack of information on their legal situation, on the future steps in their respective proceedings and the length of their detention was perceived by foreign nationals as a major problem in most of the establishments visited. The Committee recommends 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.

As regards the safeguards to protect foreign nationals against *refoulement*, the CPT expresses doubts, in view of the relevant legislative framework and its practical operation, whether border asylum procedures are in practice accompanied by appropriate safeguards, whether they provide a real opportunity for foreign nationals to present their case and whether they involve an individual assessment of the risk of ill-treatment in the case of removal.

Finally, the delegation gained a generally positive impression of the arrangements made in the immigration/asylum detention centres visited to enable foreign nationals to have contact with the outside world. Foreign nationals could send and receive letters without any restrictions and were in principle allowed to receive visits and make telephone calls every day (provided that detainees were able to purchase a phone card). Further, in several of the establishments visited, arrangements had been made to allow foreign nationals to make free-of-charge Voice over Internet Protocol (VoIP) calls on a regular basis.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Hungary from 21 to 27 October 2015. The visit was one which appeared to the CPT “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention).

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

- Wolfgang HEINZ, 2nd Vice-President of the CPT (Head of Delegation)
- Georg HØYER
- Ivona TODOROVSKA
- Anton VAN KALMTHOUT.

They were supported by Francesca GORDON and Petr HNÁTÍK of the CPT’s Secretariat and assisted by the following interpreters:

- Lina DOKHGAN
- Mouhcine EL GUEDIMI
- Gábor KARAKAI
- Zoltan KÖRÖSPATAKI.

B. Context of the visit and establishments visited

3. In 2015, an unprecedented number of foreign nationals arrived in Hungary, in particular across the Hungarian-Serbian border. According to the information provided to the delegation by the authorities, the influx peaked in the summer months, with up to 9,800 foreign nationals arriving every day. Of the estimated overall number of 390,000 persons who arrived between January and mid-October 2015, more than 176,000 lodged an asylum application in Hungary. While in the first months of 2015, the majority of persons applying for international protection in Hungary were nationals of Kosovo,¹ Afghanistan and Syria, later in the year the majority came from Syria, Afghanistan and Iraq. However, the vast majority of the asylum proceedings were terminated throughout that period as the foreign nationals concerned left the country, continuing on their way to other European countries.

In reaction to this situation, the Hungarian Parliament adopted several legislative amendments which entailed significant changes to the existing legal framework.² Most notably, a legal basis was provided for the construction of a border barrier (the construction of a fence on the Hungarian-Serbian border was finalised on 15 September 2015, and subsequently the Hungarian-Croatian border was sealed by means of a border fence on 1 October 2015) as well as for the creation of so-called “transit zones” close to the border, through which foreign nationals would arrive in the country and in which certain asylum applications would be processed. Further, a new accelerated asylum procedure and border (asylum) procedure were introduced to speed up the processing of asylum applications and the Government was authorised to adopt a list of “safe countries of origin” and “safe third countries” (see also paragraph 69).

Further, the criminal legislation was amended. In particular, three new criminal offences punishable by imprisonment and mandatory expulsion were introduced, namely illegally crossing the border barrier,³ damaging the border barrier and obstructing its construction or maintenance; the maximum term of imprisonment for these three offences was three, five and three years respectively. However, if certain aggravating circumstances exist, e.g. if the perpetrator is armed or if the act results in the death of a person, considerably longer sentences may be imposed. According to the amended Code of Criminal Procedure (CCP), provisions concerning the translation into foreign languages of indictment and judgment, as well as special provisions concerning juveniles, shall not apply in criminal proceedings concerning the three aforementioned new offences.

4. The objective of the visit was to examine the treatment and conditions of detention of foreign nationals deprived of their liberty under aliens legislation or the recently amended criminal legislation in different types of establishment, as well as the legal safeguards offered to the foreign nationals concerned.

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

² In particular, Law CXXVII (adopted on 6 July and entered into force on 1 August 2015) and Law CXL (adopted on 4 September and entered into force on 15 September 2015) which amended, *inter alia*, the Asylum Act, the Act on the State Border, the Criminal Code and the Code of Criminal Procedure. The amendments also concerned, for example, the National Defence Act and the Police Act.

³ The illegal crossing of the border not fitted with a border barrier, however, remains an administrative offence.

5. Before setting out the delegation's findings, the CPT would like to emphasise that it does acknowledge the particular challenges faced by the Hungarian authorities in the context of the large influx of foreign nationals. At the same time, it wishes to stress that this situation cannot absolve the authorities from their international human rights obligations as regards the treatment of foreign nationals deprived of their liberty. The recommendations contained in this report are as always made in a constructive spirit and the CPT looks forward to pursuing its dialogue with the Hungarian authorities in order to improve the situation of foreign nationals deprived of their liberty in Hungary.

6. In the course of the visit, the delegation visited the following places:

- Detention Facility of the Csongrád County Police Headquarters (Szeged, Paris street)
- Detention Facility of the Border Police (Szeged, Moscow street)
- Police Station at Kalvaria street, Szeged
- Guarded Shelter of the Border Police Station, Kiskunhalas (Unit at Mártírok street and Units 1 and 2 at Kárpát street)
- Guarded Reception Centre for Asylum-Seekers, Békéscsaba
- Detached unit of Szeged Strict and Medium Regime Prison in Nagyfa ("Nagyfa Prison Unit").

The delegation also visited the "transit zones" at Rösztke and Tompa, as well as a "pre-registration camp" close to the transit zone at Rösztke.

C. Consultations held by the delegation and co-operation encountered

7. During the visit, the delegation held consultations with Sándor PINTÉR, Minister of the Interior, as well as with senior officials from the Ministry of the Interior, the Office of Immigration and Nationality, the National Police Headquarters and the National Prison Service.

The delegation also met László SZÉKELY, Commissioner for Fundamental Rights (Ombudsman), in his capacity as the Head of the National Preventive Mechanism (NPM) set up under the Optional Protocol to the United Nations Convention against Torture (OPCAT). Further, meetings were held with representatives of the Regional Representation for Central Europe of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations active in areas of concern to the CPT.

A list of national authorities and organisations met by the delegation is set out in the Appendix to this report.

8. Throughout the visit, the delegation received generally very good co-operation from both the national authorities and staff at the establishments visited. The delegation enjoyed access to all the places it wished to visit (including those which had not been notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

The CPT would also like to express its appreciation for the assistance provided before and during the visit by the CPT's liaison officer, András SZÚCS, of the Office of the Prosecutor General.

D. Immediate observations under Article 8, paragraph 5, of the Convention

9. During the end-of-visit talks with the Hungarian authorities on 27 October 2015, the delegation outlined the main facts found during the visit and, on that occasion, made four immediate observations under Article 8, paragraph 5, of the Convention.

The first immediate observation concerned the manner in which detained foreign nationals were treated following an incident which occurred on Friday, 23 October 2015, at the detached unit for immigration detainees of Szeged Strict and Medium Regime Prison in Nagyfa. When later met by the delegation, many of the foreign nationals claimed that they had been subjected to physical ill-treatment by members of special police forces during an intervention in the establishment on the above date and following their transfer from the prison to various police establishments in Szeged, as well as by police officers during subsequent questioning. The delegation requested the Hungarian authorities to carry out a prompt and independent inquiry into the manner in which the foreign nationals involved in the above-mentioned incident were treated by the police at Nagyfa Prison Unit and following their transfer to various police establishments.

The second immediate observation was made in respect of Szeged Border Police Station where the delegation met three mothers with five young children who had been held there for several days, together with five unrelated male adolescents (including at least one unaccompanied minor), in a garage which served as a temporary detention facility. The garage measured some 36m² and was only equipped with six beds and seven mattresses placed directly on the concrete floor. During all that time, the foreign nationals concerned were not offered any outdoor exercise, nor were they able to take a shower. The delegation requested the Hungarian authorities to take immediate action to transfer the aforementioned persons to a suitable facility.

