



G R E T A

Group of Experts on Action
against Trafficking in Human Beings

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Report on Hungary

under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

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1. Introduction

1. Pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), the Group of Experts on Action against Trafficking in Human Beings (GRETA) monitors the implementation of the Convention by the Parties. GRETA's Rules of procedure for evaluating the implementation of the Convention by the Parties, which were adopted in 2009 and amended in 2014, specify the modalities and means of evaluation. Under Rule 7 of these Rules, when GRETA receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention, it may make an urgent request for information to any party or parties to the Convention. Taking into account the information submitted by the party or parties concerned, as well as any other reliable information available to it, GRETA may designate rapporteurs to assess the specific situation and, if necessary, carry out a visit to the party or parties concerned.

2. In its first evaluation report on Hungary,¹ GRETA noted that insufficient steps were being taken to detect possible victims of trafficking in human beings (THB) amongst asylum seekers and irregular migrants. GRETA urged the Hungarian authorities to adopt a framework for the identification of victims of human trafficking among third-country nationals without legal residence and to strengthen procedures for the identification of victims of human trafficking among asylum seekers and irregular migrants, in particular by increasing efforts to train staff of the Immigration and Asylum Office² on identification and the use of common indicators for identification.

3. Since the adoption of GRETA's report on Hungary in March 2015, as part of its mandate to monitor the implementation of the Convention, GRETA has continued to follow developments related to trafficking in human beings in Hungary. The adoption of Law No. T/13976 "On the amendment of certain acts related to increasing the strictness of procedures carried out in the areas of border management" on 7 March 2017 raised a number of questions related to GRETA's mandate. Pursuant to this law, unaccompanied migrant children aged 14 or more are considered adults during a "crisis situation caused by mass immigration" declared by the Hungarian government and do not benefit from the usual child protection measures provided to other separated or unaccompanied children. The law provides for the automatic placement of asylum seekers, including families with children and unaccompanied and separated children from the age of 14, in transit zones at the border.

4. On 21 June 2017 GRETA sent a letter to the Hungarian authorities pursuant to the above-mentioned Rule 7 of the Rules of procedure for evaluating implementation of the Convention by the Parties, requesting the following information:

- steps taken in the transit zones and other detention facilities to enable staff through training and the provision of instructions to screen migrants and asylum seekers for indicators of human trafficking, with a view to identifying victims of trafficking and referring them to assistance as required by the Convention, paying special attention to vulnerable groups, such as children, women and people with disabilities;
- statistics on the number of possible victims of trafficking in human beings detected in transit zones and other detention facilities for migrants and asylum seekers;

¹ GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: First evaluation round, GRETA(2015)11, adopted on 20 March 2015, published on 29 May 2015, available at: <http://rm.coe.int/doc/090000168070a5f3>

² At the time of the first report, this government agency was called Office of Immigration and Nationality.

- steps taken to protect unaccompanied and separated children from falling victim to trafficking in human beings and to ensure that a protective environment is provided for such children, including existing arrangements for accommodating unaccompanied and separated children under the age of 14, the procedure for appointing legal guardians to unaccompanied and separated children, and the current age assessment procedures;
- procedures in place to ensure that the return of victims of trafficking is conducted with due regard for the rights, safety and dignity of the persons concerned;
- non-governmental organisations (NGOs) and international organisations allowed to access transit zones and other detention facilities for migrants and their mandate in relation to human trafficking.

5. By letter of 3 July 2017, the Hungarian Ministry of the Interior provided responses to GRETA's urgent requests for information, which are reproduced and discussed in later parts of the report. GRETA considered the information provided by the Hungarian authorities during its 29th meeting (3-7 July 2017) and decided to send a follow-up letter requesting clarifications and additional information as regards the training provided to different categories of staff on the detection of victims of THB, the applicable procedure if a victim of trafficking is detected in a transit zone, the measures put in place to enable victims of trafficking to exercise their right to seek and enjoy asylum, the time limits for appointing legal guardians and the number of such guardians appointed in the last two years. GRETA also decided that, in the light of the information received and new developments, GRETA's Bureau remained seized to decide on taking any further steps.

6. By letter of 8 September 2017, the Hungarian Ministry of the Interior provided responses to GRETA's requests for additional information. After having examined the additional elements, GRETA's Bureau considered that they only partially addressed GRETA's concerns. Therefore, in application of Rule 7 of the Rules of procedure for evaluating the implementation of the Convention by the Parties, GRETA's Bureau decided to appoint Ms Siobhán Mullally, President of GRETA, and Mr Jan van Dijk, First Vice-President of GRETA, as rapporteurs to assess the specific situation of identification and referral of victims of trafficking among asylum seekers and migrants. With a view to collecting first-hand information necessary to perform this assessment and pursuant to its mandate, GRETA decided to carry out a visit to Hungary. The visit, organised pursuant to Rule 7 of the Rules of procedure for evaluating implementation of the Convention on Action against Trafficking in Human Beings by the Parties, took place from 18 to 20 December 2017. It was carried out by the two previously mentioned rapporteurs, who were accompanied by Mr Markus Lehner of the Secretariat of the Convention.

7. During the visit, GRETA's delegation met Mr Mátyás Hegyaljai, Deputy State Secretary for EU and International Affairs within the Ministry of the Interior and National Anti-Trafficking Co-ordinator, as well as officials from the Ministry of the Interior, the Ministry of Human Capacities and the Immigration and Asylum Office.

8. Further, the delegation visited the transit zones in Röszke and Tompa. During these visits, GRETA held meetings with officials from the Immigration and Asylum Office and the police, and interviewed persons held in the facilities visited. The delegation also visited the Károly István Children's Centre in Fót.

9. The GRETA delegation held separate meetings with representatives of NGOs in Budapest. It also met officials of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR). GRETA is grateful for the information provided by them.

