

## Annex II

*Unofficial translation!*



**ALAPVETŐ JOGOK BIZTOSA**  
AZ ENSZ NEMZETI EMBERI JOGI INTÉZMÉNYE

NAIH (National Authority for Data Protection and Freedom of Information) registration number: 40689

### REPORT

of the Commissioner for Fundamental Rights

in case No. AJB 4019/2012

**Rapporteurs:** Dr Katalin Haraszti  
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**Affected organisation:** Temporary Detention Facility, Békéscsaba

June 2012

**Report**  
**in case No. AJB 4019/2012**

### **The opening of the procedure**

Pursuant to section 56(2) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter referred to as the Third-Country Nationals Act), apart from special cases, the detention of a third-country<sup>1</sup> national (hereinafter: third-country national) who is a minor may not be ordered.

If a third-country national minor does not arrive or stay in Hungary alone, i.e. as an unaccompanied minor, but is accompanied by his/her parents or another relative, pursuant to section 56(3) of the Third-Country Nationals Act he/she can be detained under immigration laws for not more than thirty days “where the best interests of the child shall be a primary consideration”.

In Hungary, the place of detention prior to expulsion or deportation is “an institution built especially for the purpose of detention and operated by the police for accommodating foreigners whose personal freedom is restricted”, in other words a hostel of restricted access.<sup>2</sup> At the time of the investigation, the police operated hostels of restricted access in Budapest (at Liszt Ferenc International Airport) and also in Győr, Kiskunhalas and Nyírbátor.

Pursuant to the joint measure of the Director-General of the Office of Immigration and Nationality and the National Commander of the Police number 1/2011 (OT 15), as of 1 April 2011, the police does not execute the detention ordered in immigration proceedings of vulnerable third-country nationals such as families with small children, married couples, single women and other third-country nationals who are particularly vulnerable (old people, disabled people etc.) in the listed institutions but in the Békéscsaba Temporary Hostel of Restricted Access (hereinafter: the Temporary Hostel of Restricted Access).

### **The purpose of the investigation**

The purpose of my investigation was to learn about the circumstances of detention of foreigners living in the Temporary Hostel of Restricted Access. I paid special attention to the enforcement of the rights of minors in detention as ensured in Act LXIV of 1991 on the promulgation of the Convention on the Rights of the Child signed in New York on 20 November 1989 (hereinafter: the Convention on the Rights of the Child).

Since according to the information provided by the United Nations High Commissioner for Refugees the foreigners detained under immigration laws “were regularly given sedatives, which resulted in an addiction by the end of the detention for some of them”, I also inspected the types and quantities of drugs used during the medical treatment of foreigners detained at the Temporary Hostel of Restricted Access between 1 April 2011 and 30 April 2012.<sup>3</sup>

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<sup>1</sup> Under section 1(3) of the Third-Country Nationals Act, the provisions of the Act apply to foreigners without the right of free movement and residence.

<sup>2</sup> See section 1(1) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings and section 18 of the joint measure of the Director-General of the Office of Immigration and Nationality and the National Commander of the Police number 1/2011 (OT 15).

<sup>3</sup> Hungary as a country of asylum. Observations relating to the situation of asylum seekers and refugees in Hungary. UNHCR, United Nations High Commissioner for Refugees, April 2012, section 50 on page 17.

## **The method of the investigation**

We carried out an on-site inspection of the Temporary Hostel of Restricted Access on 3 May 2012 without prior notice. My colleagues who participated in the investigation met the deputy head of the Békés County Police Headquarters responsible for law enforcement issues, they visited every building accommodating and serving foreign nationals, inspected the furniture and equipment of the buildings, inspected documents and talked to a few foreign nationals, social workers, social assistants, members of the medical staff and some of the guards, and the head and the financial manager of the Temporary Hostel of Restricted Access.

My colleagues who participated in the investigation speak English, German, French, Dutch, Serbian and Croatian in addition to Hungarian, therefore they conducted the hearings without the participation of interpreters.

## **Participants in the investigation**

Leader of the investigation: Dr Katalin Haraszti, Deputy Head of Department  
 Participants: Dr Katalin Magyarné Vuk, legal rapporteur  
 Dr István Sárközy, legal rapporteur  
 Dr Gábor Somogyi, legal rapporteur

## **The facts of the case as established**

Before the entry into force of Act CXXXV of 2010 on the Amendment of Certain Acts Related to Migration for the Purpose of Law Harmonisation (hereinafter referred to as Act CXXXV of 2010) on 24 December 2010, it was not possible to order detention under immigration laws or detention prior to expulsion in respect of minors who are the nationals of a third country (hereinafter: third-country nationals).<sup>4</sup>

According to the accounts of the police officers interviewed during the investigation, before 24 December 2010, in the case of families with small children from third countries who committed illegal border crossing or violated the rules of residence in Hungary, the fathers, after their detention had been ordered for immigration purposes, were transferred to a hostel of restricted access, whereas mothers and children were accommodated in a different, open institution. If a third-country national minor arrived with only one parent, the immigration authority only detained the parent and placed the child in an open child protection institution. It happened that such disrupted families, often living in different Hungarian towns, could only meet again after weeks or even months.

Act CXXXV of 2010 tried to remedy the judicial practice of disrupting families. According to an amendment of section 56(2) of the Third-Country Nationals Act (effective from 24 December 2010), “subject to the exception set out in subsection (3), the detention of a third-country national minor may not be ordered”.<sup>5</sup>

In addition to amending it, the legislator supplemented section 56 of the Third-Country Nationals Act with a new (third) paragraph, according to which “families with minors shall only be detained as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration, if the immigration

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Available at: <http://www.unhcr-centraleurope.org/hu/pdf/informacioforrasok/jogi-dokumentumok/unhcr-kezikonyvek-ajanlasok-es-iranyelvek/a-magyar-menekultugyi-helyzet-2012.html>

<sup>4</sup> See section 56(1) of the Third-Country Nationals Act.

<sup>5</sup> See section 61 of Act CXXXV of 2010 on the Amendment of Certain Acts Related to Migration for the Purpose of Law Harmonisation.

authority is of the opinion that the objective of detention cannot be ensured by the provisions of section 48(2) or section 62(1).”

According to section 48(2) of the Third-Country Nationals Act “in order to secure the enforcement of an expulsion measure the immigration authority shall be authorised to confiscate the travel document of the affected third-country national; this action cannot be contested”. If the family with a minor has no travel documents suitable for identification (in other words, there is nothing that the immigration authority could confiscate), this circumstance is in itself sufficient for the immigration authority to order their detention for not more than thirty days.

Pursuant to points a)-g) of section 62(1) of the Third-Country Nationals Act, the immigration authority shall have powers to order the restriction of freedom of a third-country national in a way that the measure will not qualify as detention, i.e. it may order “the confinement of the third-country national in a designated place”, if the third-country national in question

- a)* cannot be returned or expelled due to commitments of Hungary conferred upon it in international treaties and conventions;
- b)* is a minor who should be placed under detention;
- c)* should be placed under detention and in consequence of this his/her minor child residing in the territory of Hungary would be left unattended if he/she was to be detained;
- d)* the maximum detention period expires but there are still valid grounds for his/her detention;
- e)* has a residence permit granted on humanitarian grounds;
- f)* has been expelled, and lacks adequate financial resources to support himself and/or does not have adequate dwelling;
- g)* should be placed under detention under immigration laws according to Section 54(1) (a) or (b), and detention would result in a disproportionate punishment (for instance due to the state of health or age) of the third-country national concerned.

The amendment of the Third-Country Nationals Act that entered into force on 24 December 2010 contains no provisions as to what priorities the immigration authority should consider before ordering the detention of a third-country national as a “measure of last resort” in the cases listed in points (a)-(g) of section 62(1). According to the reports of the administrators interviewed during the investigation, the immigration authorities had the tendency of ordering the detention of foreigners who violated the laws also during this period.

Following another amendment, which became effective on 1 August 2011, concerning section 55(1) of the Third-Country Nationals Act, the immigration authority may order the detention of the third-country national (of any age) prior to expulsion in order to secure the conclusion of the pending immigration proceedings if his/her identity or the legal grounds of his/her residence is not conclusively established, or if the return of the third-country national under the bilateral readmission agreement to another Member State of the European Union is pending.<sup>6</sup>

The joint application of section 48(2) of the Third-Country Nationals Act and section 55(1) of the same act, restricting the discretion of immigration authorities which even before had only been used in exceptional cases, resulted in the automatic detention of foreigners without documents suitable for identification, among them also families with small children.