The third immediate observation was made concerning the provision of outdoor exercise in the Unit at Mártírok Street and Unit 1 at Kárpát Street of the Kiskunhalas Guarded Shelter. Apparently, the foreign nationals held in these facilities were granted only limited outdoor exercise or no outdoor exercise at all, for days or even weeks on end. The delegation requested the Hungarian authorities to take urgent measures to ensure that all foreign nationals held in the aforementioned facilities were offered at least one hour of outdoor exercise every day.

The fourth immediate observation was made regarding the situation of a seven-month pregnant woman at Kiskunhalas who was a high-risk pregnancy but who was not receiving appropriate care for her condition, as the Kiskunhalas Detention Facility did not provide a suitable environment for her. The delegation requested the Hungarian authorities to take urgent measures to ensure that the woman concerned received appropriate care in a suitable environment, without depriving her of regular contact with her husband.

10. The above-mentioned immediate observations were subsequently confirmed in a letter of 30 October 2015 from the Executive Secretary of the CPT and the Hungarian authorities were requested to provide, within one month, an account of the concrete steps taken in response.

By letter dated 9 December 2015, the Hungarian authorities provided information on the measures taken in response to the delegation's observations. The Committee will consider the information later in the report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

1. Preliminary remarks

11. As regards the general legal framework governing deprivation of liberty by the police, a person may be apprehended in order to be brought before the competent authority and held for up to twelve hours. The maximum period a *criminal suspect* may spend in police custody is 72 hours (including the hours during which the person has the status of an “apprehended” person); upon the expiry of this period, the person concerned must be remanded in custody by a judge or released.

12. Concerning administrative detention of foreign nationals, the relevant legislation distinguishes between *immigration detention*, regulated by the 2007 Act on the Entry and Stay of Third Country Nationals (“Aliens Act”),⁴ and *asylum detention*, governed by the 2007 Asylum Act.⁵

In both cases, detention may be initially ordered by the Office of Immigration and Nationality of the Ministry of Justice (“the OIN”) for a period of up to 72 hours.⁶ Following the expiry of this period, the detention may be extended by a court, upon the initiative of the OIN, for renewable periods of 30 days (immigration detention) or 60 days (asylum detention), up to a maximum of six months, while families with children may only be detained for a maximum of 30 days. Immigration detention may be further extended by a court for up to a total of twelve months (in renewable 30-day periods) if the foreign national concerned fails to co-operate with the authorities or if delays emerge in obtaining documents necessary for the deportation which are attributable to a third state.⁷

13. At the time of the visit, asylum detainees were being held in guarded (i.e. closed) reception centres at Békéscsaba, Debrecen and Nyírbátor and immigration detainees primarily in guarded establishments (shelters) for aliens (such as the one visited by the delegation in Kiskunhalas) and prisons. Foreign nationals suspected of having committed one of the newly-introduced “border-related offences” (see paragraph 3) were being held in police holding facilities and prisons or under “house arrest” in a separate unit of the guarded establishment in Kiskunhalas.

According to the information provided by the Hungarian authorities, at the time of the visit, there were in total⁸ 730 immigration detainees in the country, as well as 400 asylum-seekers in closed and 520 in open centres.⁹

⁴ See Section 54 of the Aliens Act.

⁵ See Section 31A of the Asylum Act.

⁶ The 72-hour time limit includes any period during which the person concerned has been deprived of his/her liberty by the police.

⁷ In addition, foreign nationals who have been denied entry into the country can be held, pending their removal, for up to 72 hours in a designated place located in the frontier zone, or if they have arrived by means of air transport, for up to eight days in a designated place at the airport. Further, detention of a foreign national prior to his/her expulsion may be ordered under certain conditions for up to 72 hours. This period may be extended by a court for up to 30 days.

⁸ All figures are approximate.

⁹ The legal grounds for asylum detention are laid down in Section 31/A of the 2007 Asylum Act. According to the information received during the visit, in most cases, asylum detention was imposed on foreign nationals who: had escaped from open centres; had no personal documents and where there was a suspicion that they had provided misleading information to the authorities; had applied for asylum while being prosecuted for a

14. Further, the delegation was informed that between 15 September 2015, the date of entry into force of the amended criminal legislation, and mid-October 2015, criminal investigations had been opened into approximately 800 cases connected with the border-related offences; in most cases, these investigations concerned the illegal crossing of the border fence. At the time of the visit, some 500 foreign nationals had been sentenced, in all cases to a suspended prison term and concomitant expulsion (see, in this regard, the remarks made in paragraph 64).

From the consultations which the delegation held with police officers and various other interlocutors, it transpired that criminal investigations would be pursued against foreign nationals who had illegally crossed a border fence even if they had submitted an application for international protection. The CPT was struck by such an approach bearing in mind that Article 31 of the 1951 Geneva Convention of the Status of Refugees stipulates that the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Indeed, this article has been interpreted to apply to “persons who have briefly transited other countries or who are unable to find effective protection in the first country or countries to which they flee. The drafters only intended that immunity from penalty should not apply to refugees who found asylum, or who were settled, temporarily or permanently, in another country.”¹⁰ It is also noteworthy that a Commentary by UNHCR on the Geneva Convention specifies that “coming directly” may also mean “coming without undue delay.”¹¹

The Committee would like to receive the comments of the Hungarian authorities on this matter.

15. In the course of the visit, the delegation visited various establishments where foreign nationals were being held.

The *Guarded Shelter of the Border Police Station in Kiskunhalas* comprises four units of which three were visited by the delegation. The Unit at Mártírok street (built in 2007) has an official capacity of 36 places. At the time of the visit, it was holding 12 adult foreign nationals (including two women) of whom ten were facing criminal charges for border-related offences and were formally being held under house arrest (replacing remand detention) and two, held in a separate unit, being in immigration detention. Unit 1 at Kárpát street was located in a building which had previously been unused and which had been turned into an immigration detention facility in 2014. For an official capacity of 40 places, it was holding 39 adult male immigration detainees at the time of the visit. Unit 2 at Kárpát street was used for accommodation of families. At the time of the visit, it was holding 22 foreign nationals (including five juveniles), all of whom were subject to immigration detention.

Initially operating as an open establishment, the *Guarded Reception Centre for Asylum-*

criminal offence; were awaiting transfer to another country under the Dublin Regulations.

¹⁰ See Summary Conclusions: Article 31 of the 1951 Convention, Expert Round Table organised by the United Nations High Commissioner for Refugees and the Graduate Institute of International Studies, Geneva, Switzerland, 8–9 November 2001. Available online at <http://www.unhcr.org/419c783f4.pdf>.

¹¹ See Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, published by the Division of International Protection of the United Nations High Commissioner for Refugees, 1997. Available online at <http://www.refworld.org/docid/4785ee9d2.html>.

Seekers in Békéscsaba (“Békéscsaba Asylum Reception Centre”) had been converted into a closed facility in July 2013. With an official capacity of 185 places, it was holding 161 asylum-seekers (including five families with children and two unrelated women) at the time of the visit.

Unit 3 of the detached unit of *Szeged Strict and Medium Regime Prison* at Nagyfa (Nagyfa Prison Unit) had, two months prior to the visit, been designated as a temporary detention facility for male immigration detainees (in principle, to provide accommodation when guarded shelters had reached full capacity), with an official capacity of 110 places. At the time of the visit, the unit was holding 71 male foreign nationals.

The *Detention Facility of the Csongrád County Police Headquarters in Szeged (Paris street)* comprised 25 cells, with an official capacity of 53 places. At the time of the visit, the establishment was accommodating 24 foreign nationals.