10. Following the visit, by letter of 20 February 2018, the Hungarian authorities provided additional information which is reflected in later parts of the report. The present report was considered by GRETA at its 31st meeting (19 - 23 March 2018), following which it was sent to the Hungarian authorities for comments on 3 April 2018. The Hungarian authorities' comments, received on 19 April 2018, are reproduced at the end of this report.

2. Legislative developments

11. Since GRETA's first evaluation visit in 2014, there have been no changes to the legislative framework for combating THB in Hungary. However, there have been a series of amendments to the legislation pertaining to asylum, border management, residence of third-country nationals and child protection, which have a bearing on anti-trafficking action.³ In this context, GRETA recalls the legal obligations enshrined in the Convention, which requires Parties to put in place adequate identification procedures which enable the detection of victims of trafficking, including among people seeking international protection and migrants, and to enable them to exercise a series of rights to assistance, protection and compensation. The Convention also recognises the importance for States Parties to enable migration to take place legally.

12. The Hungarian Asylum Act⁴ (Article 93, paragraph 1(j)) provides for the possibility to declare by a Government Decree a "crisis situation caused by mass immigration". The declaration of such a crisis situation triggers certain measures relating to the asylum procedure, immigration and border protection that are foreseen in the Asylum Act and other relevant laws.

13. Following the arrival of increased numbers of migrants in Hungary in 2015,⁵ such a crisis situation was first declared by the Hungarian Government in September 2015 for six months⁶ and has been periodically prolonged by Government Decrees; at the time of GRETA's visit, the declaration of the crisis situation was effective until 7 March 2018. In February 2018, the crisis situation was extended for another six months until 7 September 2018.

14. On 28 March 2017, Law No. T/13976 ("On the Amendment of Certain Acts Related to Increasing the Strictness of Procedures Carried out in the Areas of Border Management")⁷ came into force, amending the Asylum Act, the State Border Act (LXXXIX of 2007), the Aliens Act (Act II of 2007) and the Child Protection Act (Act XXXI of 1997). These amendments also concerned the exceptional measures that apply when a "crisis situation caused by mass immigration" has been declared by Government Decree.

³ For an overview of the Hungarian asylum legislation and system, see UNHCR, Hungary as a country of asylum, March 2016, available at: <http://www.refworld.org/docid/57319d514.html>

⁴ Act LXXX of 2007 on Asylum; unofficial English translation reflecting the state of affairs of 5 July 2016 available at: <http://www.refworld.org/docid/4979cc072.html>

⁵ According to statistics of the Asylum and Immigration Office (available at bmbah.hu), 177 135 persons applied for asylum in Hungary in 2015, 29 432 in 2016, and 3 379 in 2017. As regards decisions taken in asylum procedures in 2017, 106 persons received refugee status, 1 110 received subsidiary protection and 85 were acknowledged as persons authorised to stay, while 2 880 cases were rejected and 2 049 procedures were otherwise closed.

⁶ Government Decree 269/2015 of 15 September 2015; unofficial English translation available at <http://www.refworld.org/docid/55f90f614.html>

⁷ Available in Hungarian at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=58bfcc084>

15. Pursuant to Article 80/J of the Asylum Act (inserted by Law No. T/13976), during a “crisis situation caused by mass immigration”, asylum applications can only be made within transit zones⁸ set up at the Hungarian-Serbian border (with the exception of persons who are already legally residing in Hungary). No exception is made in law for victims of trafficking who seek asylum in Hungary and who are therefore required to enter the transit zones. Asylum seekers can only enter such transit zones from the Serbian side of the border fence that was erected along the Hungarian-Serbian border. During the asylum procedure, asylum seekers must stay in the transit zone until they are either granted a protection status and can enter Hungarian territory, or their claim is rejected by a final decision and they have to leave to the Serbian side.⁹ At any given time, an applicant can leave the transit zones to Serbia. Unaccompanied children younger than 14 at the time of their arrival are referred to the Károly István Children’s Centre in Fót (see paragraphs 37-43), while those who are older than 14 are detained in a transit zone (see paragraphs 44-45).

3. Identification of victims of trafficking among asylum seekers held in transit zones

16. The purpose of GRETA’s visit to the two transit zones was to examine the procedures for identifying and referral to assistance and protection of possible victims of trafficking among asylum seekers. At the time of the visit, the transit zone in Röszke had a capacity of 450 and the one in Tompa, of 250. On 19 December 2017, 285 asylum seekers were placed in Röszke, including 26 unaccompanied children. On 20 December 2017, 194 persons were accommodated in Tompa, including 91 children staying with their families and 31 single men.

17. The transit zones are closed facilities surrounded by a fence topped with barbed wire. Asylum seekers are placed in groups in so-called “sectors”, each sector being surrounded by a separate fence. There is a common courtyard in each sector.¹⁰ A locked door on the wire fence of each sector is guarded by uniformed police personnel at all times. Most of the sectors accommodate families, but there is one sector in the Röszke transit zone for unaccompanied children (14 to 18 years old) and one sector in the Tompa transit zone for single men. Asylum seekers can leave their sector only if escorted by guards and for a specified reason, for example in order to see a medical doctor or meet a lawyer. At the entry points to the transit zones, there are designated staff accommodation areas and container units that serve as waiting or interview rooms and health-care services.

18. The transit zones are under the authority of the Immigration and Asylum Office which is subordinated to the Ministry of the Interior. The Hungarian Police receive the asylum seekers when they enter the transit zone through the entrance gate, having crossed the Serbian/Hungarian border). They carry out the preliminary registration and refer them to the Immigration and Asylum Office for the asylum procedure. The police also provide surveillance of the sectors where the asylum seekers live. Staff of the Secret Service and the Anti-Terrorist Unit of the Hungarian Police are also present in the transit zones. The Immigration and Asylum Office employs social workers present in the transit zones. Health-care staff working in the transit zones include military doctors as well as civilian doctors and nurses, employed by a private health care agency.