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<sup>6</sup> See section 104 of Act CV of 2011 on the Amendment of Certain Labour-related and other Relevant Acts for the Purpose of Law Harmonisation.

Detention prior to expulsion may be ordered for a maximum duration of seventy-two hours, and it may be extended by the court of jurisdiction of the place of detention until the third-country national's identity or the legal grounds of his/her residence is conclusively established but for maximum thirty days.<sup>7</sup>

However, during the application of the statutory provisions that after 24 December 2010 made it possible to also detain families with small children, it became clear that the police did not have any facilities suitable for detaining minors. In the absence of adequate accommodation circumstances, at first the police had to execute the detention for immigration purposes of minors arriving with their relatives in one of the hostels of restricted access run for adults, in circumstances of a detention facility.

In order to solve the fundamental rights related issues arising from the circumstances of the detention of minors, the top officials of the Ministry for Internal Affairs decided that the police would execute the detention ordered in immigration proceedings of families with small children, married couples, single women and other vulnerable persons, such as old people, disabled people etc.<sup>8</sup> at the Békéscsaba Accommodation Centre (hereinafter: the Accommodation Centre) established in 1989 for admitting and providing for asylum seekers and foreigners who have been granted the right of asylum.

Since also the administrator of the property, the Office of Immigration and Nationality, wanted to keep the facility which had been converted, enlarged and modernised several times, the new detention location was named "Temporary Hostel of Restricted Access" as a result of an agreement between the two organisations. The word "temporary" in the name reflects the hopes of the management of the Office of Immigration and Nationality that at a yet unknown date in the not too distant future the facility will be again used for receiving and providing for foreigners who have been granted the right of asylum.

The Temporary Hostel of Restricted Access started operating on 1 April 2011, after the conversion of the Accommodation Centre as required for the purposes of executing detention. Within the framework of the conversion of the building the police had bars fitted to the entrances in addition to bars on the external windows of the institution, they had the external facade and the fences reinforced, and installed on these a video surveillance system as well as infra barriers suitable for detecting and preventing unauthorised departure. They closed the internal floors of the building with metal bars, installed a video surveillance system in the corridors and also developed a room for storing weapons.

The Temporary Hostel of Restricted Access has four wings. On the first floor of building "A" there are eight bedrooms, for two persons each, which are used for accommodating married couples with no children. The six double bedrooms on the second floor of the wing are used for accommodating single women.

In building "C", there are four rooms with three beds, two rooms with five beds and four rooms with six beds on the first floor, and there are two double bedrooms, one room with three beds, two rooms with four beds and five rooms with five beds on the second floor for accommodating families with children.

According to house rules, the foreigners accommodated on the floors of building "A" or "C" are strictly prohibited from entering or staying in any bedroom other than the one assigned to them.

In building "B" there were originally ten bedrooms suitable for accommodating 38 persons; however, nine of these rooms are currently used as offices. The tenth is used for receiving the visitors of foreigners detained at the Temporary Hostel of Restricted Access.

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<sup>7</sup> See section 55(3) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>8</sup> Directive 2003/9/EC of 27 January 2003 of the Council of the European Union, in Articles 17-19, gave a definition for persons with special needs who require special attention from the authorities of Member States.

Altogether 27 persons could potentially be accommodated in the eight former bedrooms in building “D”, which was originally built as a medical isolation ward, but these are now used by the private armed guards employed by the police.

The first foreigners under detention arrived in the Temporary Hostel of Restricted Access on 4 April 2011. During the first weeks the police moved the families with small children – mostly of Afghan or Kosovar nationality – detained at the Kiskunhalas hostel of restricted access in the newly developed institution with a capacity of 135 people.

The families with small children admitted in the second half of the month did not arrive from another hostel of restricted access but from various places within the country, based on the decision of the immigration divisions of the county police departments having jurisdiction on the basis of the place of arrest. More than half of the 102 foreigners admitted during the first month of the facility’s operation were minors.

As of 23 May 2011 the detention ordered in immigration proceedings of single women and married couples has also been executed at the Temporary Hostel of Restricted Access.

Between 1 April 2011 and 31 December 2011 **646** citizens of 31 countries (including **279 minors**) spent periods of various lengths in the institution. 83.3% (**539** persons) of the foreigners admitted during this period were taken to the Temporary Hostel of Restricted Access together with a family member, 12.5% (**81** persons) were single women and 4% (**26** persons) were married couples with no children.

Between 1 January 2012 and 31 March 2012 **255** foreigners (including **130 minors**) arrived in the institution. 71.3% (**182** persons) of the admitted foreigners arrived with a family member, 13% (**33** persons) were single women and 15.3% (**40** persons) were married couples with no children.

The number of foreigners detained in the Temporary Hostel of Restricted Access during the first twelve months never reached or exceeded the upper limit of the facility’s capacity, therefore it was never overcrowded. Nobody tried to leave the institution illegally during this period.

The person living in the institution for the longest time (since 14 December 2011) was a woman of Congolese nationality born in 1976, who also filed an application for asylum. The last person at the time who was brought to the Temporary Hostel of Restricted Access arrived at dawn on 3 May 2012 and was a woman of Macedonian nationality. At the start of the on-site inspection she was in the medical isolation ward.

On 3 May 2012 there were **22** women, **10** men and **8** minors, altogether **40 persons**, at the Temporary Hostel of Restricted Access. Of the eight minors, three Afghans and three Kosovars arrived with both of their parents, and two children of Iranian nationality arrived at the institution with a single male relative.

The oldest inhabitant of the Temporary Hostel of Restricted Access was a 62 years old Mongolian woman and the youngest was a barely two-week-old baby of a Kosovar married couple, born on 21 April 2012.

### **The fundamental rights affected in this case**

- *The right to freedom and personal safety*: “No person shall be deprived of his or her liberty except for statutory reasons or as a result of a statutory procedure.” (Article IV(2) of the Fundamental Law).

- *The right to the protection of private life*: “Every person shall have the right to the protection of his or her private and family life, home, relations and good reputation”. (Article VI(1) of the Fundamental Law).

- *Prohibition of discrimination*: “Hungary shall ensure fundamental rights to every person without any discrimination on the grounds of race, colour, gender, disability, language,

religion, political or other views, national or social origin, financial, birth or other circumstances whatsoever.” (Article XV(2) of the Fundamental Law).

- *The right of children to protection and care*: “Every child shall have the right to the protection and care required for his or her proper physical, mental and moral development”. (Article XVI(1) of the Fundamental Law).

- *The right to physical and mental health*: “Every person shall have the right to physical and mental health”. (XX(1) of the Fundamental Law).

- *The right to legal remedy*: “Every person shall have the right to seek legal remedy against any court, administrative or other official decision which violates his or her rights or lawful interests.” (Article XXVIII(7) of the Fundamental Law).

## **The applicable laws**

- Act CXI of 2011 on the Commissioner for Fundamental Rights,
- Act XXXI of 1993 on the promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and the eight protocols of the same;
- Act LXIV of 1991 on the promulgation of the Convention on the Rights of the Child signed in New York on 20 November 1989;
- Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals;
- Act CXXXV of 2010 on the Amendment of Certain Acts Related to Migration for the Purpose of Law Harmonisation;
- Act CLIX of 1997 on armed security guards, nature conservation and field guards;
- Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals;
- Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

## **The findings of the investigation**

### **I. The competence of the Commissioner for Fundamental Rights**

Pursuant to Article XVI(1) of the Fundamental Law, every child shall have the right to the protection and care required for his or her proper physical, mental and moral development.

Pursuant to Article 3 point 1 of the Convention on the Rights of the Child “in all actions concerning children, whether undertaken by administrative authorities or legislative bodies, the best interests of the child will be a primary consideration”.

Pursuant to point 2 of Article 24 of the Charter of Fundamental Rights of the European Union “in all actions relating to children, whether taken by public authorities or private institutions [of the Member States], the child's best interests must be a primary consideration”.

As a result of their physical and mental condition arising from their age, children have special needs, which means that, irrespective of their legal status, they are particularly vulnerable, therefore they are regarded as an endangered social group from the aspect of the protection of fundamental rights. The immigration status of a minor who is in a vulnerable situation because of his/her age is of secondary importance; according to the cited provisions of the Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union as well as with Article XVI(1) of the Fundamental Law, all government agencies are obliged to treat him/her first of all as a child, and his/her best interests must be a primary consideration.