The *Detention Facility of the Border Police in Szeged (Moscow street)* contained three police holding cells (of which only one was in use at the time of the visit) and five recently created temporary holding areas located in former garages. In addition, five containers (not in use at the time of the visit) were placed in the courtyard of the police station and could serve as overnight accommodation for foreign nationals. At the time of the visit, 35 foreign nationals were being held in this facility (including three mothers with five children and five male adolescents of whom one was recognised by the authorities as unaccompanied minor and the other four claimed to be unaccompanied minors); 13 of the foreign nationals were being detained on suspicion of having committed a border-related offence, while the others were subject to immigration detention.

The *Police Station at Kálvária street in Szeged* was opened in September 2015 with the aim of accommodating foreign nationals who had been apprehended in connection with border-related offences. The establishment comprised four detention cells, each with a capacity of 30 places, in which persons could be held for up to twelve hours (i.e. during the period of police custody). At the time of the visit, no-one was being held in this facility.¹²

The delegation also visited two *transit zones* located adjacent to the border with Serbia at Rösztke and Tompa.¹³ As mentioned earlier, the transit zones were established in mid-September 2015 as part of an operation to seal off the Hungarian-Serbian border. Each of the transit zones visited had an accommodation capacity of 50 places; after having lodged an asylum application, foreign nationals could be held in the transit zone for up to four weeks.¹⁴ The procedure applied in transit zones to process asylum applications is described in paragraph 66. At the time of the visit, no foreign nationals were being held in either of the transit zones visited.

¹² According to the information provided by the police officers present, since 15 September 2015, some 700 foreign nationals have been detained.

¹³ Two other transit zones have been established by the Hungarian authorities close to the border with Croatia at Beremend and Letenye.

¹⁴ If an asylum procedure cannot be completed within four weeks, the asylum-seeker concerned must be granted entry into Hungarian territory where the asylum procedure is pursued.

In addition, the delegation paid a brief visit to a closed *pre-registration camp* located in the close vicinity of the Hungarian-Serbian border crossing at Rösztke. The camp consisted of a large building (previously used as a warehouse) and several rows of army tents.¹⁵ At the time of the visit, no foreign nationals were being held in the camp. The delegation was informed that, in principle, foreign nationals could be held in the camp for up to 24 hours. Between January and September 2015, foreign nationals arriving at the border had reportedly been brought to the camp from the border so that they could be registered and that immigration or asylum proceedings could be started.

2. Ill-treatment

16. The majority of detained foreign nationals interviewed by the delegation stated that they had been treated correctly by police/prison officers and/or armed guards.¹⁶

That said, a considerable number of foreign nationals claimed that they had been subjected to physical ill-treatment by police officers. These allegations concerned mainly slaps and punches to the face or abdomen, as well as baton blows, at the moment of apprehension (even when the persons concerned were allegedly not resisting apprehension or after they had been brought under control), during transfer to a police establishment and/or during subsequent police questioning. It is of particular concern that some of these allegations were made by foreign nationals who claimed to be unaccompanied minors.

In addition, a few allegations were received of physical ill-treatment by police officers and/or armed guards working in immigration or asylum detention facilities.

Moreover, some allegations were received of verbal abuse and disrespectful behaviour on the part of police officers and armed guards (such as swearing, mocking and spitting at foreign nationals); these allegations concerned all stages of deprivation of liberty.

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.

17. Particular reference should be made to an incident which occurred at the Nagyfa Prison Unit on 23 October 2015, the first day of the delegation's visit to the establishment. During the weeks preceding the visit there had apparently been a tense atmosphere, accompanied by an increasing number of instances of self-harming, suicide attempts, destruction of property and hunger-strikes. These tensions escalated on 23 October when a large number of foreign nationals staged a protest

¹⁵ According to the information provided by the authorities, another similar camp was located some 500 metres away from the camp visited by the delegation; this second camp was also empty at the time of the visit.

¹⁶ Armed guards were employed by the police for the specific task of working in immigration/asylum detention facilities but were not fully-trained police officers. See also paragraph 72.

by damaging the premises and equipment of the detention unit. At the same time, several of the foreign nationals barricaded themselves in two rooms and threatened to harm themselves or commit suicide if the staff attempted to enter. At the request of the prison management, two special police intervention forces (MEKTO and Bevete'si Osztaly) were called in. The officers remained outside in black riot gear, in buses parked directly in front of the detention unit, in full view of many of the immigration detainees, during the afternoon and early evening. In the late evening, after the delegation had left the establishment, the special intervention forces entered the detention unit.

When returning to the establishment the next day, the delegation was informed that, following the police intervention the night before, 29 foreign nationals involved in the protest had been transferred to various other establishments, including several police detention facilities in Szeged. Approximately two-thirds of them had first been taken to the Detention Facility of Csongrád County Police Headquarters and then to the Detention Facility of the Border Police in Szeged (Moscow street), while the others had immediately been transferred to other places of detention and the airport (for immediate deportation). The delegation was also shown closed circuit television (CCTV) footage of the intervention, which covered certain parts of the Unit and of the outside courtyard. However, the delegation was informed that some of the CCTV cameras were not functioning properly at the time of the intervention and it also became clear that they did not cover the entire premises of the prison unit. One of the 'blind spots' was the area where foreign nationals entered the special police buses to be transferred to other police establishments.

Subsequently, the delegation went to various police establishments in order to interview those foreign nationals who had been involved in the above-mentioned incident or had witnessed the intervention of the special police forces. In interviews carried out separately, many of the foreign nationals concerned made consistent and detailed allegations of physical ill-treatment by the special police forces. The alleged ill-treatment took the form of violently pushing the heads and faces of inmates against a wall and punching them in the abdomen and face, as well as directing baton blows to the head while the persons concerned were handcuffed behind their backs. Several allegations were also received of excessively tight handcuffing and of persons being lifted by the handcuffs from the ground. The ill-treatment allegedly took place in the yard of the facility, in areas not covered by the CCTV.

In addition, many of the foreign nationals who had been transferred after the incident to various police stations (in particular, in Szeged) claimed that they had been ill-treated by local police officers upon arrival at the police establishment (for example, violently pushed against the wall and/or punched in the abdomen and kidneys).

It should be noted in this context that some of the foreign nationals interviewed by the delegation displayed injuries which were consistent with the allegations of ill-treatment/excessive use of force made, such as a lacerated wound on the head, pain on palpation of the abdomen and the back of the head and parallel linear-shaped bruises on both wrists.

18. During the end-of-visit-talks, the delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation, requesting the Hungarian authorities to carry out a prompt and independent inquiry into the manner in which the foreign nationals involved in the above-mentioned incident were treated by the police at the Nagyfa Prison Unit and following their transfer to various police establishments.

19. By letter of 9 December 2015, the Hungarian authorities provided the following information:

“Based on the events occurred in the penal institution and upon the reasonable suspicion of the felony of prison riot committed as instigator in violation of Subsection (1) Section 284 of Act C of 2012 on the Penal Code and specified as aggravated circumstance under Point a) Subsection (2) the Csongrád County Police Headquarters initiated criminal proceedings against 10 foreign citizens, who were taken into custody according to Subsection (2) Section 126 of Act XIX of 1998 on the rules of criminal procedure (hereinafter referred to as Criminal Procedure Act) on 23rd October 2015 at 22.30, and then the Szeged District Court ordered the pre-trial detention of the persons concerned.

None of the suspects, and none of the 8 persons interviewed as witnesses complained to the officer carrying out the investigation activity that they had been abused by the police during their apprehension (court-ordered defenders as well as interpreters participated in the interview of the suspects, interpreters participated in the interview of witnesses).