⁸ Further to an amendment of the Act on the State Border in September 2015, transit zones can be established at any of Hungary’s land borders that is an external Schengen border. The two transit zones on the border with Serbia became operational on 15 September 2015. See UNHCR, Hungary as a country of asylum, 2016, available at: <http://www.refworld.org/docid/57319d514.html>.

⁹ In August 2017, the Hungarian authorities stated that the average length of stay of asylum seekers, including persons falling within the scope of Dublin Regulation, was 25 days in the Tompa transit zone and 87 days in the Röszke transit zone; see European Migration Network, Ad-hoc query no. 1229, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/2017.1229_-_average_cost_and_average_length.pdf

¹⁰ The single men sector in Tompa was the only one without such a courtyard; there was only a strip of about two to three metres between the containers and the fence where the men could move outside the containers.

19. UNHCR and IOM staff as well as representatives of some NGOs are periodically present in the transit zones.¹¹ Both UNHCR and IOM provide counselling services and legal advice on asylum procedures and Hungarian legislation. At the time of GRETA's visit, the following NGOs had access to the transit zones: Caritas Hungarica, Hungarian Reformed Church Aid, Hungarian Charity Service of the Order of Malta, Hungarian Interchurch Aid,¹² Hungarian Baptist Aid, as well as the Hungarian Red Cross. Their representatives fulfil different tasks (distribution of additional food and clothing, interpretation, intercultural mediation, screening for pulmonary diseases) and visit the transit zones depending on their resources.

20. At the time of the visit, five persons per working day were allowed to enter from the Serbian side into each transit zone and make an asylum claim.¹³ A waiting list is established in Serbia, which is brought to the transit zone from the Serbian side by a so-called "list manager", who is also an asylum seeker. List managers are usually male and appear to be informally appointed from among asylum seekers waiting at the Serbian border; they enter the transit zone about one week later than those on the list.

21. The asylum interview for adults is held on the day of arrival at the transit zone by an official of the Immigration and Asylum Office. The questions asked during the asylum interview reportedly do not directly address THB. There are no guidelines on how to detect possible victims of trafficking during the asylum procedure and how to interview applicants in a gender-sensitive manner. However, according to the authorities, an applicant can ask for a same-sex interviewer and this is usually provided.

22. As noted in GRETA's first report on Hungary, the legal framework for the identification and referral to assistance of victims of human trafficking in Hungary is provided through Government Decree No. 354/2012 (XII.13) on the Identification of Victims of Trafficking in Human Beings,¹⁴ which entered into force on 1 January 2013. It specifies the bodies that can carry out victim identification, i.e. health service providers, state health administration bodies, personal care providers, public educational establishments, the police, the labour inspectorate, consulates, border guards and the Immigration and Asylum Office. The Hungarian authorities have indicated that since 1 January 2018, the victim support service, legal aid services and probation services have been added to the list of bodies. Where there are indications that a person might be a victim of trafficking, an interview takes place on the basis of a list of indicators, in the form of a questionnaire reproduced in an appendix to the Decree.¹⁵ Representatives of international organisations and NGOs informed GRETA that, despite requests that had been made, they had not received a clear answer as to whether the Government Decree applies in the transit zones. In the meeting with the GRETA delegation, however, the Hungarian authorities indicated that Government Decree No. 354/2012 also applies to the transit zones.

¹¹ UNHCR staff are present several times per week, including with their own interpreters, and IOM staff one day per week.

¹² According to information received in the transit zones, the Hungarian Interchurch Aid no longer visits them.

¹³ According to the authorities, sometimes a few more persons are granted access on the same day, e.g. when a whole family arrives. However, in a statement published on 16 February 2018, UNHCR noted that "for the past few weeks, UNHCR has observed that the Hungarian authorities are, on average, only allowing two asylum seekers a day to enter the country through the two transit zones at the border with Serbia"; available at: <http://www.unhcr.org/hu/4486-hungary-unhcr-dismayed-border-restrictions-draft-law-targeting-ngos-working-asylum-seekers-refugees.html>.

¹⁴ Unofficial translation in English available at: http://thb.kormany.hu/download/a/ec/a0000/13_Government%20Decree%20No%20354_2012.pdf

¹⁵ See GRETA's first evaluation report on Hungary (see footnote 1), paragraph 126.

23. According to information provided by the Hungarian authorities, a training project for 120 officials and social workers from the Immigration and Asylum Office, including 57 asylum officers, entitled "Successful Identification of Victims of Trafficking in the Procedures of the Immigration and Asylum Office", was implemented from 1 January 2017 to 31 January 2018, in co-operation with the Ministry of the Interior, the National Police, the Hungarian Baptist Aid, UNHCR and the embassies of the United States and France. The project was funded by the European Union's Internal Security Fund (ISF) and aimed at building the capacity of staff to identify victims of trafficking and refer them to assistance. The authorities informed GRETA that additional training sessions were expected to take place later in 2018 and in 2019. Another ISF-funded project implemented by the National Police aims at sensitising 600 police officers and persons from organisations that are competent to identify victims of trafficking under Government Decree No. 354/2012 on the identification of victims of trafficking in the 19 counties of Hungary. Some of the staff met by GRETA in the transit zones had participated in one of these trainings, including police officers, officials of the Asylum and Immigration Office and social workers.

24. Further, by letter of 20 February 2018, the Hungarian authorities informed GRETA that in the framework of a project entitled "Development of Social Human Resources", training courses were developed for child welfare and child protection specialists working across the country, which covered the issues of child prostitution and child trafficking. Further, the National Police Headquarters and IOM intend to organise training for police officers on identifying third-country national victims of trafficking under the project SAFE (Safe and Adequate Return, Fair Treatment and Early Identification of Victims of Trafficking).