The fact that a minor detained in immigration proceedings was not alone when he/she arrived in the country illegally or he/she is not staying in the country illegally by him/herself but accompanied by a relative, does not release the government agencies from their statutory obligation to consider the child's best interests.

According to Article 30(1) of the Fundamental Law, the Commissioner for Fundamental Rights protects fundamental rights and acts at the request of any person.

Pursuant to section 18(4) of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter referred to as the ACFR) the Commissioner for Fundamental Rights may conduct *ex officio* proceedings in order to conduct an inquiry into irregularities affecting not precisely identifiable larger groups of natural persons or to conduct a comprehensive inquiry into the enforcement of a fundamental right.

According to Section 1(2)(a) and (d) of the ACFR, in the course of his or her activities, the Commissioner for Fundamental Rights will pay special attention, especially by conducting proceedings *ex officio*, to the protection of the rights of children and those of the most endangered social groups.

In the case of foreigners who do not speak Hungarian, it can be presumed with good reason that, due to their lack of knowledge of the Hungarian language and the local circumstances, especially in the particularly exposed situation that detention involves, they would not even be able to complain about the infringement of their own or their minor children's fundamental rights. For this reason, within my powers ensured by section 18(4) of the ACFR, I examined the circumstances of detention of the foreigners detained in the Temporary Hostel of Restricted Access within the framework of *ex officio* proceedings.

## **II. The apprehension of foreign nationals staying at the Temporary Hostel of Restricted Access**

Under sections 43(2)(a) and (b) of the Third-Country Nationals Act, subject to the exception set out in the Act, the immigration authority shall order the expulsion of a third-country national under immigration laws who has crossed the frontier of Hungary illegally, or has attempted to do so or fails to comply with the requirements of granting the right of residence (as set out in the Third-Country Nationals Act).

Some of the persons interviewed at the Temporary Hostel of Restricted Access during the on-site inspection crossed the border illegally, while the others were foreigners who violated the conditions of lawful residence in Hungary.

Foreigners who commit or attempt illegal border-crossing are arrested by the police, they are interviewed by the police with the help of an interpreter and their personal identification data are recorded. In effect, the police order expulsion on the very day of arresting the foreigner if they noticed the illegal border-crossing in connection with their border control activity in the frontier zone or during controlling the frontier traffic at the state borders and if the expulsion of the third-country national can be carried out under a readmission agreement.<sup>9</sup> Expulsion orders may not be appealed; however, a petition for judicial review may be lodged within eight days of the date when the resolution was delivered to the affected person.<sup>10</sup>

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<sup>9</sup>See section 114(2) of Government Decree 114/2007 (V. 24) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals; and section 6 of the joint measure of the Director-General of the Office of Immigration and Nationality and the National Commander of the Police number 1/2011 (OT 15).

<sup>10</sup>See section 46(2) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

Return under the readmission agreement is decided by the immigration authority by way of an order (and not a decision regarding the merits of the case) which may be contested by the third-country national affected by lodging a complaint within twenty-four hours following the time of delivery of the order. Implementation of the ruling on the return order will not be suspended upon receipt of the said complaint.<sup>11</sup>

On the first business day after the arrest or expulsion of the third-country national the police requests readmission of the person by the neighbouring country under the readmission agreement.

Neighbouring countries usually reply on the first business day following the receipt of the document to requests concerning the readmission of their citizens with documents suitable for identification and if the identity of their citizen with no documents could be verified by the person affected on the basis of information communicated verbally. If the contacted country is willing to readmit its citizen, the person affected must be transferred within a few hours but not later than on the following business day.

In general, these foreigners are only accommodated in a hostel of restricted access if the business day following the sending of the request for the application of the readmission agreement does not fall on the next calendar day because of a weekend, a public holiday or for any other reason.

The neighbouring countries reply to requests for readmitting foreigners with documents suitable for identification only after a longer period, in practice after two business days have passed. If the neighbouring country declares that it is willing to readmit the foreigner, the person concerned will be transferred on the following business day, that is, usually on the third business day after his/her arrest.

Such foreigners and the illegal border-crossers apprehended by the police in whose case the readmission agreement cannot be applied due to the negative answer of the neighbouring country are transferred to a hostel of restricted access until the conditions of expulsion can be met. According to the policemen we interviewed, the neighbouring countries only tend to reject the readmission of foreigners if they have no documents suitable for identification.

If the foreigner files an application for asylum while in the border zone, he/she will not be transferred to a hostel of restricted access but to an open institution, the Debrecen Accommodation Centre.

The immigration proceedings against foreigners who violated the rules of residence in Hungary and have no documents suitable for identification are conducted by the police.<sup>12</sup> Until their identity is clarified or the conditions of expulsion are ensured, the police detains such foreigners and carries out their detention at a hostel of restricted access.

Detention under immigration laws of third-country nationals who do not meet the conditions of residence prescribed by the Third-Country Nationals Act but have documents suitable for identification is not ordered by the police but the competent regional directorate of the Office of Immigration and Nationality.<sup>13</sup>

Since in order to secure the enforcement of an expulsion measure the immigration authority may confiscate the travel document of a third-country national, which act cannot be contested, these foreigners – as they have no travel documents – are also transferred to a hostel of restricted access until the conditions of expulsion are met. If the foreigner files an application for asylum as soon as he/she is captured, he/she may be transferred to the Debrecen Accommodation Centre.

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<sup>11</sup>See section 45/B(2) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>12</sup>See section 126(1)(a) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>13</sup>See section 126(1)(b) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

Foreigners who do not file their applications for asylum at the time they are captured but only after the immigration procedure has been started, i.e. while they are at a hostel of restricted access (which means that they are subject to both procedures), usually remain detained.

In 2012, 196 inhabitants of the Temporary Hostel of Restricted Access (among them 42 minors) filed an application for asylum. At the time of the on-site inspection, 27 of the 40 foreigners detained at the institution were asylum seekers.<sup>14</sup>

The detention of families with small children, married couples and single women from third countries who crossed the border or are staying in Hungary illegally must be enforced at the Temporary Hostel of Restricted Access, irrespective of the geographical location where they were arrested and of the area of jurisdiction of the immigration authority ordering the detention.

Detention under immigration laws may be ordered for a maximum duration of seventy-two hours, and it may be extended by the court of jurisdiction by reference to the place of detention until the third-country national's deportation or transfer, but for maximum thirty days at a time.<sup>15</sup> Families with minors may only be detained *as a measure of last resort and for not more than thirty days* where the best interests of the child must be a primary consideration.<sup>16</sup>

According to the Fundamental Law, everyone shall be entitled to his or her liberty, which can only be restricted "for statutory reasons or as a result of a statutory procedure".

According to point (f) of paragraph 1 of Article 5 of Act XXXI of 1993 on the promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and the eight protocols of the same (hereinafter: the European Convention on Human Rights) the arrest or detention of a person is lawful if it prevents his/her effecting an unauthorised entry into the country or if action is being taken against him/her with a view to expulsion.

The immigration authority issues a decision on the detention under immigration laws of a third-country national in a resolution. During the investigation, in the case of married couples detained at the Temporary Hostel of Restricted Access, the detention for immigration purposes of the husband and the wife were ordered in separate decisions.

In the case of families with children who are younger than 14, only two decisions are issued. One orders the detention of the father, the other that of the mother. The data of the one or more children under the age of 14 are included in the decision that orders the detention of the mother. If the child under 14 is in the country accompanied by only one adult relative, his/her personal data are recorded in the decision ordering the detention for immigration purposes of this person.

According to the interviewed administrators of the immigration authorities, one of the reasons for the above-mentioned legal practice is that although pursuant to section 56(2) of the Third-Country Nationals Act the detention of children from third countries cannot be ordered, the Hungarian laws provide no detailed rules in respect of ordering the detention of minors. On the other hand, pursuant to the Civil Code, children under the age of fourteen years have no legal capacity,<sup>17</sup> which means that they may not make valid legal statements in immigration proceedings, i.e. they cannot be a "client" in the procedure. The family members

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<sup>14</sup> Between 1 January 2012 and 3 May 2012, the refugee authority operating in one of the buildings of the Temporary Hostel of Restricted Access in Békéscsaba had altogether 242 asylum seekers as applicants in procedures. 46 persons of the applicants were foreigners from third countries detained at the Kiskunhalas hostel of restricted access while the rest were detained at the Temporary Hostel of Restricted Access.