The medical examination necessary for holding the 10 persons taken into custody also took place, but no injury had been discovered that could be associated with their apprehension. During their interview, “recording of biometric data”, take-in as prisoner and their medical examination the persons apprehended behaved patiently and disciplined, therefore no “coercive measures” were necessary following their handover. The apprehension of the persons was reviewed, a police report was made on the apprehension. According to the report made by the commander of the persons carrying out police intervention in the No. III, Nagyfa facility of the Szeged Strict and Medium Regime Prison, in the course of the police interventions carried out in eliminating the extraordinary event the personnel of the Department for Control of Legality of Stay of Foreign Nationals and Public Area Support had in no way communicated with the persons convened by the intervention. The call-out for the cell units was had been carried out by the staff of the penal institution – with the help of an interpreter. Based on arrest forms the arresting police officers used handcuffs against 18 persons according to Point c) Section 48 of Act XXXIV of 1994 on the Police (hereinafter referred to as Police Act), the parties concerned suffered no injuries and they did not request their relatives to be notified. According to the documents, the parties concerned had no complaints with respect to the measures or the use of coercive means. Prior to their interview as suspects, the suspects underwent medical examination, and based on the documents available on those they had also no injuries or complaints.

Due to the abuses indicated by CPT the Csongrád County Police Headquarters is going to make a criminal complaint, and is going to send the documents available to the competent Szeged Regional Department of the Central Investigating Prosecution Service in order to have the events described therein investigated in course of the investigation. It should be noted that the Csongrád County Police Headquarters makes criminal complaints to the competent prosecution service in all cases when any suspicion of abuse of a detainee by a police officer occurs, and this year all such reports proved to be unsubstantiated.”

20. The CPT takes note of this information. At the same time, it must express its concern that no independent, thorough and prompt inquiry has apparently been carried out into the above-mentioned allegations of ill-treatment almost two months after the incident at the Nagyfa Prison Unit.

The Committee urges the Hungarian authorities to take steps without further delay to ensure that a thorough and independent inquiry is carried out into the manner in which the foreign nationals involved in the above-mentioned incident were treated by the police at the Nagyfa Prison Unit and following their transfer to police establishments. Further, it would like to receive a detailed account of the steps taken in this connection (including on the measures taken to secure the collection of evidence such as the taking of statements from potential victims/ witnesses who were supposed to be deported), as well as information on the outcome of the aforementioned inquiry and the action subsequently taken.

21. More generally, the response of the Hungarian authorities implies that not all the 29 foreign nationals who had been involved in the protest and had been transferred to various other establishments had been medically examined following the incident. **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.** This will promote the effectiveness of any investigation into the events and may also protect police/prison officers against unfounded allegations. As regards recording of injuries, reference is made to the recommendation set out in paragraph 48.

3. Conditions of detention

a. police holding facilities

22. In all the establishments visited, material conditions in ordinary police holding facilities were on the whole adequate.

23. The Detention Facility of Csongr ad County Police Headquarters comprised 25 custody cells¹⁷ (each measuring some 10 m²) and the Detention Facility of the Border Police in Szeged one custody cell¹⁸ (measuring some 12 m²). All the cells were in a good state of repair and cleanliness and had good access to natural light and artificial lighting. Further, at the Csongr ad County Police Headquarters, all the cells were equipped with two beds, adequate bedding and a wash basin.

However, at the Detention Facility of the Border Police, the custody cell was devoid of any equipment (except for a wash basin). Whilst acknowledging that foreign nationals held overnight were usually provided with mattresses and blankets, it is a matter of serious concern that shortly before the visit, eleven foreign nationals had been crammed into the cell for the whole night. Such a state of affairs is unacceptable.

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 m² per person.

¹⁷ Used for up to 48 hours.

¹⁸ A second custody cell and a cell formerly used for the accommodation of families with children were out of use at the time of the visit.

24. The Detention Facility of Csongrád County Police Headquarters in Szeged comprised two small outdoor cubicles covered with metal bars. That said, the foreign nationals interviewed by the delegation in the establishment claimed that they had not been offered any outdoor exercise and they also appeared to be unaware of any such possibility. There was no outdoor exercise yard at the Detention Facility of the Border Police in Szeged.

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.

25. The Police Station at Kálvária street in Szeged had four waiting rooms (measuring between 20 and 35m²) for apprehended persons.¹⁹ All the rooms were in a good state of repair and cleanliness and had adequate artificial lighting.²⁰ That said, except for thin foam mattresses and blankets, they were not equipped with any means of rest (e.g. a bench). **Steps should be taken to remedy this shortcoming.**

26. As already mentioned in paragraph 15, due to large number of detained foreign nationals, arrangements had recently been made to create ad hoc detention premises at the Detention Facility of the Border Police in Szeged. For this purpose, five containers had been placed in the courtyard and former garages had been transformed into detention areas by installing a metal grille partition. The delegation was told that foreign nationals were usually held in these facilities for a maximum period of 36 hours (see, however, paragraph 29).

27. The containers (each measuring some 13m²) were in a good state of repair, had good access to natural light and artificial lighting and were equipped with heating. However, there was no means of rest and foreign nationals held overnight had to sleep on mattresses placed on the floor.

28. The detention rooms in the former garages provided a cage-like environment. The rooms measured between 25 and 55m², had a concrete floor and, with the exception of a “family room” (see below), were devoid of any equipment except for one or two narrow benches (detained persons were provided with mattresses and blankets if they had to stay overnight). Further, many complaints were received from foreign nationals, and the delegation could verify for itself, that the premises were cold (despite the fact that rooms were equipped with a heating system).

29. The above-mentioned “family room” measured some 36 m² and was equipped with six beds, plus seven mattresses placed on the floor. It is a matter of serious concern that, at the time of the visit, three mothers with five young children, together with five male adolescents (of whom one was an unaccompanied minor and the other four claimed to be unaccompanied minors), had already been held inside that detention area under very cramped conditions for four days, without being offered any outdoor exercise and without being able to take a shower.

¹⁹ Used for up to 12 hours.

²⁰ Three of the rooms were located in the basement and had no access to natural light.

During the end-of-visit talks, the delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation, requesting the Hungarian authorities to take immediate action to transfer the above-mentioned foreign nationals from Szeged Border Police Station to a suitable facility.

30. By letter of 9 December 2015, the Hungarian authorities informed the Committee that, at the time of the visit, families with small children were accommodated in the room designated for that purpose which was sufficient in size for the number of persons held and was equipped with several beds and mattresses. There was no possibility to take outdoor exercise or shower as police stations did not qualify as a detention facility and a person's stay was limited to a maximum of 24 hours, or 36 hours in the case of exceptionally large numbers of apprehended foreign nationals.

Such a response cannot alleviate the Committee's misgivings about the accommodation of families with children and unaccompanied minors in cage-like detention areas at the Detention Facility of the Border Police in Szeged. Moreover, the response implies that the Hungarian authorities failed to act upon the immediate observation made by the delegation. The Committee wishes to stress again that these facilities are not suitable for accommodating overnight families with children and unaccompanied juveniles, irrespective of their legal status.

31. 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 (as regards outdoor exercise, see the recommendation made in paragraph 24).

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** (see also the recommendation in paragraph 23);
- **detained persons have access to adequate washing facilities.**

32. At the Detention Facility of the Border Police in Szeged, in one of the detention areas in the former garages, two women were being held together with an unrelated adult male detainee (although other detention rooms were not occupied at the time of the visit. **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.**

b. immigration and asylum detention centres

33. Material conditions of detention varied considerably from one establishment to another. They were on the whole acceptable at the *Békéscsaba Asylum Reception Centre*, as well as at *Unit Kárpát 2 (family unit)* and the *Unit at Mártírok street of Kiskunhalas Guarded Shelter*. In all three establishments, rooms usually offered sufficient living space (e.g. 12m² or more for two to three persons and 26m² for six persons). At Békéscsaba and Kárpát 2, the premises were generally in a reasonable state of repair and hygiene; the accommodation rooms were adequately ventilated and access to natural light and artificial lighting was satisfactory. Further, at Mártírok street, rooms were equipped with tables, chairs and shelves (in addition to beds).