25. Health-care staff working in the transit zones include military doctors as well as civil doctors and nurses hired by the police from a private health care company. On weekends only military doctors are present. There is constant rotation of staff as they usually work at hospitals. The health-care staff have not received specific training to enable them to identify victims of trafficking or on addressing the specific needs of victims of trafficking. Health-care staff met by GRETA during the visit did not know what indicators to look for to detect possible victims of trafficking and how to refer them to assistance.

26. In the transit zones, there was no established set of procedures or guidelines for the identification of victims of trafficking and their referral to assistance and protection. Most of the staff working in the transit zones who were interviewed by the GRETA delegation were unable to provide a clear explanation as to what procedures would be followed or who were the competent authorities to take decisions on victim identification and referral.

27. By letter of 20 February 2018, the Hungarian authorities indicated that as part of the training project referred to in paragraph 23, the Immigration and Asylum Office has prepared a "professional brochure" which is being disseminated to its staff members in the transit zones as well as the regional directorates and local offices. GRETA was not provided with a copy of this brochure, but it reportedly provides a comprehensive overview of the phenomenon of trafficking in human beings, the legislative framework for combating it, victim identification techniques and victim referral measures.

28. In 2015 the Hungarian police introduced a protocol for the identification and referral to assistance of victims of trafficking, but other relevant public bodies, such as the Immigration and Asylum Office, do not have such a protocol. In GRETA's opinion, a clear and harmonised protocol with instructions on the steps to be taken in case of an indication of THB is needed for all public bodies present in the transit zones.

29. GRETA notes with concern that material conditions in the transit zones are not conducive to creating an atmosphere of trust which would make it possible for victims of trafficking to come forward and discuss their situation. As mentioned in paragraph 17, asylum seekers are detained in cramped living quarters, surrounded by barbed wire, and are always under the surveillance of armed guards. Even when leaving their living area to attend medical appointments, asylum seekers are accompanied by armed guards.

30. According to representatives of international organisations and NGOs present in the transit zones, asylum seekers are insufficiently informed about their rights in the framework of the asylum procedure. GRETA was informed that in some cases asylum seekers refrained from seeing a doctor because they feared that their health situation might endanger their international protection claim. On the positive side, IOM provides asylum seekers with information on how to seek a judicial review¹⁶ of a negative decision and provides translations of decisions usually available only in Hungarian.

31. GRETA noted that there was a lack of information materials available to asylum seekers in the transit zones, with the exception of a poster in English and Arabic informing them about the possibility to ask for legal assistance. GRETA did not see any information material about trafficking in human beings in Röszke. In Tompa, GRETA was provided with an information leaflet on THB which was reportedly distributed to asylum seekers. It lists indicators for four different forms of exploitation and ends with the sentence "If you feel you are/if you think you know a victim of trafficking, ask for help/inform the authorities." The term "authorities" is not further specified. This information leaflet exists in the languages that are mostly spoken by the persons placed in the transit zones. The Hungarian authorities subsequently provided GRETA with a copy of a one-page leaflet entitled "Information for potential victims of human trafficking", which reportedly exists in 11 different languages, and contains contact details of organisations that can provide assistance and support.

32. NGOs other than the ones mentioned in paragraph 19 are not allowed to enter the transit zones, in particular NGOs specialised in THB, counselling of migrants, legal and administrative support and psychological assistance, such as the Cordelia Foundation (which specialises in providing psychological support to victims of torture and other vulnerable persons) and Menedék - Hungarian Association for Migrants (which is specialised in social and integration work for migrants including unaccompanied children). The Hungarian Helsinki Committee is not allowed to enter the sectors where the asylum seekers live, but can provide legal assistance in a meeting room, to which the asylum seekers are escorted. The authorities informed the GRETA delegation that they had recruited one psychologist who would be available for a limited number of hours per week. GRETA is concerned that this limited service is unlikely to meet the needs of hundreds of asylum seekers detained in the transit zones, including unaccompanied and separated children.

33. According to information provided by the Immigration and Asylum Office, victims of trafficking identified among asylum seekers in the transit zones would in principle be placed separately from other applicants within the transit zone. The authorities indicated that the Immigration and Asylum Office may also arrange for placement of an identified victim of trafficking outside the transit zone in reception centres for asylum seekers, where they would be accommodated separately. GRETA was informed that asylum seekers can, exceptionally, be allowed to leave the transit zones, in general for medical reasons that cannot be dealt with in the transit zones. However, there does not seem to be a legal basis for accommodating asylum seekers, including victims of trafficking amongst them, outside the transit zones under a "crisis situation caused by mass immigration." **GRETA considers that the Hungarian authorities should urgently seek to clarify this question.**

¹⁶ For details concerning the judicial review procedure, see UNHCR, Hungary as a country of asylum, March 2016, available at: <http://www.refworld.org/docid/57319d514.html>

4. Identification of victims of trafficking amongst unaccompanied and separated children

34. In the context of the ongoing declared "crisis situation caused by mass immigration", all children, including unaccompanied and separated children older than 14, are placed in a transit zone. Unaccompanied children younger than 14 at the time of their arrival are referred to the Károly István Children's Centre in Fót (see paragraph 15).

35. The authorities informed GRETA that when an unaccompanied person who could be younger than 18 arrives at the transit zone, a military doctor decides on his/her age on the basis of the person's physical maturity and a dental assessment, taking into account relevant family relationships of applicants. The same applies when a child could be younger than 14. A second assessment can be requested and is usually done by a forensic doctor, who can conduct further examinations, such as an X-ray of the dentition, examination of the pelvic bone and other tests. According to the authorities, in case of doubt, the presumption of childhood should prevail. In its first report on Hungary, GRETA had expressed concern that the age assessment procedure did not take into account psychological, cognitive or behavioural factors. International organisations and NGOs met by GRETA during the urgent procedure visit reported that the age assessment procedure had not evolved since GRETA's first report and that the age assessment examinations in the transit zones were based on physical observation and took only a few minutes.¹⁷ A significant period of time can elapse until a requested second age assessment takes place.¹⁸

36. GRETA notes that for asylum seeking persons entering a transit zone, an erroneous age assessment can have particularly negative consequences, including detention in a transit zone rather than referral to the child protection system.