<sup>15</sup> See section 48(4) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>16</sup> See section 56(3) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>17</sup> See section 12/B (1) of Act IV of 1959 on the Civil Code.

accompanying such children proceed on their behalf as their legal representatives.<sup>18</sup> Another problem is that incompetent minors cannot be punished under Hungarian law,<sup>19</sup> therefore they cannot be held accountable in administrative, criminal or minor offence procedures.<sup>20</sup> According to the Hungarian law in force, it is excluded by definition to order the detention of a minor under 14 for any purpose.

Since pursuant to the Civil Code a minor is of limited capacity if he or she has reached the age of fourteen years but has not reached the age of eighteen yet, he/she may make legal statements independently in certain cases determined by the law, therefore the immigration authority deals with his/her detention under immigration laws in a separate decision.<sup>21</sup>

Based on point d) of Article 37 of the Convention on the Rights of the Child the member states ensure that every child deprived of his or her liberty, irrespective of his/her age, has the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt an urgent decision on any such action.

A common feature of the immigration status of minors of no legal capacity and minors of limited legal capacity is that pursuant to section 56(2) of the Third-Country Nationals Act they cannot be detained independently but only together with the family member who accompanies them, based on section 56(3) of the Third-Country Nationals Act. Since in the latter case the subject of the detention applied in the immigration proceedings as a measure is not the minor but his/her adult relative, there is no legal ground or legal guarantee for the detention of the child.

*Since the immigration authority arrests a minor from a third country who arrives with his/her family not because he/she has committed a breach of law but, on the basis of section 56(3) of the Third-Country Nationals Act, because he/she accompanies his/her adult family member, the child has no opportunity to request the review of the lawfulness of his/her own detention from the court individually, which gives rise to an abuse of the freedom ensured in Article IV(1) of the Fundamental Law as well as of the right to seek legal remedy declared in paragraph (7) of Article XXVIII of the Fundamental Law.*

Pursuant to Article XV(2) of the Fundamental Law, Hungary shall ensure fundamental rights to every person without any discrimination on the grounds of race, colour, gender, disability, language, religion, political or other views, national or social origin, financial, birth or other circumstances whatsoever.

While pursuant to section 56(2) of the Third-Country Nationals Act the detention of a third-country national who is a minor and is in the country illegally without any relatives may not be ordered,<sup>22</sup> it can be applied as a “measure of last resort” in the case of children arriving with their families on the basis of section 56(3) of the Third-Country Nationals Act

According to the experiences of investigations carried out by my Office in other cases, the immigration authorities do not apply detention in the case of unaccompanied and separated children.<sup>23</sup> They are subject to compulsory confinement at a designated place, that is, in an open child protection institution, until the conclusion of the immigration or asylum procedure by a final decision.

Pursuant to point 2 of Article 2 of the Convention on the Rights of the Child, States Parties shall take all appropriate measures to ensure that each child within their jurisdiction is

<sup>18</sup>See section 12/C (1) of Act IV of 1959 on the Civil Code.

<sup>19</sup>See section 23 of Act IV of 1978 on the Criminal Code.

<sup>20</sup>See section 2(7) of Act II of 2012 on minor offences, offence procedures and the registration system of offences.

<sup>21</sup>See sections 12/A(1) and (2) of Act IV of 1959 on the Civil Code.

<sup>22</sup>In the case of unaccompanied and separated children the immigration authority is also not required to consider the options listed in sections 48(2) and 62(1) of the Third-Country Nationals Act.

<sup>23</sup>See reports No. AJB 7120/2009 and AJB 733/2012.

protected against all forms of discrimination or punishment on the basis of the status or activities of the child's parents, legal guardians, or family members.

The legal obligation of the immigration authority to consider the best interests of the child as a prime factor, based on point 1 of Article 3 of the Convention on the Rights of the Child, is the same in the cases of both unaccompanied minors who stay in the country illegally and minors who stay in the country illegally accompanied by their families. The immigration authority must take into consideration the child's best interests also when ordering the detention of a minor who is accompanied by his/her family.

*The legal practice based on section 56(3) of the Third-Country Nationals Act, according to which a minor from a third country can be detained only because he/she is accompanied by an adult family member even in such cases where the detention of children of a similar age is excluded by definition, violates the ban of discrimination on the grounds of other circumstances laid down in Article XV(2) of the Fundamental Law, therefore it gives rise to irregularities in relation to a fundamental right.*

### **Accommodation of and provisions for foreigners detained at the Temporary Hostel of Restricted Access**

The foreigners interviewed at the Temporary Hostel of Restricted Access were transferred to the institution by the police.

A foreign national can only be admitted to the Temporary Hostel of Restricted Access if the decision of the competent immigration authority ordering detention is available. After receiving the decision ordering detention, the social assistant on duty takes over the luggage of the foreigner and prepares a list of its contents. The social assistant takes over (against a receipt) and retains the valuables and cash of foreigners as well as all things that they are not allowed to keep in their possession for safety reasons.

During the admission a photo is taken of the foreigner, which is also recorded in the plastic ID card used for the identification of the inhabitants of the Temporary Hostel of Restricted Access. Foreigners can only have their meals at the institution, reserve time for using the Internet room and use all other facilities and services provided by the institution if they have such an ID (it must be pressed against a card reader).

Newcomers (among them also minors) can only be accommodated after a prior medical examination, with the written approval of the doctor carrying out the examination.<sup>24</sup>

The continuous, 24-hour health care supervision of the inhabitants of the Temporary Hostel of Restricted Access was carried out by two medical assistants employed by the Office of Immigration and Nationality, four medical orderlies belonging to the professional staff of the police, a police doctor and a paediatrician engaged by the police.

The police doctor, who speaks English, is in every Tuesday between 1 p.m. and 3 p.m. and every Thursday between 1:30 p.m. and 3 p.m. The paediatrician, who is in the institution every Thursday between 3 p.m. and 5 p.m., has a basic knowledge of German, English and Russian. Sometimes the participation of an interpreter is required for carrying out medical examinations. However, interpreters are not available at night and in particular at the weekend. This causes problems in particular during medical examinations that must be carried out as part of the admission.

In addition to the above, an English-speaking psychologist, employed by Cordelia Foundation, also gives advice in the institution once a week.

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<sup>24</sup> See section 3(1) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

According to the house rules of the Temporary Hostel of Restricted Access, the police doctor who is responsible for the medical treatment of adults and the paediatrician cannot have their consulting hours at the same time.

The police doctor carries out the examinations necessary for the admission of foreigners at times that correspond to the needs of the persons concerned. If the foreigner arrives at night, the medical examination takes place on the following day. If he/she arrives during the day, the doctor will examine him/her on the same day. If a large number of foreigners – in particular families with small children – arrive at the same time, the police doctor is called in even at the weekend or at night.

The police doctor questions the foreigner in detail and determines his/her internal medical state during the medical examination carried out at the time of admission. In addition to blood tests and urine tests, they can also perform ECG examinations in the surgery of the Temporary Hostel of Restricted Access.

For security reasons, detainees may not keep any medicaments in their possession. All drugs that are in the possession of the foreigner at the time of his/her admission are confiscated during the medical examination; the assistant participating in the examination places them in an envelope and retains them until the foreigner is released. The purchasing and distribution of medicaments for foreigners accommodated at the Temporary Hostel of Restricted Access, smaller medical treatments, public health checks and the making of appointments with specialists and for laboratory tests are carried out by the professional medical staff.

If the foreigner arrives in the Temporary Hostel of Restricted Access at a time when the police doctor who carries out the examinations necessary for admission is not in the institution, then the foreigner must wait, until the doctor arrives, in the medical isolation ward in a room called the “cell” by the foreigners. The medical isolation ward, which is next to the surgery, consists of two rooms, about 4x4 metres each, with bars on their windows. Each room is furnished with three iron beds, mattresses and bedding and there is a hand wash basin behind the door. Both rooms have viewing windows and they shut with heavy iron doors.