That said, some shortcomings were observed by the delegation in the above-mentioned establishments. At Kárpát 2, several shower rooms were dilapidated and mouldy and at Mártírok street, some ceilings were dilapidated, artificial lighting was inadequate and there were exposed sockets and wiring. At Békéscsaba, most showers had no curtains and were thus not partitioned from the rest of the sanitary facilities.²¹ This appeared to be particularly problematic in the family unit; many complaints were received from women accommodated in this unit about the lack of privacy when taking a shower. Further, despite the existence of a floor heating system, many foreign nationals at Békéscsaba complained about the rooms being cold, in particular at night. Moreover, the number of chairs and shelves/cupboards was insufficient at Békéscsaba and they were completely missing in the accommodation rooms at Kárpát 2.

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.**

34. At *Nagyfa Prison*, the unit for immigration detention comprised a number of dormitories measuring on average some 38m². All dormitories had sufficient access to natural and artificial light.

That said, conditions were cramped with up to twelve foreign nationals being held in one dormitory (with six bunk beds) and, except for beds, dormitories were equipped with hardly any equipment (such as tables, chairs or shelves/cupboards). Further, mattresses were thin and filthy, and all the rooms were very cold. Overall, material conditions had deteriorated due to a series of violent episodes which had recently occurred in the Unit, culminating in the incident of 23 October 2015 (see paragraph 17): virtually all the dormitories were in an advanced state of dilapidation (e.g. broken furniture, doors and windows). In addition, water pipes had been ripped from the wall and two of the wings were flooded with water.

²¹ At Békéscsaba, sanitary facilities (including toilets, showers and wash basins) were located in the corridor; at Kárpát 2, rooms were equipped with a fully partitioned toilet and a wash basin, and shower rooms were in the corridor.

35. Further, material conditions were extremely poor in *Unit Kárpát 1* (single male detainees) of Kiskunhalas Guarded Shelter. The entire premises were in an appalling state of repair and hygiene (including mattresses and bedding), and heating and ventilation were insufficient. The communal sanitary facilities were particularly dilapidated and dirty, several toilets being congested or leaking and many showers were damaged. Moreover, several of the facilities were flooded, with water apparently repeatedly spilling into the corridors.

Detention rooms provided sufficient living space (e.g. 10m² for two persons and 40m² for eight persons). That said, many rooms were devoid of any equipment except for beds, and in those rooms which were equipped with some furniture the latter was often broken. Moreover, in most rooms, doors were missing and were replaced by a makeshift partition made of blankets.

36. 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.

37. Moreover, at Unit Kárpát 1 of Kiskunhalas Guarded Shelter, the delegation was inundated by complaints concerning the quality of water supplied to the establishment and used for drinking. **The CPT recommends that a supply of drinking water of adequate quality be ensured at Unit Kárpát 1.**

38. In several of the establishments visited, foreign nationals, including children, had neither proper footwear nor warm clothing; many merely had the short-sleeved shirts and sandals that they had travelled in and few had coats. The staff at the establishments affirmed to the delegation that this shortcoming would be remedied within a few days of the visit, before the winter season started.

By letter dated 9 December 2015, the Hungarian authorities confirmed that in all the establishments concerned additional clothing and footwear purchased or supplied by charity organisations had been provided to foreign nationals who were in need of such items. The CPT welcomes this development.

39. The delegation gained a generally favourable impression of the regime offered to foreign nationals at *Békéscsaba Asylum Reception Centre*. All foreign nationals benefited from an “open regime” throughout the day and could move freely within the detention area and the adjacent outdoor exercise yard (which comprised a basket-ball court).²² Further, they could watch television and play table tennis in communal rooms and also had access to a gym and a prayer room. In addition, some organised activities were provided to foreign nationals (e.g. language and art classes, sports activities, etc.) and there was a small library with some books in English. That said, only a limited number of detainees was able to partake in such activities.

²² At night, detainees were obliged to stay in their rooms.

40. At *Unit Kárpát 2 (family unit) of Kiskunhalas Guarded Shelter*, foreign nationals also benefited from an open regime; a communal room and a garden-like outdoor yard were accessible during the day. That said, it is regrettable that foreign nationals were not offered any organised activities (as regards children, see paragraph 44) or provided with any reading material.

41. At *Units Kárpát 1 and Mártírok street of Kiskunhalas Guarded Shelter*, as well as at the *Nagyfa Prison Unit*, foreign nationals could move within the detention units during the day. Moreover, television sets were available in the establishments visited.

That said, in all the above-mentioned establishments, hardly any sports or other recreational activities were offered, nor were detainees provided with board games or reading material. At Nagyfa, the delegation was told by the management that some activities, such as table tennis and table football, had been provided but had repeatedly been destroyed by detainees and that they had no longer been replaced.

As regards outdoor exercise, foreign nationals are entitled by law to spend at least one hour per day in the open air. Notwithstanding that, the delegation received numerous allegations from foreign nationals held in Units Kárpát 1 (single males only) and Mártírok street of Kiskunhalas Guarded Shelter that they were not offered outdoor exercise every day and when they were allowed to go outside it was often for significantly less than one hour. Some foreign nationals (in particular those held in a separate unit at Mártírok) claimed that they had not been allowed to go to the open air for more than a week, and one foreign national, who was in a wheelchair and accommodated on the second floor, indicated that he had not been able to benefit from any outdoor exercise for almost a month.

In the light of the above, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention at the end of the visit (see also paragraph 9), requesting the Hungarian authorities to take urgent measures to ensure that foreign nationals held at Units Kárpát 1 and Mártírok street of the Kiskunhalas Guarded Shelter were offered at least one hour of outdoor exercise every day.

By letter dated 9 December 2015, the Hungarian authorities confirmed that at both Units Kárpát 1 and Mártírok street, all foreign nationals were offered at least one hour of outdoor exercise (with access to ball games) and that efforts were being made to offer foreign nationals outdoor exercise for longer periods, as far as was organisationally possible. The CPT welcomes this development.

42. 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 more²³) 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.

²³ In the CPT's view, immigration/asylum detainees should in principle have free access to outdoor exercise throughout the day.

Further, steps should be taken to ensure that foreign nationals suffering from physical impairments are provided with the necessary assistance so that they can effectively benefit from outdoor exercise.

43. The delegation noted that the outdoor exercise yard at Mártírok street had neither a shelter against inclement weather nor a means of rest. **Steps should be taken to remedy these shortcomings.**

44. As already mentioned in paragraph 15, a number of families with children were being held at the Békéscsaba Asylum Reception Centre and at Unit Kárpát 2 of the Kiskunhalas Guarded Shelter (in principle, for up to one month).

It is a matter of concern that in both establishments hardly any arrangements had been made to cater for the needs of young children. Whilst acknowledging that a playground for children had been created in the outdoor yard at Unit Kárpát 2, at Békéscsaba, there was no playground and the families interviewed by the delegation were not aware of any organised activities for children.

Moreover, several of the mothers met at Kiskunhalas stated that their husbands, who had travelled to Hungary together with the family, had been separated from them by the authorities and placed in another establishment. Allegedly, the mothers and children had no contact with the fathers.

The CPT considers in this respect that, as a matter of principal, the placement of minors with their parents in a detention centre should only occur as a last resort, and if, in exceptional circumstances, such placement cannot be avoided, its duration should be as short as possible and children should be provided with appropriate care. Every possible effort should be made to avoid separation of children from their parents and splitting up the family. **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.**

c. transit zones

45. The two transit zones visited by the delegation at Rösztke and Tompa were located on Hungarian territory, a few metres inland of the official border line with Serbia, and were integrated into the border fence which sealed off the Hungarian-Serbian border. On the side towards the border, the premises of the zones were delimited by a row of adjacent containers with rolls of razor-blade wire on each side of their roofs, the three other sides of the transit zones being surrounded by a 3.5-metre-high wire-mesh fence. Different containers served as offices, waiting rooms, a dining room and sanitary facilities (with toilets, wash basins, showers and hot-water boilers),²⁴ and approximately ten of them were used for the accommodation of foreign nationals.