37. The Károly István Children's Centre in Fót, which is subordinated to the Ministry of Human Capacities, is specialised in accommodating unaccompanied children, including those who are sent from the transit zones, either because they are younger than 14 or because they have obtained a protection status. The unit for unaccompanied children is one of three units at the Centre and part of the Hungarian child protection system. On the day of GRETA's visit it hosted 40 unaccompanied children (37 boys and three girls). The children were mainly from Afghanistan, Pakistan, Iran, Somalia and Ghana. Two children were about to leave the Centre for family reunification.

38. GRETA was informed that no unaccompanied or separated children at the Centre had been identified as victims of trafficking. Staff working at the Centre consider all unaccompanied children accommodated at the institution as children at risk, including of becoming victims of trafficking. A certain number of children disappear from the Centre after a relatively short time (in 2017, 40% of the children accommodated at the Centre stayed less than a month), which impedes the identification of possible victims of trafficking.

39. Children younger than 14 are only allowed to leave the Centre accompanied and children older than 14 can leave the Centre unaccompanied subject to certain rules. The area of the Centre extends to 40 hectares, but there is a closed gate policy, with guards patrolling around the clock. If a child under 14 goes missing, the police are informed without delay. If a child older than 14 absconds, the police are informed if the child has not been found within 24 hours.

¹⁷ See also Lanzarote Committee Special report further to a visit to transit zones at the Serbian/Hungarian border (5-7 July 2017), paragraph 32.

¹⁸ See also the Special Representative of the Secretary General of the Council of Europe on migration and refugees' Report of the fact-finding mission to Serbia and two transit zones in Hungary, 12-16 June 2017, chapter 4.2.

40. In order to prevent disappearances, GRETA was informed that the Centre's staff focus on education and awareness-raising and make efforts to increase the number of family reunifications. According to the Centre's staff, the number of children who were reunited with their families tripled in 2017. One unaccompanied child was placed in foster care.

41. The Centre provides leaflets available in different languages to the children with information on their rights and advice on risks they face when they abscond from the centre. The Centre has also produced a short film about its activity and the opportunities the children have if they remain in Hungary. Several specialised NGOs (including Cordelia Foundation, Menedék, SOS villages) visiting the centre provide support services, including psychological care.

42. According to Hungarian legislation, a legal guardian is appointed to each unaccompanied child under 14 within eight days of the receipt of a request by the Immigration and Asylum Office. Legal guardians are obliged to meet the children regularly: according to law, at least twice a month for children under 14 years of age and once a month for older children. According to the Centre's staff, guardians generally manage to fulfil this obligation, despite being responsible for up to 30 children.

43. GRETA was informed that the Károly István Children's Centre expected to be closed in 2018 as part of an institutional modernisation plan. Representatives of the Ministry of Human Capacities could not provide details on where the children would be placed. Concerns have been expressed that the closure of the Centre might result in the children being dispersed across the country in different institutions.

44. Unaccompanied asylum-seeking children aged 14 to 18 are placed in the transit zones and do not fall under the normal child protection system. Teachers from local schools provided half-day basic schooling, but other than that, there was a lack of activities to occupy the children. As of the date of GRETA's visit, no victims of trafficking had been identified among the children detained in the transit zones. These children are appointed an ad hoc guardian, who is a government official and is only mandated to represent the child in the asylum procedure. All procedural actions under the asylum procedure should take place in the presence of the guardian. The asylum interview takes place two to four weeks after arrival, following the appointment of an ad hoc guardian. GRETA was informed that there were a limited number of ad hoc guardians who met the detained children sporadically.¹⁹ When an unaccompanied or separated child decides to leave the transit zone to go back to Serbia, the ad hoc guardian is reportedly informed. However, GRETA received reports that this was not always the case and the authorities confirmed that no agreement from the ad hoc guardian was required before the child left across the border to Serbia. GRETA was not provided with information on any risk assessment performed in such situations.

45. GRETA notes that both under the United Nations Convention on the Rights of the Child (Article 1) and under the Council of Europe Convention on Action against Trafficking in Human Beings (Article 4, alinea d) a "child" is any person under 18 years of age. GRETA is deeply concerned that children aged 14-17 years may be particularly vulnerable because they are treated as adults, despite their minority. GRETA recalls that under Article 5, paragraph 5, of the Convention, States are obliged to take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them. Conditions in the transit zones cannot be regarded as providing as a protective environment for children in the sense of Article 5, paragraph 5, of the Convention.

¹⁹

See also the Special Report of the Lanzarote Committee, paragraphs 43-45.

5. Return of asylum seekers to Serbia

46. Persons placed in the transit zones who decide to withdraw their asylum applications can leave to Serbia. Further, persons whose asylum requests have been refused have to leave the transit zone and are placed in a removal centre pending their departure from Hungary, or returned directly to Serbia. In both cases, no risk assessment is carried out before the person leaves, including in cases of unaccompanied children (see paragraph 44).

47. According to the authorities, UNHCR is informed of cases of persons leaving the transit zones to Serbia so that UNHCR staff in Serbia can provide assistance to the persons concerned. However, according to information obtained from UNHCR, this information is not always provided in time, and the organisation sometimes learns only at a later stage that a person has left the transit zone.