The bathroom and the toilet, which can be found within a few paces, open from the corridor. If a foreigner who is in the isolation ward wants to use one of these, he/she has to knock so that the guard on duty in the corridor can open the door and allow the foreigner to use these facilities. The Temporary Hostel of Restricted Access also provides towels and toiletries for the foreigners in the isolation ward and they can wash themselves with such toiletries before the medical examination. During the on-site inspection, a woman of Macedonian nationality arrived early in the morning and was waiting for the medical examination for about 7 or 8 hours. She said that after she had arrived in the Temporary Hostel of Restricted Access a photo was taken of her, she could wash herself, received some food and she was also given the plastic photo ID card necessary for using the facilities and services provided by the institution. *Based on the data available during the investigation, I found no circumstances indicating any irregularity in connection with any fundamental right concerning the admission to the Temporary Hostel of Restricted Access.*

If it is discovered as a result of the medical examination which forms part of the admission that the foreigner has a contagious disease or carries pathogens, the doctor will take measures to isolate the person concerned and inform the Specialised Agency for Public Health of the Békés County Government Office. If it is justified by the foreigner’s health condition, he/she must be taken to a public health institution.<sup>25</sup>

According to the data of the investigation, between 4 April 2011 and 31 December 2011 there were only two occasions when an inhabitant of the Temporary Hostel of Restricted

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<sup>25</sup> See sections 3(2) and (3) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

Access was suffering from a contagious disease because of which he/she had to be isolated. On 26 October 2011 an Eritrean citizen turned out to be infected with salmonella, then on 5 December 2011 “Cryptosporidium sp.” microbes were found in an Afghan citizen’s stool sample sent for a parasitological test. There was a foreigner who was infected with “Hepatitis B” but the medical staff only received his results after he had left the Temporary Hostel of Restricted Access.

Between 1 January 2012 and 31 March 2012 two foreigners had to be isolated because of scabies and another one because of head lice infection.

The employees of the Temporary Hostel of Restricted Access placed the inhabitants with infectious diseases in the medical isolation ward. The inhabitants then stayed there until negative control results were received following their treatment. Both the immigration authority which ordered the detention of the foreigner concerned and the public prosecutor who supervised the lawfulness of detention were informed of the infectious disease. *During the investigation, I found no irregularities in connection with any fundamental rights as regards the treatment of foreigners who suffered from an infectious disease or parasites.*

If foreigners detained at the Temporary Hostel of Restricted Access need emergency medical care or need to see a specialist, they can use such services in the outpatient clinic of the town or in the hospital on the basis of the referral of the police doctor or the paediatrician. The taking of foreigners to examinations or treatments at the outpatient clinic and their appropriate guarding during such periods must be arranged by the Temporary Hostel of Restricted Access.<sup>26</sup>

At the time of the on-site inspection, three expectant mothers lived in the institution, in the 8th, 5th and 16th weeks of their pregnancy, respectively. An inhabitant at the Temporary Hostel of Restricted Access, a 21-year-old woman of Kosovar nationality, was taken to the maternity ward, accompanied by guards, where she gave birth to her first child. The infant, who was two weeks old during the on-site inspection, received all vaccinations prescribed for Hungarian newborn babies after birth. During their five-day stay at the hospital, the mother and the newborn baby was guarded by the police in alternating shifts, twenty-four hours a day. According to the reports of the affected persons, police staff stayed in the hospital corridor while guarding the mother and the newborn baby; they were not present in the labour room or the ward.

According to the second sentence of section 23(2) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement, the police shall arrange the guarding of foreigners detained at a hostel of restricted access during the entire period of their treatment in an in-patient clinic. *In my opinion, the 24-hour guarding by the police of a mother who has given birth recently and needs hospital treatment is an unnecessary and disproportionate restriction of liberty. Furthermore, this is an unnecessary intervention not only in her private and family life but also in the private and family lives of all other mothers at the hospital ward, therefore it gives rise to irregularities in relation to the fundamental right to the protection of private and family life ensured in Article VI(1) of the Fundamental Law.*

The employees of the Temporary Hostel of Restricted Access took the father to the hospital every day; this way he had the opportunity to see the mother and his child.

After the family returned from the hospital, the medical service provided them with the medicaments, a cot, swaddling clothes, diapers and baby clothes necessary for the baby. The paediatrician and the medical service continuously monitored the condition of the newborn baby. *I found no circumstance indicating any irregularity in connection with any fundamental right as regards the provisions for the newborn.*

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<sup>26</sup> See section 23(1) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

If the medical examination carried out as part of the admission establishes that the foreigner does not suffer from any contagious diseases or any parasites, a social assistant on duty (usually someone who speaks English) provides the foreigner with the plastic photo ID card necessary for using the facilities and services provided by the institution, and also with bedding, toiletries, the house rules translated into a language spoken by the foreigner and, if necessary, seasonal clothes. There is a public phone box in the courtyard of the institution which can be used with phone cards. The foreigners can buy phone cards from their deposited money; the phone cards are actually purchased by the employees of the Temporary Hostel of Restricted Access and they settle accounts with the foreigners after the purchase. The Internet room can be used free of charge, at times agreed in advance, and this way the foreigners can inform their relatives about their whereabouts. Keeping in mind that families and married couples must be provided with a separate living space that meets the basic requirements of family life<sup>27</sup>, the social assistant accommodates the foreigner in one or the other part of the building, depending on his/her personal circumstances. *According to the experiences of the on-site inspection, most of the bedrooms could not even be latched, which is not only embarrassing for the detained married couples and families but also violates the fundamental right to the protection of private and family life ensured in Article VI(1) of the Fundamental Law.*

The Temporary Hostel of Restricted Access provides three meals per day to the detained foreigners and five meals per day to minors. With the HUF 700/day/person cost for provisions, food of an energy content of at least 10,900 joules per day must be provided to the detainees. The eating requirements of detainees' religions are also taken into consideration. Expectant mothers, mothers with small children and minors are provided with a litre of milk, fruits every day or, if justified by medical reasons, other equivalent food. Having regard to detainees following the Muslim faith, the inhabitants of the institution are only given pork-free food. During Ramadan it is also possible for Muslim detainees to eat their meals at times of their choice. The foreigners interviewed during the on-site inspection were basically satisfied with the food, they only mentioned that they often received pasta and that they would have liked to be given meat more frequently. During the on-site inspection my colleagues participating in the investigation also ate the lunch prepared for the foreigners. They found the quantity and quality of the meals adequate. *I found no circumstance indicating any irregularity in connection with any fundamental right as regards the food provided to the detained adult foreigners.*

According to the reports of the non-governmental organisations working at the Temporary Hostel of Restricted Access, it was a recurring problem in connection with supplying children with food that the children of asylum seeking families received extra food from the additional support to such families funded by the European Refugee Fund. The children of families which did not apply for asylum were not entitled to such additional support. It causes tensions that it is virtually impossible to give a satisfying explanation to the children staying in the institution why the children of the family living in the next bedroom receive sweets or fruits of which they are not given any.

*Since the immigration status of a detained minor is of secondary importance, he/she must be treated as a child in the first place pursuant to Article XVI(1) of the Fundamental Law and point 2 of Article 2 of the Convention on the Rights of the Child. Providing for children detained at the Temporary Hostel of Restricted Access depending on their immigration status violates the prohibition of discrimination laid down in Article XV(2) of the Fundamental Law.*

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<sup>27</sup>See section 5/B of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

In the accommodation buildings there are sitting rooms with a TV set and shared kitchens furnished with a cooker and a refrigerator on every floor. Since the switches of cookers have been removed, they cannot be used, and the detainees are unable to cook using the products bought from their deposited money. The police also had the refrigerators that belonged to the bedrooms removed when they transformed the accommodation centre into a detention facility. However, the foreigners do not use the refrigerators which can be found in the shared kitchens as they are afraid that others may take the food they bought or received as part of their provisions. *This situation does not make it possible for families or married couples to eat alone, in the living space assigned to them, at times other than when the meals are dispensed according to the daily schedule, which jeopardises the enforcement of the right to the protection of private and family life ensured in Article VI(1) of the Fundamental Law.*

The bedrooms are cleaned by those who use them. The employees of the Temporary Hostel of Restricted Access change the bedclothes every two weeks, which are then washed centrally. The detained foreigners wash and dry their clothes themselves in the bathroom that belongs to the bedroom but there is also a laundry room furnished with a washing machine on the ground floor. Cleaning products and laundry detergents are provided by the Temporary Hostel of Restricted Access. *I found no circumstance indicating any irregularity in connection with any fundamental right as regards the hygienic condition of the bedrooms in the Temporary Hostel of Restricted Access.*

The Temporary Hostel of Restricted Access has a courtyard of a basic area of approximately 2500 square metres, where, in addition to a resting place and a smoking area covered with a roof, a sports ground and a playground were also built. The institution also has a prayer room, a fitness room and a room for community activities. The foreigners are free to use the communal spaces in the parts of the buildings used for the purpose of detention, in particular the roofed resting place in the courtyard (which is also the designated smoking place), the sports ground, the fitness room, the recreational room, the Internet room and the bathrooms. They can move without any restrictions in these parts of the hostel of restricted access according to the schedule included in the house rules.