²⁴ The sanitary facilities were in a good state and call for no particular comment.

Each side of the transit zone was fitted with a locked turnstile gate leading towards Serbia. However, according to the information provided by the staff present at the time of the visit, these gates were never used. Instead, foreign nationals could enter and leave the premises of the transit zones from/towards Serbia through a door located on the back side of the first container.²⁵ The door was locked and constantly monitored by CCTV.

46. All accommodation containers measured some 13m² and were equipped with two to five beds fitted with clean mattresses, pillows and bedding. They were clean and had good access to natural light and artificial lighting, as well as to electric heating.

Further, in both transit zones visited, there was a narrow designated area in front of the containers which was fenced off from the rest of the compound of the transit zone and to which foreign nationals had unrestricted access during the day.

As far as the delegation could ascertain, foreign nationals had usually only been held in the transit zones for short periods (up to 13 hours) and hardly ever overnight. That said, **if foreign nationals were to be held in a transit zone for longer periods,²⁶ the maximum capacity of the accommodation containers should be reduced and they should be equipped with some basic furniture.**

4. Health-care services in immigration and asylum detention centres

47. The CPT acknowledges the efforts made by the Hungarian authorities to provide health care to foreign nationals held at Békéscsaba Asylum Reception Centre, Kiskunhalas Guarded Shelter and Nagyfa Prison Unit. On the whole, the delegation gained a generally favourable impression of the health-care facilities and the general health care provided to foreign nationals in all the establishments visited.

At Békéscsaba Asylum Reception Centre, the health-care staff comprised three part-time doctors and six full-time nurses. During weekdays, one doctor and at least two nurses were on duty, and at night and during weekends one nurse was present, while one doctor remained on call.

At Kiskunhalas Guarded Shelter, the health-care staff were based in the main unit at Mártírok street and comprised one full-time doctor and eight²⁷ full-time nurses. Nurses visited all three units three times a day to distribute medication and ensured 24-hour nursing cover seven days a week.

At the Nagyfa Prison Unit,²⁸ the on-site health-care staff included the equivalent of three full-time doctors and three to four nurses during weekday working hours. According to information given by the prison management, there was a doctor and at least one nurse on duty at all times.

²⁵ This door was not accessible from the restricted area in front of the accommodation containers.

²⁶ As indicated in paragraph 15, foreign nationals may be held in a transit zone for up to four weeks.

²⁷ Two of whom were on maternity leave at the time of the visit.

²⁸ In one of the blocks of the prison unit, there was an in-patient infirmary.

48. The CPT welcomes the fact that, in all three establishments visited, newly-arrived foreign nationals were usually subjected to medical screening by a doctor or nurse within 24 hours. The medical screening included a general physical examination and anamnesis and relevant questions about any transmissible diseases, as well as screening for bodily injuries.

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.

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.

49. At Kiskunhalas and Nagyfa, interpreters were provided during medical consultations whenever needed. That said, 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.**

50. As far as the delegation could ascertain, specialist treatment was provided either externally or on contract at the establishments visited, when necessary.

However, the provision of psychological and psychiatric care was clearly insufficient if not inexistent in all establishments visited. This state of affairs is all the more concerning given that many of the foreign nationals (and in particular of children) were likely to have experienced traumatic situations prior to their arrival in Hungary, while others may be suffering from psychological stress pending their deportation.

While some arrangements for the pro-bono services of a psychologist had previously been in place at Kiskunhalas, these had recently been cancelled; no psychological care was evident at the other establishments visited. Moreover, as regards psychiatric care, the pro-bono services of a psychiatrist had also recently been discontinued at Kiskunhalas, with the result that no psychiatric support was available for detainees held there. Nevertheless, the delegation was informed by the authorities about the possibility of an on-call psychiatrist at Békéscsaba and Nagyfa.

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.

51. At Unit Kárpát 2 of Kiskunhalas Guarded Shelter, the delegation met one seven-month pregnant woman who suffered from a blood disorder and was diagnosed as a high-risk pregnancy. At the time of the visit, she was bed-ridden and felt extremely weak and unwell.

Whilst acknowledging the efforts made by the health-care staff who had transferred the woman to and from a hospital for specialist examinations five times during the weeks preceding the visit, the delegation gained the distinct impression²⁹ that the detention environment at Kiskunhalas was not suitable for her condition. Therefore, as indicated in paragraph 9, it made an immediate observation under Article 8, paragraph 5, of the Convention during the end-of-visit talks, requesting the Hungarian authorities to take urgent measures to ensure that the woman concerned received appropriate care in a suitable environment, without depriving her of regular contact with her husband.

By letter dated 9 December 2015, the Hungarian authorities informed the CPT that, shortly after the delegation's visit, the woman had been transferred again to the hospital, where she had remained for two days. Upon return to Kiskunhalas, she had spent a further three days in the establishment "without any complaints" before being released and referred to an open reception centre.

The Committee welcomes the prompt response by the Hungarian authorities to the immediate observation made by the delegation.

52. In all the establishments visited, the confidentiality of medical data was generally respected. However, it is a matter of serious concern that custodial staff were usually present either inside the room or in front of an open door during medical consultations and thus within earshot, during medical consultations, in particular, at Kiskunhalas Guarded Shelter and Nagyfa Prison Unit.

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.

²⁹ In particular, based on her interview with the delegation's doctor and upon examination of her medical records.

5. Safeguards

a. fundamental safeguards against ill-treatment in the context of police custody

53. Foreign nationals deprived of their liberty under aliens legislation should – irrespective of whether they are suspected of having committed a (border-related) criminal offence – benefit as from the very outset of their deprivation of liberty from three fundamental safeguards against ill-treatment, namely the right to inform a relative or another person of their choice of their situation and the rights to have access to a lawyer and a doctor. Further, the foreign nationals concerned should be expressly informed, without delay and in a language they understand, of all their rights and the procedure applicable to them.

54. As regards the right of notification of custody, the majority of foreign nationals interviewed by the delegation stated that, whilst in police custody, they were not afforded this right. Such a possibility was usually offered only when the foreign nationals concerned were transferred to an asylum or immigration detention facility, often several days after their actual apprehension (see also paragraph 70).

55. Further, some detained foreign nationals met by the delegation were unaware of their right of access to a lawyer, let alone one appointed *ex officio*. A few foreign nationals claimed that they had been told by police officers that such a right did not exist in Hungary. Moreover, the majority of those foreign nationals who did have an *ex officio* lawyer appointed complained that they did not have an opportunity to consult the lawyer before being questioned by the police or before a court hearing and that the lawyer remained totally passive throughout the police questioning or court hearing. In this context, it is also noteworthy that several foreign nationals stated that they were not sure whether they had a lawyer appointed as somebody unknown to them was simply present during the official proceedings without talking to them and without saying anything in their interest.

56. On a positive note, the delegation's findings suggest that, whenever foreign nationals detained by the police were in need of medical care, a doctor was called without delay. In this regard, the CPT welcomes the fact that, at Szeged Border Police Station and the Csongrád County Police Detention Facility, a medical office has been established, in co-operation with the Hungarian Red Cross (in the case of Szeged Border Police Station), where detained persons could be provided with the necessary assistance. That said, it is regrettable that foreign nationals had apparently often not been explicitly informed of their right of access to a doctor.³⁰

³⁰ As far as the provision of health care in the immigration/asylum detention facilities is concerned, reference is made to paragraphs 47 to 52.

57. **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.**

Further, appropriate steps should be taken, in consultation with the Bar Association, to ensure the effectiveness of the system of legal aid during the entire period of police custody, in the light of the remarks made in paragraph 55.