48. Due to the above-mentioned deficiencies in the identification of victims of trafficking in the transit zones, it is possible that a person leaving or being returned to Serbia is a victim of trafficking without having been identified by the Hungarian authorities. GRETA is concerned that such persons, in particular children, leave without a risk assessment being undertaken, and that the obligation of *non-refoulement* is not being met due to the difficult circumstances that migrants and asylum seekers, and in particular unaccompanied and separated children, face in Serbia, which puts them at risk of falling victim to trafficking in human beings.²⁰

49. GRETA refers to Article 16 of the Convention, which states that the return of victims of trafficking must take due regard of the rights, safety and dignity of the victim. Article 16 of the Convention should be read along with Article 40, paragraph 4, which specifically mentions the principle of *non-refoulement* and provides that its applicability is in no way affected by the Convention. Under Article 16, paragraph 7, of the Convention, a risk and security assessment has to be made before any return of a child victim to a State and such return shall not take place if there is indication that it would not be in the best interests of the child.

6. Collective expulsions

50. While a "crisis situation caused by mass immigration" is in force, any person found on Hungarian territory without regular residence status is immediately escorted to and removed across the Hungary-Serbian border without individual screening for vulnerabilities or any procedural safeguards.²¹ According to figures published by the Hungarian Helsinki Committee, 9 136 persons were escorted to the external side of the border fence in 2017.²² The Hungarian police publish on a daily basis the number of apprehended irregular migrants.²³ According to UNHCR Serbia, the number of collective expulsions from Hungary to Serbia amounted to 79 in the period from 11 December to 24 December 2017.²⁴

51. GRETA notes that irregular migrants and asylum seekers are groups which are particularly vulnerable to trafficking. As a consequence, collective expulsions negatively affect the detection of victims of THB amongst them and raise grave concerns as regards Hungary's compliance with certain obligations of the Convention, including the positive obligations to identify victims of trafficking and to refer them to assistance, and to conduct a pre-removal risk assessment to ensure compliance with the obligation of non-refoulement.

²⁰ See GRETA's second evaluation report on Serbia, paragraphs 14, 71 and 113, available at: <http://rm.coe.int/greta-2017-37-frg-srb-en/16807809fd>.

²¹ According to the Hungarian authorities, this procedure is not applied to unaccompanied children who are younger than 14 and who are placed in protection institutions on the territory of Hungary.

²² Hungarian Helsinki Committee, Hungary: Key Asylum Figures for 2017, available at: <https://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-figures-1-January-2018.pdf>

²³ Available at: <http://www.police.hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes>

²⁴ UNHCR Serbia update 11-24 December 2017, available at: <https://data2.unhcr.org/en/documents/download/61469>

52. In this context, GRETA refers to the ECtHR judgment in the case of *N.D. and N.T. v. Spain* (which was referred to the Court's Grand Chamber on 29 January 2018), concerning a Malian and an Ivorian national who tried to enter Spain via the Melilla border crossing by climbing over the border fences.²⁵ Together with some 75-80 other migrants, they were apprehended by the Spanish civil guard and immediately returned to Morocco, without being able to apply for asylum. The Court saw a violation of Article 4 of Protocol 4 of the European Convention on Human Rights (which prohibits collective expulsions) and Article 13 of the Convention (right to an effective remedy) due to the absence of individual assessment and effective remedy against expulsion.

7. Conclusions and recommendations

53. Many of the concerns raised in this report echo those contained in GRETA's first evaluation report on Hungary, in particular concerning the identification of victims of trafficking among asylum seekers and the prevention of trafficking of unaccompanied children by creating a protective environment for them. Several concerns have been magnified by the repeated introduction of more restrictive legislation and measures regarding immigration and asylum in Hungary.

54. GRETA notes that these measures, as well as the conformity of Hungary's legislative framework on refugees and asylum seekers with international human rights standards, have been criticised and questioned by other Council of Europe bodies²⁶ and international organisations.²⁷ There are several cases pending before the European Court of Human Rights concerning the conformity of the Hungarian asylum regime with the European Convention on Human Rights.²⁸ GRETA stresses that the policies and procedures applied by Hungary in the context of immigration must be in conformity with its human rights obligations and must not prejudice the application of the protection and assistance measures provided by the Convention on Action against Trafficking in Human Beings.

55. Furthermore, GRETA considers that a transit zone, which is effectively a place of deprivation of liberty, cannot be considered as appropriate and safe accommodation for victims of trafficking as required by Article 12 of the Convention.

²⁵ European Court of Human Rights, *N.D. and N.T. v. Spain*, applications No. 8675/15 and 8697/15, 3 October 2017.

²⁶ In particular the Council of Europe Commissioner for Human Rights statements of 27 November 2015, 13 January 2016 and 8 March 2017, available at: <https://www.coe.int/en/web/commissioner/-/hungary-s-response-to-refugee-challenge-falls-short-on-human-rights>; <https://www.coe.int/en/web/commissioner/-/risk-of-human-rights-violations-for-asylum-seekers-returned-to-hungary>; <https://www.coe.int/en/web/commissioner/-/commissioner-concerned-about-hungary-s-new-law-allowing-automatic-detention-of-asylum-seekers>; the Special Representative of the Secretary General of the Council of Europe on migration and refugees, Report of the fact-finding mission to Serbia and two transit zones in Hungary, 12-16 June 2017, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2; Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), Special report further to a visit to transit zones at the Serbian/Hungarian border (5-7 July 2017), available at: <https://www.coe.int/en/web/children/urgent-monitoring2>.

²⁷ UNHCR, statement of 7 March 2017, available at: <http://www.unhcr.org/news/briefing/2017/3/58be80454/unhcr-deeply-concerned-hungary-plans-detain-asylum-seekers.html>; UNICEF, statement of 9 March 2017, available at: https://www.unicef.org/media/media_95066.html

²⁸ For example, *A.S. and Others v. Hungary* (Application no. 34883/17); *A.A.A. and Others v. Hungary* (Application no. 37327/17); *I.A. v. Hungary* (Application no. 38297/17); *N.A. and Others v. Hungary* (Application no. 37325/17). In the case of *Ilias and Ahmed v. Hungary* (Application no. 47287/15), the Chamber judgment of the European Court of Human Rights held that there had been: a violation of Article 5, paragraphs 1 and 4, of the European Convention on Human Rights because the applicants' confinement in the Röszke transit zone had amounted to detention, meaning they had effectively been deprived of their liberty without any formal, reasoned decision and without appropriate judicial review; a violation of Article 13 as concerned the lack of an effective remedy with which they could have complained about their conditions of detention; and a violation of Article 3 on account of the applicants' expulsion to Serbia insofar as they had not had the benefit of effective guarantees to protect them from exposure to a real risk of being subjected to inhuman or degrading treatment. This case has been referred to the Grand Chamber of the European Court of Human Rights.