Men usually play football on the sports ground, play cards, work out in the fitness room or browse the Internet. The Internet room was particularly popular among teenagers. Women and small children, mainly the girls, liked to go to the activities held in the recreational room, supervised by the social workers of Menedék Hungarian Association for Migrants (*Menedék Migránsokat Segítő Egyesület*), where they did needlework, embroidered or threaded beads. *I found no circumstance indicating any irregularity in connection with any fundamental right as regards the activities organised for detained foreigners.*

The detained foreigners may receive visitors at previously agreed times in the room designated for this purpose. Visitors are received during office hours on business days and in the period corresponding to office hours on public holidays. Visits last at least forty-five minutes and can be extended by another thirty minutes on request if authorised by the head of the Temporary Hostel of Restricted Access. In the case of visitors arriving from abroad, at least a sixty-minute visit must be allowed immediately (if possible). The foreigner may receive several visitors at the same time if authorised by the head of the Temporary Hostel of Restricted Access.<sup>28</sup>

A Kosovar man interviewed during the on-site inspection told us that shortly after being accommodated in a bedroom, he informed his relatives living in Austria through the phone box that can be found in the courtyard (and used with a phone card) that they had been arrested when crossing the border and that the whole family was in Békéscsaba, at the

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<sup>28</sup> See sections 7(3) and (4) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

Temporary Hostel of Restricted Access. The relatives would come to visit on Saturday and they would meet in the room of the institution designated for this purpose. The other foreigners also informed their relatives on the phone or via the Internet that they had been held up at the border and were detained. However, without any relatives living in Hungary or the neighbouring countries, none of them expected any visitors during their stay at the Temporary Hostel of Restricted Access. *Based on the available information, I found no circumstance indicating any irregularity in connection with any fundamental right as regards the communication of foreigners with the outside world.*

Several of the interviewed foreigners complained about deep anxiety and various sleep disorders. According to the report provided to us by the management of the Temporary Hostel of Restricted Access, in the period after the opening of the institution, a medicament called “Frontin” with a soothing, narcotising and sedating effect was the most popular among the detainees. The inhabitants took a total of 1500 pills containing 0.25 mg active agent each and 539 of the version that contains 0.5 mg active agent. The second most popular medicament was an antipsychotic drug, “Truxal 15 mg”, of which 438 were consumed; the third was the antidepressant called “Anafranil 25 mg”, of which nearly 300 were taken. In addition to the above, it was the antidepressants “Stimuloton 50 mg” and “Yarocen 15 mg” and the anxiolytic called “Xanax 0.5 mg” of which a larger amount was consumed by the inhabitants.

The quality and quantity of these medicaments as well as the reports of the detainees confirm the information gathered by the United Nations High Commissioner for Refugees according to which a high degree of insecurity and anxiety can be experienced among the detained foreigners and detainees suffering from post-traumatic symptoms of varying severity are also not uncommon. These foreigners need sedatives and sleeping pills on a regular basis in order to endure the detention.

### **The employees of the Temporary Hostel of Restricted Access**

The Temporary Hostel of Restricted Access has the following staff: **31** professional police officers, **98** armed security guards, **20** civil servants and **11** employees with fixed-term employment contracts funded by the European Refugee Fund. The costs of the **2** social workers employed by Menedék Hungarian Association for Migrants are funded by the European Return Fund. In addition to those listed above, the Békés County Police Headquarters employs **1** paediatrician on the basis of a part-time contract.

Of the 31 professional police officers 13 were women and 18 were men. Three of them – the police doctor, the commander of the Temporary Hostel of Restricted Access and a third person – have higher education qualifications, the others have secondary education qualifications. One police officer has an advanced level language examination certificate in Romanian, two officers have an intermediate level language examination certificate in English, two in German and another two have a basic level certificate in English. One of the professional police officers was the commander of the institution, while the doctor and the four medical orderlies worked for the medical service. Five serve as commanders of the guard, six as supplies commanders and the others as assistant rapporteurs in immigration matters.

The professional service group leaders and the assistant rapporteurs participated in a course covering the medical, physical and mental screening tests required according to section 26 of order 43/2008 of the National Police Headquarters on the rules of the hostels of restricted access of the police, the legal provisions applicable to detention and guarding and the basics of first aid. After completing the course, they took an examination.

The Békés County Police Headquarters employed the 98 armed security guards pursuant to the general decision No. 29000/33955/2010/ált. of the Director-General of Law

Enforcement of the National Police Headquarters for performing tasks involving the guarding and escorting of persons. They were employed in accordance with the provisions of Act CLIX of 1997 on armed security guards, nature conservation and field guards as well as of the Labour Code.

The Békés County Police Headquarters selected the members of the armed security guard from among some 400 candidates who applied for the vacancies advertised jointly with the Békéscsaba Job Centre. They were chosen following medical and psychological aptitude tests and personal interviews.

On 3 January 2011 106 persons started acquiring the skills included in the training programme issued by the Law Enforcement Directorate of the National Police Headquarters. Following the training, on 2 and 3 February 2011, 97 persons passed the examination. On 28 February 2011 another 7 persons re-took and passed the examination. Two persons quit the course voluntarily because of other employment possibilities.

Out of the 98 armed security guards working at the site during the on-site inspection, there were 85 men and 13 women. Three persons had higher education qualifications, 79 secondary qualifications, three secondary vocational qualifications and thirteen had other qualifications. One armed security guard had an advanced level language examination certificate in German, four guards had an intermediate level language examination certificate in English, one in Romanian, three had a basic level certificate in English and two in German. Since the majority of the armed security guards spoke no foreign languages, they communicated with the detainees with the help of the social assistants, who interpreted for them.

The members of the armed security guard wear blue uniforms, baseball caps and dark boots. They communicate with each other using radio handsets. As there are minors among the detainees, they are not allowed to keep their service firearms on them on the area of the institution. They can only wear such firearms while transporting the foreigners or accompanying them to external locations.

Initially, the armed security guards performed their duties equipped with truncheons and handcuffs. In May 2011 the national commander of the guard and his deputy (operating in subordination to the Public Order Protection Department of the National Police Headquarters) inspected the activity of the guards in person. The inspection established that the armed security guards carried out their tasks continuously and in accordance with the rules and it only mentioned as a complaint that they were not equipped with tear gas sprays.

As a result of the inspection the police purchased tear gas sprays also for the armed security guards, which they all carried with them at the time of our on-site inspection.

According to the information gathered through the on-site inspection, the armed security guards handled extraordinary events mainly through communication or, incidentally, by using physical force, therefore they have not used the tear gas spray yet. *With regard to the best interests of the minors detained in the institution, who are already anxious anyway, I am of the opinion that the armed security guards serving in the area of the Temporary Hostel of Restricted Access should not have tear gas sprays on them, just as they do not have firearms.*

None of the interviewed foreigners mentioned that the armed security guards hurt or verbally harassed them or any other detainee. However, many of them indicated that the very appearance of the guards may fill the already frustrated children with fear or anxiety, in particular the younger ones. This notion was also not disputed by the interviewed employees of the Temporary Hostel of Restricted Access.

The regular training of the policemen and the members of the armed security guard takes place monthly, on the "training day" designated for this purpose or on other dates when needed. In 2011 twenty armed security guards participated in a multicultural training organised by the Menedék Hungarian Association for Migrants and the Cordelia Foundation.

On 3 November 2011, the Hungarian Women's Foundation (*Magyarországi Női Alapítvány*) held a one-day training on female genital mutilation for the medical orderlies and the social workers.

Of the twenty civil service positions financed by the Office of Immigration and Nationality, the director's post was vacant. The others are employed in the following jobs: a secretary, a senior executive in charge of the provisions of refugees, a financial manager, a caretaker, a manager in charge of catering, two general nurses, two cooks, two kitchen maids, three store-keepers and four senior financial executives.

The European Refugee Fund covered the costs of the employment of five social assistants, two kitchen porters, one confectioner, the Internet room supervisor, the fitness room supervisor and one repairman. Each of the social assistants with higher education qualifications, whose employment was funded by the European Refugee Fund, spoke English, Russian or German. One of the two social workers of Menedék Hungarian Association for Migrants speaks Arabic at a native speaker's level, is fluent in English and Serbian and has a basic knowledge of Farsi and the other social worker, who is responsible for organising community programmes, speaks intermediate English and basic German.

Social workers and social assistants had higher education qualifications, but, in contrast with the police officers and the members of the armed security guard, they did not participate in any training or special preparation prior to starting the job other than their briefing on their first day in the morning and they also do not have to participate in the trainings organised on the monthly training days.