58. As regards the provision to detained persons of information on their rights, the CPT welcomes the existence of information materials, in several languages, in the various police establishments visited, such as an information sheet on the rights and obligations of detained persons, on criminal offences committed in connection with the border fence, leaflets explaining the asylum procedure, etc.

However, the majority of foreign nationals interviewed by the delegation claimed that they had not been informed of their rights upon their apprehension by the police (let alone in a language they could understand) and that all the documents they had received since their entry into the country were in Hungarian.

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.

59. The CPT appreciates the efforts made by the Hungarian authorities to ensure that foreign nationals are assisted by an interpreter; interpretation was in principle provided during police questioning and official procedures before the OIN and courts and, as needed, in the various places where foreign nationals were being held. Interpreters were either present in person or were available via a remote audio-and-video computer connection.

That said, many foreign nationals (including unaccompanied juveniles) complained about the quality of interpretation services and in particular that they were made to sign documents in Hungarian, the contents of which were not translated to them and which they consequently did not 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.

60. As indicated in paragraph 15, at the Detention Facility of the Border Police in Szeged, the delegation met five male adolescents who had been detained for four days; one of them was an unaccompanied minor and the other four claimed to be unaccompanied minors. It is a matter of concern that allegedly, no lawyer had been appointed for two of them and that they had been interviewed by the police without any legal support.

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.

b. legal safeguards during immigration and asylum detention

61. As already mentioned in paragraph 12, both immigration and asylum detention, initially imposed by the OIN, are subjected to an automatic court review after the first 72 hours and thereafter every thirty days. The findings of the visit indicate that the deadlines were respected in practice and that detained persons appeared in person before the court. This is to be welcomed.

62. It is positive that information leaflets and/or house rules explaining the daily routine and basic rights and obligations of immigration/asylum detainees, including the right to lodge complaints, were available in several languages at Békéscsaba, Kiskunhalas and Nagyfa. At Békéscsaba, a copy of the house rules was also on display on the outside wall of the canteen.

However, a number of the foreign nationals interviewed during the visit claimed that they had not been informed upon their arrival at the establishment of their rights and obligations in a language they could understand (let alone in writing) and that they had been made to sign documents which they had not understood. They were also uncertain, for example, whether and to whom they could lodge complaints. The examination by the delegation of a number of personal files of detained foreign nationals revealed that some of the files contained a copy of information materials provided to the foreign national concerned. However, in all cases, they were in Hungarian and only some of them were signed by the foreign national concerned and/or an interpreter.

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.

63. The relevant legislation³¹ guarantees the right of foreign nationals to be represented by a lawyer (including, under certain conditions, free-of-charge) and to receive legal assistance from non-governmental organisations. According to the information provided by the authorities, arrangements have been made with non-governmental organisations to visit immigration/asylum detention facilities and provide assistance to foreign nationals. However, a number of the foreign nationals interviewed by the delegation during the visit were unaware of such possibilities.

³¹ See Section 37 (3) of the 2007 Asylum Act and Sections 59 (4), 92/A and 92/B of the 2007 Aliens Act.

It is noteworthy in this context that a lack of information on their legal situation, on the future steps in their respective proceedings and the length of their detention was perceived by the foreign nationals deprived of their liberty as a major problem in most of the establishments visited. The situation in this respect appeared to be less problematic at Békéscsaba where an information office of the OIN was open every weekday and asylum-seekers could ask for updated information.

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.

c. safeguards to protect foreign nationals against *refoulement*

64. The prohibition of torture and inhuman or degrading treatment or punishment entails the obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment. This principle of non-*refoulement* is expressly set out in Section 45 of the Asylum Act and Sections 51 and 52³² of the Aliens Act.

It is axiomatic that foreign nationals should have ready access to an asylum procedure which offers them a real opportunity to present their case and which guarantees both confidentiality and an objective and independent analysis of the human rights situation in other countries. That procedure should involve an individual assessment of the risk of ill-treatment in the event of removal of the person concerned to the country of origin or a third country.

65. In this connection, the CPT notes that the legislative amendments referred to in paragraph 3 have introduced two new asylum procedures (an accelerated procedure and a border procedure) which contain considerably shorter deadlines as compared to the “standard” asylum procedure.³³ Under the *accelerated procedure*,³⁴ the first-instance decision on an asylum application must be issued by the OIN within 15 days; consequently, it may be appealed to a court within seven days and a court decision must be taken within eight days.

³² Regarding both administrative and judicial expulsions.

³³ Under the standard asylum procedure, a decision on an asylum application must be taken by the OIN within 60 days; within eight days, the administrative decision may be appealed to a court and the court must take a decision within 60 days.

³⁴ Grounds on which an asylum application may be decided in the accelerated procedure are laid down in Section 51 (7) of the 2007 Asylum Act (e.g. where the applicant discloses only irrelevant information, provides misleading information, originates in a country included on an EU or national list of safe countries, refuses to give fingerprints).

Unless the asylum-seeker is a person requiring special treatment,³⁵ such as unaccompanied minors, elderly, persons with disabilities and pregnant women, asylum applications submitted in the transit zones are reviewed in the *border procedure* under which only the admissibility of the application is examined by the OIN and a decision must be taken within eight days.³⁶ The deadlines for lodging an appeal and a court review are the same as those for the accelerated procedure. However, a court decision may be taken by a “court secretary”³⁷ and a personal hearing of the applicant (who is in the transit zone) may be carried out by a remote audio-and-video computer connection.

Under the accelerated and border procedures, if the concept of a safe third country is considered by the authorities to be applicable in a given case, the applicant is informed thereof by the OIN and may declare, within three days, why in his/her case the country does not qualify as a safe country.

In both procedures, a personal hearing of the applicant before the court is only required “if necessary” and, in principle, an appeal against the administrative decision issued by the OIN has no suspensive effect.³⁸ Moreover, it is not possible to submit new facts or evidence in the proceedings before the court.

66. As regards the practical operation of the procedures in the transit zones, according to the information provided by the Hungarian authorities, between 15 September and early October 2015, 579 asylum applications were lodged in the two transit zones visited by the delegation, of which 510 applicants were exempted from the border procedure on account of being considered as persons requiring special treatment (notably families with children). In total, 50 asylum applications were rejected in the border procedure, in all cases on the ground that the asylum-seekers had transited a safe third country (namely, Serbia).³⁹

The staff in the transit zones informed the delegation that foreign nationals, after having entered the transit zones from Serbia, were pre-registered and searched by the police; at Röszke, foreign nationals were obliged to deposit their mobile phone together with other valuables and had no access to it whilst in the transit zone; depositing mobile phones was reportedly not required at Tompa. The asylum-seekers were then informed by an OIN officer (via an interpreter)⁴⁰ about the possibilities to request asylum in the country and the asylum procedure. The delegation was also shown an information leaflet which existed in several languages and which, *inter alia*, informed the applicant that Serbia was regarded as a safe third country and that the aim of the procedure was to examine whether Serbia could not be considered to be a safe country in their particular case.⁴¹ In

³⁵ Persons requiring special treatment are exempted from the border procedure, should be granted access to the territory and their asylum application should be processed there.

³⁶ If the application is not inadmissible, the applicant is allowed entry to the territory of Hungary where the asylum procedure is pursued.

³⁷ I.e. not an appointed judge, but a qualified lawyer employed by the court who is entitled to act in cases specified by the relevant legislation.

³⁸ Unless an inadmissibility decision is issued on the basis of the safe third country concept.

³⁹ It should be noted that in several cases, the border procedure was discontinued after the applicant decided to leave the transit zone towards Serbia.

⁴⁰ As for interpretation during the border procedure, interpreters were either present in the transit zone in person or provided their services via a remote audio-and-video computer connection.

⁴¹ The asylum-seekers were explicitly informed in the leaflet that they were obliged to prove that they had not had a real chance of effective protection or of applying for effective protection whilst staying in or transiting a third country considered to be safe.

addition, it contained information on the right to leave the transit zone to Serbia at any time, the possibility of a free-of-charge legal assistance and the right to use one's own mother tongue and to benefit from translation services.

Foreign nationals who decided to apply for asylum in Hungary were registered by the OIN (including fingerprinting and taking a photo) and the border procedure was instituted (unless they were exempted and granted entry). When asked, neither police officers nor OIN staff met by the delegation in the transit zones were able to inform the delegation about the usual length of the border procedure and the length of stay of foreign nationals in the transit zones. The relevant police register examined by the delegation at Röszke contained a list of foreign nationals pre-registered by the police but did not contain information as to when the persons concerned had left the transit zone. According to the register maintained by the police at Tompa, foreign nationals stayed in the transit zone for up to 13 hours. This would confirm the reports received by the delegation during the visit that the border procedure was extremely expeditious, with negative decisions being issued by the OIN within a few hours. Following the rejection of their asylum application, foreign nationals had to leave the transit zone for Serbia,⁴² without being officially handed over to the Serbian authorities.

67. A stay in the transit zone was not formally regarded as deprivation of liberty by the Hungarian authorities and, consequently, no detention order was issued which could be challenged before a court.⁴³ The CPT notes in this context that according to the Hungarian authorities, as well as by the staff in the transit zones, asylum-seekers present in the transit zones, while they were not allowed to enter Hungary, were free to leave for Serbia at any time. In such a case, however, their asylum application would automatically be regarded as withdrawn and the asylum procedure would be discontinued.

68. According to the information provided to the delegation by staff in the transit zones, legal assistance during the border procedure was provided to foreign nationals almost exclusively by civil servants employed by the county authority who would inform foreign nationals about the relevant legislation and help with lodging an appeal. In the CPT's view, these arrangements raise a question as to the objectiveness of such legal advice. The delegation was also informed that staff of the UNHCR and non-governmental organisations providing support to foreign nationals faced obstacles if they wished to enter transit zones, such as the obligation to announce their visit several days in advance.

69. The CPT notes the combination of 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 the court in the appellate proceedings, the possibility to take final court decisions by a judicial clerk, the impossibility to present new facts and evidence before the court and problematic access to legal assistance.

⁴² Unless they appealed to the court and decided to wait for the court decision in the transit zone.

⁴³ Article 5(4) of the European Convention on Human Rights stipulates that "[e]veryone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Consequently, the CPT has serious doubts whether border asylum procedures are in practice accompanied by appropriate safeguards, whether they provide a real opportunity for foreign nationals to present their case and involve an individual assessment of the risk of ill-treatment in case of removal and thus provide an effective protection against *refoulement*, bearing also in mind that, according to UNHCR, Serbia cannot be considered a safe country of asylum due to the shortcomings in its asylum system, notably its inability to cope with the increasing numbers of asylum applications.⁴⁴

It should also be noted in this context that the Hungarian Supreme Court held that when courts review administrative decisions regarding the application of the safe third country concept, they should always *ex officio* take into consideration the country information provided by UNHCR. It further held that the fact that the asylum system of a third country was overburdened may render this country incapable to respect the rights of asylum-seekers. Such a third country shall not be regarded as safe for asylum-seekers.⁴⁵

The CPT urges the Hungarian authorities to take the necessary steps, including of a legislative nature, to ensure that all foreign nationals arriving at the border are effectively protected against the risk of *refoulement*, including chain *refoulement*, in the light of the above remarks. In particular, an individual assessment of the aforementioned risks should be guaranteed.

6. Other issues

70. As regards contact with the outside world, the CPT welcomes the fact that, in all the immigration/asylum detention centres visited, foreign nationals could send and receive letters without any restrictions and were in principle allowed to receive visits and make telephone calls every day (provided that detainees were able to purchase a phone card). That said, mobile phones were systematically taken away by the authorities on arrival.

It is particularly praiseworthy that, at Békéscsaba Asylum Reception Centre and the Unit at Mártírok street of Kiskunhalas Guarded Shelter, arrangements had been made to allow foreign nationals to make free-of-charge Voice over Internet Protocol (VoIP) calls through the Internet on a regular basis (usually twice a week). Further, according to the Hungarian authorities' letter of 9 December 2015, similar arrangements were made after the visit for immigration detainees at Nagyfa Prison Unit.

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.

⁴⁴ See <http://www.unhcr.rs/media/UNHCRSerbiaCountryofAsylumScreen.pdf>.

⁴⁵ See <http://www.kuria-birosag.hu/hu/kollvel/22012-xii10-kmk-velemen-y-biztonsagos-harmadik-orszag-megitelesenek-egy-es-kerdeseirol> (in Hungarian) and <http://www.refworld.org/docid/50ee7a732.html> (in English).

71. Notwithstanding the above, it is regrettable that, at Mártírok street, foreign nationals were in principle allowed to receive visits from relatives and friends only under closed conditions (i.e. with a glass partition).

The CPT wishes to stress that the rule should be that foreign nationals are allowed to have visits under open conditions, and closed visits behind a screen should be limited to exceptional cases.

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.

72. The CPT acknowledges that staff working in immigration/asylum detention centres have a particularly challenging task not least because of language barriers and the confluence of different cultures. It has already stressed in previous visit reports that, as well as possessing well-developed interpersonal communication skills, staff working in establishments for detained foreign nationals should be familiar with the various cultures of the detainees and at least some of them should have relevant language skills. This is also important for managing inter-detainee violence.

That said, it is matter of concern that, in all the establishments visited, most of the custodial staff have apparently received only little if any specialised training in working with immigration detainees and that hardly any of them spoke any foreign language. Not surprisingly, many foreign nationals interviewed by the delegation complained about the distant and sometimes disrespectful behaviour of staff.

The Committee reiterates its recommendation that the Hungarian authorities develop specialised training for staff working with foreign nationals in immigration/asylum detention centres, including the provision of refresher courses, in the light of the preceding remarks, and encourage greater interpersonal communication between staff and detainees.

73. The CPT welcomes the fact that at Békéscsaba Asylum Reception Centre, several social workers were present on a daily basis to provide assistance to asylum detainees. Regrettably, no such services were provided at the three units of Kiskunhalas Guarded Shelter visited by the delegation.

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.

74. Finally, in most of the establishments visited, the delegation noted that custodial staff openly carried truncheons in the detention areas.

In the interest of promoting positive relations between staff and detainees, the CPT considers that custodial staff working in immigration or asylum detention centres should not carry such devices as a matter of routine in detention areas; if it is deemed necessary for staff to be armed with such devices in specific and clearly defined exceptional circumstances, they should be hidden from view.

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

APPENDIX

**LIST OF THE NATIONAL AUTHORITIES, OTHER BODIES AND ORGANISATIONS
MET BY THE CPT'S DELEGATION**

A. National authorities

Ministry of the Interior

Sándor PINTÉR Minister of the Interior

Péter STAUBER Head of Department

Office of Immigration and Nationality

Zsuzsanna VÉGH Director General

National Police Headquarters

Károly PAPP Director General

Tibor TAKÁCS Deputy Director General

National Prison Service

András CSÓTI Director General

János SCHMEHL Deputy Director General

B. Other bodies

Office of the Commissioner for Fundamental Rights (Ombudsman)

László SZÉKELY Commissioner for Fundamental Rights

Miklós GARAMVÁRI Chief Secretary of the Office

Boglárka LÁSZLÓ Head of Department

András MAGICZ Head of Department

Gergely FLIEGAUF Head of OPCAT/NPM Department

Katalin HARASZTI Deputy Head of OPCAT/NPM Department

Office of the Prosecutor General

András SZÚCS

Head of Department, CPT Liaison Officer

C. International organisations

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

D. Non-governmental organisations

Hungarian Helsinki Committee