56. GRETA acknowledges that training programmes of officials from the Immigration and Asylum Office and police officers have been launched. While welcoming these initiatives, GRETA is concerned that professional groups such as doctors, nurses and other relevant actors present in the transit zones have not systematically been trained on THB.

57. GRETA notes that commendable efforts are being made to reduce the disappearance of unaccompanied and separated children from the Károly István Children's Centre in Fót and notes that the legal obligation to appoint child protection guardians for unaccompanied and separated children within eight days has been introduced.

58. GRETA urges the Hungarian authorities to adopt such measures that are necessary to identify victims of trafficking among asylum seekers, including by:

- **setting up clear procedures on the identification of victims of trafficking and their referral to specialised assistance;**
- **providing systematic training to officials of the Immigration and Asylum Office, police officers, doctors, nurses, social workers and other staff working in the transit zones, on the identification of victims of trafficking and the procedures to be followed, including by providing operational indicators to enable staff to proactively identify victims of trafficking;**
- **enabling specialised NGOs with experience in identifying and assisting victims of trafficking to have regular access to transit zones and to all accommodation centres for victims of trafficking;**
- **taking proactive measures to raise the awareness of victims of trafficking by systematically informing all asylum seekers, orally and in written in a language they can understand, about their rights in the framework of the asylum procedure, and the legal rights and the services available to victims of trafficking. Such steps should include distribution of information materials that specifically address the trafficking risks faced by men, women and children;**
- **ensuring that there are appropriate facilities in transit zones where asylum seekers can meet in privacy with persons of trust, including lawyers, employees of specialised NGOs, officials of international organisations and social workers.**

59. Without prejudice to the right of victims of trafficking to seek and enjoy international protection as referred to in Article 40, paragraph 4, of the Convention, GRETA urges the Hungarian authorities to ensure that:

- **victims of trafficking seeking asylum or subsidiary protection are not deprived of their liberty and are provided with specialised assistance and protection outside the transit zones, in accordance with Article 12 of the Convention;**
- **whenever there are reasonable grounds to believe that an asylum-seeking person placed in a transit zone is a victim of trafficking, he/she is granted a recovery and reflection period, during which expulsion orders cannot be enforced, and is promptly referred to specialised assistance outside the transit zone;**
- **victims of trafficking are provided with support and assistance outside the transit zones and in accordance with Article 12 of the Convention.**

60. Further, as far as children are concerned, GRETA urges the Hungarian authorities to review their age assessment procedures, with a view to ensuring that the best interests of the child are effectively protected and that the benefit of the doubt is given in cases of doubt, in accordance with Article 10, paragraph 3, of the Convention, and taking into account the requirements of the UN Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child²⁹ and the recently published European Asylum Support Office (EASO) practical guide on age assessment.³⁰

61. GRETA also urges the Hungarian authorities to mainstream prevention of human trafficking in the training of all staff working with unaccompanied children and separated children, and to provide them with indicators of trafficking.

62. Further, GRETA urges the Hungarian authorities to increase their efforts to identify child victims of trafficking and to set up child-specific identification procedures which involve child specialists and take into account the special circumstances and needs of child victims of trafficking. As regards unaccompanied and separated children placed in transit zones, this includes the timely appointment of a guardian and providing access to interpretation. In this context, GRETA refers to the 2016 report by the UN Special Rapporteur on trafficking in persons, especially women and children, on trafficking of persons in conflict and post-conflict situations³¹ and to the Council of Europe Strategy for the Rights of the Child (2016-2021).³²

63. Moreover, GRETA urges the Hungarian authorities to take further steps to prevent the disappearance of unaccompanied and separated asylum-seeking and migrant children, in particular by:

- providing enhanced safeguarding measures for children, with adequately trained staff;
- providing adequate training to legal guardians and foster families to ensure that the best interests of the child are effectively protected, in accordance with Article 10, paragraph 4, of the Convention;
- continuing to facilitate family reunification.

64. Recalling the recommendations made in its first evaluation report, GRETA urges the Hungarian authorities to conduct individual risk assessments prior to the return of trafficked persons, in co-operation with the country of return, international organisations and NGOs, with a view to ensuring compliance with the *non-refoulement* obligation under Article 40, paragraph 4, of the Convention and the UNHCR's Guidelines on the Application of the 1951 Refugee Convention to Victims of Trafficking,³³ as well as to facilitate their reintegration in countries of origin.

65. As regards in particular children, GRETA urges the Hungarian authorities to ensure that the best interests of the child are effectively protected, through an assessment of risks prior to any return, by specialised bodies in co-operation with relevant bodies in countries of origin.

²⁹ [General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005.](#)

³⁰ Available at: <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf>

³¹ Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/250/78/PDF/N1625078.pdf?OpenElement>

³² Available at: <http://rm.coe.int/168066cff8>

³³ UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking, HCR/GIP/06/07, 7 April 2006.

66. **Further, GRETA urges the Hungarian authorities to ensure that pre-removal risk assessments prior to all forced removals from Hungary fully assess risks of trafficking or re-trafficking on return, in compliance with the obligation of *non-refoulement*.**

67. GRETA looks forward to continuing its co-operation with the Hungarian authorities and stands ready to offer assistance in achieving the purposes of the Convention.