According to the data of the investigation, none of the employees of the Temporary Hostel of Restricted Access speaks French or Spanish. A single woman of African origin, who arrived in the institution on 14 December 2011, and would not speak to anyone according to the reports of the employees of the Temporary Hostel of Restricted Access, complained that although she speaks French and Portuguese, nobody of the staff speaks these languages, therefore she cannot communicate with them at all. She can only communicate with one person in her environment to some extent, another African woman, who speaks Spanish as a foreign language. If this woman left before her, she would be completely left alone. She is very anxious and cannot sleep without drugs.

Almost every detainee interviewed during the on-site inspection mentioned that several English-language programmes were available on the TV sets in the sitting rooms but there are no French broadcasts, let alone programmes in Arabic or Spanish. According to the information given by the employees of the Temporary Hostel of Restricted Access, further satellite channels are accessible in the Internet room, which Muslim women, mainly those who have a family, are reluctant to visit for cultural reasons, because of the presence of unknown men. Since during the accommodation centre's transformation into a detention facility the police had the televisions removed from the bedrooms, the foreigners are no longer able to choose a channel broadcasting in a language that they understand and they cannot watch it alone. *Isolation from the outside world is particularly stressful for the detainees who are already frustrated, suffer from various post-traumatic symptoms and do not speak English, which jeopardises the enforcement of their rights to physical and mental health ensured in Article XX(1) of the Fundamental Law.*

During the one-year operation of the Temporary Hostel of Restricted Access, there were other extraordinary events in addition to the identification of foreigners suffering from contagious diseases or parasites:<sup>29</sup>

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<sup>29</sup>Pursuant to section 5/A(4) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings, "extraordinary events are the following: natural disasters affecting the detention and all other events, acts or omissions which violate or seriously jeopardise the lives, physical integrity or health of the detainees, the persons responsible for guarding, escorting, transporting

Late at night on 16 June 2011, in the sitting room on the second floor of building “C”, which is used for accommodating families, a twelve years old Afghan boy was playing sexual games with a five years old Afghan boy, which was noticed by the guards through the internal video surveillance system. The members of the guard intervened immediately, then separated the children from each other and also from their families until it was clarified what had happened. The younger boy was also examined by the doctor, of which a medical report was made.

Pursuant to paragraph (iii) of section 2 of Article 40 of the Convention on the Rights of the Child, States Parties ensure that all matters of the child are determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians. *Since both children were younger than fourteen at the time of committing the act that served as a basis for the procedure, they were incompetent under section 12/B (1) of Act IV of 1959 on the Civil Code. For this reason, the employees of the Temporary Hostel of Restricted Access violated the provisions of paragraph (iii) of section 2 of Article 40 of the Convention on the Rights of the Child when they separated the children from their families and heard them in the absence of their parents, which caused an irregularity in connection with children’s right to protection ensured in Article XVI(1) of the Fundamental Law.*

In order to prevent any conflicts from arising between the two families, the younger boy and his family were placed in the medical isolation ward until further measures. In order to remedy the situation, the authority which ordered the detention of the older boy and his family appointed the accommodation centre in Debrecen, operating as an open institution, as their mandatory place of residence.

On 7 September 2011 a Moldavian married couple and a Georgian single woman declared in writing that they would not eat until a decision is made on the merits of their cases. Later they announced that they had valid residence permits in Romania, where they wanted to return as soon as possible. The management of the Temporary Hostel of Restricted Access forwarded the request to the authority which ordered the detention of these foreigners, and moved them to the medical isolation ward in order to continuously monitor their condition. Besides the medical examination, the foreigners were interviewed by the psychologist employed by the Cordelia Foundation.

On 13 September 2011, a Moroccan citizen injured his right forearm with a peach stone, causing a superficial wound on his skin which required no medical treatment. As the motive for his act he mentioned that he wanted to play football but the time chosen for this purpose by the social worker was not good for him, therefore he decided to commit suicide. A few days later, on 19 September 2011, this Moroccan citizen injured his right forearm again. As an explanation he said that he was not satisfied with the way he was being treated and with the food because he did not receive the peach that he wanted but another one. The armed security guards took the foreigner to the ER of the city hospital and after the examination he was escorted back to the Temporary Hostel of Restricted Access.

On 5 January 2012, a woman of Kosovar nationality attempted to hang herself. Her plan was noticed by another detainee, who then informed the members of the armed security guard.

On 10 January 2012, following an argument at the phone box in the courtyard, a Somali woman slapped a Palestinian woman in the face. The Palestinian woman’s husband

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and providing for the detainees, the persons in charge of managing the staff performing these tasks and the persons carrying out supervision, or which violate or seriously jeopardise the order of the hostel of restricted access and the security of guarding.”

informed the armed security guard of this. The hit caused no outward signs of injury and there was no need for medical treatment.

On 17 January 2012 a Palestinian man fell while sliding about on the snow-covered concrete, as a result of which he suffered lesions on his knees and his skin split under his left eyebrow. After he was given first aid, the foreigner was taken to hospital where the open wound was stitched and he could return to the hostel of restricted access on the same day.

On 6 March 2012, a man of Kosovar nationality started quarrelling with the staff in the Internet room because he was upset that he was not assigned to his usual computer, and then started fighting with another Kosovar man who tried to calm him. The members of the armed security guard separated the fighting men and isolated the still aggressive person who started the conflict in the admission room.

On 14 March 2012, as a result of a dispute about the interpretation of the rules concerning the use of computers, two Afghan citizens and a Ghanaian citizen got into a fight. By the time the members of the armed security guard arrived at the scene, the foreigners in the room separated the fighting persons and asked them to leave the room. The medical orderly on duty examined and attended to those who participated in the fight. There was no need for medical assistance.

On 15 March 2012 a woman of Kosovar nationality made cuts of approx. 6 cm on her wrists and 8 cm under her chin with the edge of a plastic yoghurt box. After she was given first aid, the foreigner was taken to hospital, where the doctor on duty concluded that the injuries would heal within eight days and required no medical treatment. During her interview the woman said that she was not feeling well because of being isolated and also her father asked her to return to Kosovo as soon as possible, but without her husband. She feared that if the Hungarian authorities sent her back to Kosovo, her family would separate her from her husband. The woman was also interviewed by the psychologist.

The extraordinary events documented by the employees of the Temporary Hostel of Restricted Access prove that isolation and the insecurity as regards their future are heavy burdens on the detained foreigners. *The members of the armed security forces who have daily contact with the detainees and also the social assistants have only superficial and general information about the above extraordinary events documented by the management of the Temporary Hostel of Restricted Access, which indicates that there are deficiencies in the communication of the management. In order to prevent the occurrence of similar cases, in particular to identify endangered foreigners and determine the individual treatment they require, it would be reasonable to give detailed information to both the members of the armed security guard and the social workers about extraordinary events involving self-harm or violence and to discuss the conclusions of such events on the training days.*

## Summary

Before the entry into force of Act CXXXV of 2010 on 24 December 2010, the detention of minors could not be ordered in immigration proceedings.<sup>30</sup>

After 24 December 2010, it is still not allowed to detain unaccompanied minors; however, detention can be ordered in the case of a minor accompanied by an adult family member “as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration”. After the entry into force of Act CXXXV of 2010, apart from the transit area of international airports, the Temporary Hostel of Restricted Access operated in Békéscsaba is the only place in Hungary where the police detains minors who are under the age of fourteen, in other words, minors who have no legal capacity under

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<sup>30</sup> See section 56(1) of the Third-Country Nationals Act.

Hungarian law.<sup>31</sup> Between 1 April 2011 and 30 April 2012, altogether **409** minors were detained in the institution for a maximum period of 30 days.

Since the Third-Country Nationals Act contains no provision as to what priorities the immigration authority must consider before applying detention as a “measure of last resort”, detention is applied routinely both in the case of families with small children who are arrested and expelled during illegal border crossing and of those who are arrested and expelled because of violating the rules of lawful residence in Hungary.

According to point (f) of paragraph 1 of Article 5 of the European Convention on Human Rights) the arrest or detention of a person is lawful if it prevents his/her effecting an unauthorised entry into the country or if action is being taken against him/her with a view to expulsion.

