



T-ES(2019)11_en final

6 June 2019

LANZAROTE COMMITTEE

Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

.....

Assessment by the Lanzarote Committee of the follow-up given by the Hungarian authorities to the recommendations addressed to them further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017)

Adopted by the Lanzarote Committee on 6 June 2019

1. Introduction

1. The Lanzarote Committee thanks the Hungarian authorities for their active cooperation during the whole process, since the beginning when the Hungarian authorities invited the Committee to undertake an on-the-spot visit to Hungary until most recently when they replied to requests for clarification on the follow-up given to the recommendations.

2. The present document is an assessment of the follow-up given by the Hungarian authorities to the recommendations addressed to them on 31 January 2018¹ further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017).

3. The Lanzarote Committee considered with care both:

- the report sent on 5 February 2019 by the Hungarian authorities on the implementation of the said recommendations;
- as well as the additional information sent on 12 April 2019 to answer requests for clarification by the Bureau of the Lanzarote Committee and the members of the delegation who undertook the visit to transit zones at the Serbian/Hungarian border (5-7 July 2017).

4. The assessment below is based on these two sources of additional information which can be found in document T-ES(2019)08_en rev.

5. The Lanzarote Committee recalls that the above-mentioned visit was organised in the context of the Committee's urgent procedure², launched after the adoption on 7 March 2017 by the Hungarian Parliament of Act XX "On the amendment of certain acts related to increasing the strictness of procedures carried out in the areas of border management", which entered into effect on 29 March 2017 and which amended, among others, Act LXXX of 2007 on asylum. The new law was motivated by what the Hungarian Government named "mass immigration" and extended the grounds on which the Government may order a "state of crisis". It requires, in particular, that all asylum applications be lodged exclusively in a transit zone and that all asylum-seekers, except unaccompanied children under the age of 14, stay in a transit zone for the duration of the asylum procedure. With the result that since 29 March 2017, unaccompanied children aged 14 to 18 must remain in a transit zone for the duration of the examination of their request for asylum whilst, before this date, they were sent to open facilities. Families with children are also retained in a transit zone for the duration of the asylum procedure. The law of March 2017 also provides for the removal of migrants who are present irregularly on the Hungarian territory.

¹ The recommendations were adopted by the Lanzarote Committee at its 20th meeting (29-31 January 2018). The Special report further to a visit of a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017), the Recommendations addressed to the Hungarian authorities, the information provided by the Hungarian authorities during the 20th meeting of the Lanzarote Committee (29-31 January 2018) and the information provided by the Hungarian authorities on 5 February 2019 and on 12 April 2019 are available on the [Lanzarote Committee's website](#).

² Rule 28.3 of the Rules of Procedure.

2. Assessment

6. The Lanzarote Committee recalls, first, that persons aged 14 to 18 are not adults but children and that they should be protected as such.

7. It notes that a very limited number of unaccompanied children have lodged an asylum application in Hungary in the past fifteen months³. It thus wonders why the above contested rule has not been repealed.

2.1. Major issues of concern

8. The Lanzarote Committee continues to deplore that:

- in the framework of immigration procedures, all persons under the age of 18 years are still not treated as children and therefore discrimination on the ground of age remains a concern and protection of all children against sexual exploitation and abuse is not ensured (Recommendation R1);
- the Hungarian authorities have not ceased the practice of detaining children in the transit zones in fenced open air areas with containers for shelter (Recommendation R12);
- unaccompanied children aged 14-18, especially girls, are still not cared for within the Hungarian regular child protection system, i.e. in open child protection institutions to prevent possible sexual exploitation or sexual abuse against them in the transit zones (Recommendations R2 and R15). The Committee is concerned that the Károlyi István Children's Home at Fót is due to be closed and, despite the explanations given by the Hungarian authorities, the Lanzarote Committee is also concerned with the lack of precise information on the alternative accommodation (and conditions) where the unaccompanied children will be.

2.2. On more specific recommendations

9. The Lanzarote Committee notes first, with appreciation, that several trainings were put in place and more are scheduled (Recommendation R16). It also acknowledges that the living conditions in the transit zones have improved since the visit with the setting-up of shaded areas (Recommendation R13). The Lanzarote Committee also takes due note that, since the visit in July 2017, a doctor always examines a child in the presence of his / her parents or, when the child is unaccompanied, in the presence of a nurse (Recommendation R19). It also notes the presence of a person of the same sex than the child during the examination.

10. However, the Lanzarote Committee finds that no or too little other improvements were made after the visit with respect to the following.

³ According to the data provided by the Hungarian authorities a total of 45 unaccompanied children have lodged an asylum application in Hungary since 1 January 2018 (including only 1 since 1 January 2019).