Appendix

List of public bodies, intergovernmental and civil society organisations with which GRETA held consultations

Public bodies

- Ministry of the Interior, National Anti-Trafficking Co-ordinator and Department of European Cooperation
- Ministry of Human Capacities, Department for Child Protection and Guardianship
- Immigration and Asylum Office

Intergovernmental organisations

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)

Civil society organisations

- Amnesty International
- Cordelia Foundation
- Hungarian Helsinki Committee
- Hungarian Women's Lobby
- Menedék - Hungarian Association for Migrants
- Terre des Hommes

Government's comments

The following comments do not form part of GRETA's analysis concerning the situation in Hungary.



MINISTRY OF INTERIOR
Department of European Cooperation

No.: BM/7756-4/2018

Ms. Siobhán Mullally
President

Council of Europe Group of Experts on
Action against Trafficking in Human Beings

Strasbourg

Dear Madam President,

I would like to thank you for forwarding us the Report on Hungary under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. We have contacted our colleagues at the Ministry of Human Capacities, as well as the Immigration and Asylum Office, and would like to make the following comments.

Concerning sections 17, 29, 32, 36 and 44, we refuse the use of expressions such as „closed facility” and place of „detention” regarding the transit zone. The transit zone is free to leave in the direction of Serbia for any asylum seekers at any time, also without withdrawing their applications. For this reason we do not agree with the conclusion in section 55, which states that the transit zone „is effectively a place of deprivation of liberty”

Regarding section 20, it is important that the Hungarian authorities have no influence on the order of the applicants for their entry into the transit zone; furthermore we do not have any official information of “waiting lists” existing.

The „professional brochure” mentioned in section 27 is available in printing and has been distributed among the staff. Please find attached to this letter an electronic copy of the material (existing only in Hungarian).

Regarding statements of sections 30–31, we emphasize that both in Tompa and Röske, all asylum seekers are properly informed in their mother tongue or in a language they can

understand in writing and verbally on their rights, obligations and the conduct of the asylum procedure. Section 31 mentions a one-page leaflet translated to different languages which has also been made available since the visit both electronically and in printing for the inhabitants of the transit zones.

Section 32 specifically mentions the Cordelia Foundation and Menedék Association as organizations not being allowed to enter the transit zones to conduct activities regarding victims of trafficking, however according to our current knowledge these two organizations do not offer such services. Menedék Association did not ask for permission to enter and conduct activities in either transit zones, nor did they do the same for the Asylum Detention facilities, they provide counselling and leisure time activities at the open center in Vámoszabadi, which activities are offered by other organizations and social workers as part of their daily tasks in the transit zones. We note furthermore, that EU directives are also applicable to Hungary as a Member State of the European Union, the provisions of which allow restrictions on the entry of non-governmental organizations into the transit zones (Article 8, Article 21 of Directive 2013/32/EU of the European Parliament and of the Council).

About psychological care it is important to mention that specialist care is available at the local hospitals for inhabitants of the transit zones. Furthermore, other organizations (e.g. the Hungarian Reformed Church Charity) offering psycho-social assistance are present at the zones as well. Consequently, the same care available through the Cordelia Foundation at issue is provided by different organizations at the transit zones, but it is still made available by the Authority.

About psychological care we can also inform you that since your visit the scope of available care funded by AMIF funds have broadened from providing psychologists to providing psychiatric care as well. At both Rösztke and Tompa transit zones since 25 November 2017 a psychologist 3 times a week for 3 hours each occasion, and a psychiatrist since 24 January 2018 also 3 times a week for 3 hours each visit, have been taking care of the clients. The above mentioned care is available for all inhabitants living in the zones.

Section 44 mentions lack of activities to occupy children, but in reality there are numerous organizations mentioned in the report previously and also social workers arrange and conduct many such activities each day, of which two-week-schedules are also available.

In section 46 the report is suggesting that only those who decided to withdraw their asylum applications can leave the transit zone to Serbia. We would like to make it clear again that the transit zone is free to leave in the direction of Serbia for any asylum seekers at any time, even without withdrawing their applications. The report notes that in the event of a voluntary departure from the transit zone, the authority does not carry out a risk assessment regarding the return of a person to Serbia. According to our point of view, the authority would effectively detain applicants by not letting them to return to Serbia according to their own will.

When deciding on the expulsion of an applicant, the authority shall examine the *non-refoulement* criteria. If the applicant is expelled to Serbia, the decision of the authority is primarily based on the fact that Serbia is a safe third country and a safe country of origin.

Regarding Chapter 6, we would like to note that after being escorted through a gate of the border protection facility, a person can reach the transit zone without being in need to step into Serbian territory. Escorting someone through a gate of the security border protection facility does not mean expulsion, considering the fact that the border line does not coincide with the border protection facility, both sides of the border protection facility belong to the territory of Hungary. Having regard to the above, in our point of view the critical remarks concerning the alleged "collective expulsion" are unfounded.

Section 58 urges provision of systematic training, in which case Section 23 outlines detailed previous activities conducted by the Authority which overlaps the recommendation. Employees of our Authority will be continuously trained in the subject matter and the training material is constantly available within our intranet system.

In the same section (58) it is recommended to enable specialized NGOs with experience in identifying and assisting victims of trafficking to have regular access to transit zones for victims of trafficking. Regarding this, the "professional brochure" mentioned in Section 27 lists all the organizations that offer such assistance in Hungary, two of which (IOM and Baptist Charity) operate within the transit zones regularly. Section 58 also urges to ensure that there are appropriate facilities in the transit zones where asylum seekers can meet in privacy with persons of trust, including lawyers, employees of specialized NGOs, officials of international organizations and social workers which possibility, in fact, is already provided.

The Immigration and Asylum Office provided various materials concerning the daily activities of asylum seekers in the transit zones that we have enclosed to our response for your information. Please also find attached the up-to-date texts of some Hungarian laws referred to in the report.

Budapest, "A" April 2018

Yours sincerely,



Dr. Gábor Tóthi
head of department