Pursuant to the case-law of the European Court of Human Rights (hereinafter: the European Court) concerning Article 5 of the European Convention on Human Rights, there must be a connection between the purpose of detention and the place and the mode of its implementation, and the duration of detention may not exceed the time that is absolutely necessary for achieving its purpose.<sup>32</sup>

Based on point d) of Article 37 of the Convention on the Rights of the Child the Member States ensure that every child deprived of his/her liberty, irrespective of his/her age, has the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt an urgent decision on any such action.

A common feature of the immigration status of minors of no legal capacity and minors of limited legal capacity is that while pursuant to section 56(2) of the Third-Country Nationals Act they cannot be detained individually, according to section 56(3) of the Third-Country Nationals Act, they can be detained together with an adult relative who accompanies them. *Since in such cases the actual subject of the detention ordered by the immigration authority is not the minor but the adult relative accompanying him/her, there are neither legal grounds nor legal guarantees for the detention of the child, which gives rise to the abuse of the freedom ensured in Article IV(1) of the Fundamental Law and the right to seek legal remedy ensured in Article XXVIII(7) of the Fundamental Law.*

Pursuant to point 2 of Article 2 of the Convention on the Rights of the Child, States Parties shall take all appropriate measures to ensure that each child within their jurisdiction is protected against all forms of discrimination or punishment on the basis of the status or activities of the child's parents, legal guardians, or family members.

The legal obligation of the immigration authority to consider the best interests of the child as a prime factor, based on point 1 of Article 3 of the Convention on the Rights of the Child, is the same in the cases of unaccompanied minors who stay in the country illegally and in the cases of minors who stay in the country illegally accompanied by their families. The authority must take into consideration the child's best interests also when ordering the detention for immigration purposes of a minor who is accompanied by his/her family. *The legal practice based on section 56(3) of the Third-Country Nationals Act, according to which a child from a third country can be detained simply because he/she is accompanied by an adult relative who violated immigration law, even in such cases where the detention of unaccompanied minors in a similar legal situation is excluded, gives rise to irregularities in*

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<sup>31</sup>An important difference is that according to section 41(1)(b) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, a foreigner must remain in the transit zone of the airport for a maximum period of eight days.

<sup>32</sup>See for example *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, paragraph 102; *Muskhadzhiyeva and others v. Belgium*, paragraph 73; *Popov v. France*, paragraph 118.

*relation to the ban on discrimination on the grounds of other circumstances laid down in Article XV(2) of the Fundamental Law.*

The staff of the immigration authorities mentioned the enforcement of the fundamental right to the protection of private and family life as one reason for detaining the minor accompanying the adult and the requirement of protecting public safety as the other reason.

It is indeed one of the indispensable elements of the protection of family life (also protected by the Fundamental Law) that the authorities should not separate children from their adult relatives. However, the joint detention of relatives does not mean that their family life is automatically respected just because they are detained at the same place. *Despite the fact that the maximum thirty-day detention of families with small children is seemingly not a long period, the circumstance that they have to spend it in a totalitarian institution where the door-handles were removed from the majority of the bedrooms in which they are supposed to live their private lives and they have no opportunity to separate themselves from the others even during mealtimes, means a serious intervention in their actual family life, thereby resulting in an irregularity in connection with Article VI(1) of the Fundamental Law.*

In connection with the argument relating to the protection of public safety, it must be considered whether the maximum thirty-day duration of the minor's detention is absolutely necessary in respect of the public safety purpose, namely the enforcement of the expulsion.

The administrators interviewed during the investigation could not remember any case where the thirty day period following the refusal to readmit a foreigner without documents suitable for identification on the basis of a readmission agreement was sufficient to obtain the documents that are necessary for the implementation of expulsion and to arrange deportation. It is true that during the maximum thirty-day detention the family with small children that violated immigration law cannot leave the Temporary Hostel of Restricted Access and consequently they have no opportunity to evade the implementation of expulsion. On the other hand, from the 31st day after the ordering of detention, there is no barrier to the minor's leaving the open place of residence designated for him/her by the immigration authority, either alone or together with his/her adult relative.

*For this reason, when the answer of the neighbouring country's authority refusing to readmit the minor on the basis of a readmission agreement is received in Hungary, the lawful reason for the minor's detention determined in point (f) of paragraph 1 of Article 5 of the European Convention on Human Rights ceases to exist, therefore it is not necessary to continue the detention, which if continued gives rise to irregularities in relation to Article IV(2) of the Fundamental Law.*

According to the data of the investigation, the legislator most endeavoured to consider the foreign "child's best interests" mentioned in section 56(3) of the Third-Country Nationals Act when regulating the circumstances of the implementation of detention.

The applicable laws provide for the separation of families with small children from the other foreigners and regulate the size of the area to be guaranteed for them for free movement as well as the size of the air space belonging to such area.<sup>33</sup> They also contain requirements concerning the meals<sup>34</sup> and toiletries to be provided to minors and expectant mothers.<sup>35</sup> The third group of rules concern the education and activities of detained minors.<sup>36</sup>

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<sup>33</sup>See section 129 of Government Decree 114/2007 (V. 24) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>34</sup> See sections 6(3) and (4) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

<sup>35</sup> See section 14(1) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings.

<sup>36</sup>According to section 17(1a) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings "the minor staying with his/her family at the

According to the foreigners interviewed during the on-site inspection, the guards who guard families with small children treat the detainees kindly and humanely. The management of the Temporary Hostel of Restricted Access observes the statutory requirements concerning the circumstances of detention and the provisions for foreigners. On the basis of the available documents and the information given by the management of the Temporary Hostel of Restricted Access, the lawfulness of the implementation of detention is monthly checked by the competent prosecutor of the Békés County Prosecutor's Office on the premises.<sup>37</sup>

Although the police make significant efforts to provide detention conditions that entail the least possible burden for detainees, the composition and quantity of the medicaments taken by those staying at the Temporary Hostel of Restricted Access and in particular the extraordinary events that led to self-harm and also the sexual contact between detained minors prove that the uncertain future, the fact of the detention, the daily schedule regulated by the house rules and the absence of real intimacy cause psychic ordeals that are incompatible with children's lives. In this situation, the thirty days of detention may seem endless to the minor who is unable to understand the causes and period of detention, which means that it does not serve the child's best interests at all.

## Measures

Pursuant to Section 31(1) of Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights, I hereby request the National Commander of the Police to take measures in order to achieve the following:

- the members of the armed security guards on duty in the area of the Temporary Hostel of Restricted Access should not have tear gas sprays on them;
- handles should be fixed on the doors of the bedrooms at the Temporary Hostel of Restricted Access;
- married couples and families with small children should be able to have their meals privately if requested;
- the previously removed televisions and refrigerators should be reinstalled in the bedrooms;
- the satellite channels that are currently only available in the Internet room should also be available at least in the sitting rooms;
- the Temporary Hostel of Restricted Access should employ at least one social worker who speaks French;
- the extraordinary events that occur on the area of the institution should be discussed by the employees of the Temporary Hostel of Restricted Access and they should take the necessary measures in order to prevent similar events.

Pursuant to Section 37 of Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights, I suggest that the Minister of Internal Affairs should initiate the following:

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hostel of restricted access must be provided with the conditions and equipment necessary for the educational and recreational activities corresponding to his/her age and maturity, including but not limited to the use of a playroom and classes held by a teacher or a specially trained social worker. In order to ensure the education corresponding to the level of development of the school-age minor under detention, the head of the hostel of restricted access must immediately contact the notary of the municipality having jurisdiction at the place of the hostel of restricted access."

<sup>37</sup>The frequency and methods of the supervision by the prosecutor are regulated in Order No. 5/2012 of the Prosecutor General and Circular No. 3/2000 of the Prosecutor General.

- the amendment of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals to ensure that neither incompetent minors nor the adult accompanying such minors can be detained at hostels of restricted access in the immigration proceedings;
- the supplementing of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals to ensure minors of limited legal capacity and adults accompanying such minors may only be detained until the notification of the refusal to readmit them on the basis of a readmission agreement is received but for a maximum period of eight days;
- the supplementing of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals with legal guarantees ensuring the individual review of the detention of minors;
- the Minister should ensure that statutory guarantees are laid down which prevent that the services provided to a detained minor are influenced by the immigration status of the minor or his/her family;
- the amendment of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the rules of executing detention ordered in immigration proceedings to ensure that the police have an obligation to guard a woman in labour and the newborn during their hospital treatment 24 hours a day only in exceptional cases.

Budapest, “ “ June 2012

Prof. Dr. Máté Szabó

Translation: Afford Fordító- és Tolmácsiroda Kft.  
(Courtesy by UNHCR Hungary Unit)

(No professional proofreading has been conducted!)