Measures to be taken towards asylum-seeking children

11. The Hungarian authorities have not taken conclusive steps to cooperate with the Serbian authorities as regards the management of the waiting lists to enter the Hungarian transit zones in order to prevent corruption through sexual exploitation and sexual abuse of the asylum-seeking children (Recommendation R3). The risks of corruption through sexual exploitation and sexual abuse of the asylum-seeking children therefore remains. Even though the Hungarian authorities consider that they should not be involved in the creation of these waiting lists, the Lanzarote Committee recalls that Article 38 of the Lanzarote Convention requires Parties to cooperate with one another in order to prevent and combat sexual exploitation and sexual abuse of children.

12. As concerns Recommendation R4, the Hungarian authorities refer to “returns” when the Lanzarote Committee speaks of “push-backs” of migrant and asylum-seeking children at the border. “Returns” implies action taken in follow-up to a procedure to assess the personal situation of the child concerned, which is not the case with “push-backs”. The Lanzarote Committee therefore recalls its recommendation and urge the Hungarian authorities to cease all push-backs of migrant and asylum-seeking children at the border and ensure that any child on Hungarian territory is immediately referred to the competent child protection authorities to undergo a needs assessment in line with the rights of the child to ensure that they are protected against any risk of sexual exploitation and abuse.

13. The Lanzarote Committee is concerned with the fact that the age verification procedures have not changed since the visit. The verification is still carried out by army doctors whose knowledge in age verification has not been demonstrated. Even if the Hungarian authorities claim that age verification is also based on psychological maturity of the applicant and on cultural or ethnical facts and characteristics, other sources contradict this, pointing out, in particular, that the Asylum Act does not specify how age verification should be conducted and does not prescribe the use of a multi-disciplinary approach. The Hungarian authorities should therefore reinforce the age verification procedures and complement the verification by other processes than physical appearance of the person, in order to avoid cases of unaccompanied children under 18 being assessed as being above 18 and held together with single men, thus preventing cases of their being sexually exploited or sexually abused (Recommendation R5). In addition, since they have not provided information on the follow-up given to Recommendation R6, the Hungarian authorities have not demonstrated that they now ensure that the principle of the benefit of the doubt is adequately applied to individuals pending verification of their age when there are reasons to believe that they are children and to individuals when the age verification procedure is over and if doubts about the age of the person remain.

14. The Lanzarote Committee takes due note of the existence of guidelines since 2014 on the treatment of families with children and what they contain as concerns family verification (Recommendation R7).

15. As concerns guardianship (Recommendations R8 and R9), contrary to what was recommended, full protection of all unaccompanied children aged 14-18 is not ensured since the Hungarian legislation was not repealed. Only unaccompanied children aged 14-18 who have been recognised refugee status or granted subsidiary protection are assigned to a guardian with the same qualifications, functions and legal powers as those appointed for children aged less than 14 (child-protection guardian). Therefore, unaccompanied children aged 14-18 who have not been recognised as refugees (i.e. those in the transit zones) are not assigned to this type of guardian but only to an ad-hoc guardian (or temporary guardian), with a less protective role, limited competences and access to the child. The Lanzarote Committee sees no reason why the legislation was not repealed as concerns child-protection guardians, in particular due to the very limited number of unaccompanied children aged 14-18 remaining in the transit zones (as acknowledged by the Hungarian authorities themselves). Even if it notes the positive steps on the reduction of the workload for child protection guardians as of 1 January 2020, the Committee highlights that this does not concern unaccompanied children in the transit zones. For them, therefore, the situation remains unchanged.

16. Languages (Recommendation R10) remain an issue. According to sources other than the Hungarian authorities, children affected by the refugee crisis do not have access to adequate interpretation support, in particular during medical examinations, psychotherapeutic sessions, meetings with the ad hoc guardians or with social workers. The Hungarian authorities do not refer to any language training provided to social workers and health care professionals in the transit zones neither in languages spoken by the children affected by the refugee crisis nor even English. As for Hungarian language courses, the Lanzarote Committee notes that educational activities have started in the community rooms of the transit zones since September 2017. However, the Hungarian authorities were not in a capacity to provide data on the language courses provided, in particular the number of hours per week per child, the percentage of children enrolled. In addition, according to other sources, Hungarian language courses are of a very limited nature, only enabling children to say a few basic words in Hungarian.

17. Information given to children in the transit zones to raise their awareness on the risks of sexual exploitation and sexual abuse (Recommendation R11) also remains an issue even if it is said that social workers inform children about such risks (and that they are trained or will be trained in the near future to do so). Children in the transit zones are also required to fill out a questionnaire designed to detect victims of trafficking in human being. However, the Hungarian authorities still do not refer to any written documentation given to the children in a language they understand, nor to posters or other printed material displayed in the sectors where the children are accommodated. In any case, the remarks above on the limited access to interpreters and languages are also of major importance in the context of a proper and effective information given to the children in the transit zones.

In the meantime, measures to be taken in the transit zones

18. Despite the positive outcome related to the setting-up of shaded areas acknowledged above (see §10) other aspects of the living conditions in the transit zones (Recommendation R13) remain poor. Air conditioning is limited to community areas, which leaves the metal containers where the children sleep and spend most of their day very hot

during the summer, despite ventilating fans. Wireless internet connection remains poor and no public telephones or computers are available. This means that children affected by the refugee crisis in the transit zones who are not equipped with personal mobile phones remain disconnected from the outside world and others have to pay for bad quality communication.

19. As concerns food (Recommendation R14), the arguments put forward by the Hungarian authorities have not changed since the visit: food provided to the children in the transit zones is appropriate to age, free of charge and adequate in quality and quantity. The Lanzarote Committee is not in a position to know precisely what the situation is at the time the current assessment is drafted, without visiting again the transit zones. It nevertheless recalls that during the visit in July 2017 some 14-18 years-old children reported that the quantities were not sufficient and complained about the quality of the food. The delegation also saw that children had the possibility to buy additional food, a possibility which was denied by the authorities.

20. It is particularly difficult for the Lanzarote Committee to assess any possible improvement of the situation vis-à-vis social workers (Recommendation R17), medical staff (Recommendation R18) and corporate culture (Recommendation R22) from a distance. The Lanzarote Committee in any case acknowledges the efforts made in the training of these staff (see above §10). The Committee nevertheless recalls the importance for social workers, the medical staff and all the workers and volunteers in the transit zones to build up a relationship of trust and confidence with the children, with a positive attitude of care and concern towards them, in order to facilitate disclosure and to prevent their sexual exploitation and sexual abuse.

21. It is undoubtedly a positive development that, now, a psychologist and a psychiatrist are present in the transit zones (Recommendation R20). The Lanzarote Committee remains concerned that these professionals are present for only a very limited number of hours per week and that communication between these professionals and children is very limited due to language barriers (It appears that they don't speak the languages spoken by the children and that interpretation is not made available). In addition, their presence in the transit zones cannot be used as an argument to refuse access to the transit zone to the NGO Cordelia Foundation since its tasks are to provide psychological support to asylum-seekers and since the Cordelia Foundation can easily complement the offer of psychological support when the psychologist and the psychiatrist made available by the Hungarian authorities are not present in the transit zones. The Lanzarote Committee reiterates therefore the call made in the report of 31 January 2018 to allow the NGO Cordelia Foundation to accede to the transit zones.

22. The Lanzarote Committee notes that the situation as regards requests from children to leave the transit zones to return to Serbia (Recommendation R21) has not changed: even if children can submit a complaint, the requests to leave the transit zones are not monitored to screen these children for possible cases of sexual violence, to remedy the cases and to act in order to limit recurrence of such cases.

23. Effective access to the helpline of the National Crisis Management and Information Telephone Service (Recommendation R23) appears to be limited. First, there are no public telephones (see §19 above) and children may be reluctant to ask to access the telephone line

of the office of the social workers, especially if their call concerns, directly or indirectly, the social workers, or if they don't have full confidence in the fact that the social workers would keep this call confidential. Second, addressing the staff of the helpline only in Hungarian or English seems insufficient to discuss very personal issues such as sexual violence. The possibility to be put in contact with someone who speaks the language of the child should be provided for. The Lanzarote Committee notes, however, with appreciation the positive development of displaying posters in several languages to publicise the existence of other helplines and NGOs.

24. The Lanzarote Committee deplores that access of NGOs to the transit zones (Recommendation R24) has not improved. It also does not accept the reasons provided by the Hungarian authorities to justify the exclusion of the NGO Cordelia Foundation from the transit zones (see §23 above). The Lanzarote Committee calls, once again, on the Hungarian authorities to revise their position.

3. Conclusion

25. The Lanzarote Committee acknowledges that some progress has been made on a number of issues identified above. It nevertheless deplores the fact that insufficient progress has been made to protect migrant and asylum-seeking children from sexual exploitation and sexual abuse since the visit by a delegation to transit zones at the Serbian/Hungarian border which took place on 5-7 July 2017. Therefore, the Lanzarote Committee considers that the risk to children held in the transit zones of becoming victims of sexual exploitation and sexual abuse has not sufficiently been reduced since the visit of the delegation in July 2017 because of all the remaining challenges described above.

26. The Lanzarote Committee therefore calls on the Hungarian authorities to fully implement the recommendations made in the report of 31 January 2018 in light of the findings made in the present report. It stands ready to provide technical assistance to the Hungarian authorities upon request. It also recalls the possibility for the Council of Europe to develop cooperation activities in this field upon request.

27. The Lanzarote Committee decides that further assessment of the implementation of the recommendations contained in the "Special report further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017)" will be pursued in the context of the assessment of the implementation by the Parties to the Lanzarote Convention of the recommendations contained in its special report "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse".