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Commissioner for Fundamental Rights  
as OPCAT national preventive mechanism

**REPORT**

in case AJB-366/2015

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**Visit site:** Debrecen Guarded Refugee Reception Centre

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<sup>1</sup> Translation: Afford Fordító- és Tolmácsiroda Kft., proofreading: UNHCR Hungary Unit

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**Launch of the procedure**

Pursuant to Article 1 of the Optional Protocol (hereinafter: Protocol) on the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011, *“The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”*.

Pursuant to Article 3 of the Protocol, in order to achieve the objective laid down in Article 1, *“Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “national preventive mechanism”)*”.

Pursuant to Article 4 of the Protocol, each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in Articles 2 and 3, to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter “places of detention”).

From 1 January 2015 in Hungary, the Commissioner for Fundamental Rights operates as the national preventive mechanism (hereinafter “NPM”) who, while performing the tasks indicated above, regularly visits places of detention and inspects the treatment of persons deprived of their liberty even without the need for any infringement or irregularity in connection with any fundamental rights.<sup>2</sup>

**Selection of the visit sites**

The concept of asylum detention was introduced in Hungary by Act XCIII of 2013, based on Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (hereinafter “revised Reception Conditions Directive”). Although the Member States must transpose the provisions of the revised Reception Conditions Directive by 20 July 2015, Hungary has been applying asylum detention since 1 July 2013. Pursuant to Article 10(1) of the revised Reception Conditions Directive, *“Detention of applicants for refugee status shall take place, as a rule, in specialised detention facilities”*. In Hungary a guarded refugee reception centre (hereinafter: GRRC) is an institution maintained by the Office of Immigration and Nationality for implementing asylum detention.<sup>3</sup> At the time of the visit, three such facilities were in the country (in Békéscsaba, Debrecen and Nyírbátor) with a total capacity of 381.

Having considered that 50% of the total capacity of the GRRC institutions is at Debrecen and that the detention of families with small children must also be implemented in that facility, proceeding within my powers granted under Article 20 e) of the Protocol, I

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<sup>2</sup> See Sections 39/A and 39/B (1) of Act CXI of 2011 on the Commissioner for Fundamental Rights.

<sup>3</sup> See Section 9(1) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail

selected that facility as the site for the first visit within the framework of the National Preventive Mechanism.

### **Scope of the National Preventive Mechanism**

Pursuant to Article 4(2) of the Protocol, *“For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”*.

Pursuant to Section 31/A (1) of Act LXXX of 2007 on Asylum, the refugee authority may detain, for the purposes and in order to attain the goals laid down in the Act, with due observance of the limitations of the Act, any asylum-seeker whose basis for residence lies solely with the application for asylum. Asylum detention can be ordered for a maximum of seventy-two hours. The refugee authority may request the extension of the asylum detention beyond seventy-two hours at the district court competent for the location of the detention. The court may extend the period of detention by sixty days at most, and this period may be prolonged by another sixty days at the request of the refugee authority on not more than two occasions, in such a manner that final period of detention may not exceed six months.<sup>4</sup> Asylum detention cannot last for more than six months or, with regard to families with children of minor age, thirty days.<sup>5</sup>

*On the basis of the provisions of Act LXXX of 2007 on Asylum quoted above, I have concluded that an individual subject to asylum detention is detained by the refugee authority for no more than seventy-two hours and then, pursuant to the decision of the district court, competent according to the place of detention, is deprived of liberty in line with the criteria laid down in Article 4 (2) of the Protocol. The institution keeping the individuals subject to asylum detention for the period while they are deprived of the liberty is the place of detention referred to in Article 4(1) of the Protocol.*

Irrespective of the form of deprivation of liberty, attempts to prevent torture and any other cruel, inhuman or degrading treatment or punishment are a key element in the obligation of the state to respect and protect the fundamental rights of any detainee.<sup>6</sup> According to the consistent judicial practice of the Hungarian Constitutional Court, the obligation of the state to respect and protect fundamental rights is not limited to refraining from infringing them, but also includes the guarantee of all conditions required for the enforcement of such rights.<sup>7</sup> Prevention is especially important in terms of the *“prevention of torture and other cruel, inhuman or degrading treatment or punishment”* specified in Article 3 of the Protocol. Prevention extends to any type of treatment of any individual deprived of liberty that, without checks, may lead to torture or any other cruel, inhuman or degrading treatment or punishment.<sup>8</sup>

The primary objective of the national preventive mechanism visits is to establish how any type of treatment, the elements of which might lead to torture or any other cruel, inhuman or degrading treatment or punishment, could be prevented and to make recommendations on preventing its occurrence or reoccurrence. The ultimate goal of national preventive

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<sup>4</sup>See Section 31 (6) of Act LXXX of 2007 on Asylum.

<sup>5</sup>See Section 31 (7) of Act LXXX of 2007 on Asylum.

<sup>6</sup>See Article I(1) of the Fundamental Law.

<sup>7</sup>See Constitutional Court decision 64/1991 (XII. 10.) AB.

<sup>8</sup> See: point 4 of the Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to The Maldives (26 February 2009).

mechanism visits is to encourage the respective authorities and institutions to improve the effectiveness of their measures aimed at the prevention of wrongful treatment.<sup>9</sup>

### **The relevant fundamental rights**

- *No torture, inhuman or degrading treatment or punishment:* “No person shall be subjected to torture, any inhuman or degrading treatment or punishment, or be enslaved.” (Article III(1) of the Fundamental Law of Hungary);
- *No discrimination:* “Hungary shall ensure fundamental rights to every person without any discrimination on the grounds of race, colour, sex, 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 the protection and care required for their proper physical, mental and moral development.* “All children have the right to receive the protection and care necessary for their satisfactory physical, mental and moral development.” Fundamental Law, Article XVI paragraph (1)

### **The relevant legal instruments**

- Act III of 1995 on the Promulgation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed in Strasbourg on 26 November 1987.
- 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 LXXX of 2007 on Asylum.
- Act XXXI of 1994 on the Police.
- Act CLIX of 1997 on Armed Security Guards, Nature Conservation and Field Guards;
- Government Decree 301/2007 (XI. 9.) on the Implementation of Act LXXX of 2007 on Asylum.
- Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.
- Minister of Justice Decree 16/2014 (XII.19.) on the Detailed Rules of Confinement Replacing Prison Sentencing, Confinement, Pretrial Detention and Disciplinary Fines

### **Methods applied during the visit**

I can proceed in person and through my colleagues while performing the tasks of the national preventive mechanism. I need to grant permanent authorisations to at least eleven civil servants of the Office of Commissioner for Fundamental Rights to perform the tasks referred to above. Apart from my civil servant colleagues, I may also engage other experts to contribute to the performance of the tasks under the national preventive mechanism on an ad hoc or permanent basis.<sup>10</sup> My authorised colleagues visited the GRRC without any prior notification. The members of the visiting team inspected the premises, furniture and equipment of the GRRC, and the documents pertaining to the number, treatment and

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<sup>9</sup> See: point 5 of the Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to The Maldives (26 February 2009).

<sup>10</sup> See Section 39/D (3) of Act CXI of 2011 on the Commissioner of Fundamental Rights.

conditions of detention of the individuals deprived of their liberty, and also observed the activities conducted with the minors detained in the facility. My colleagues interviewed the people performing services within the GRRC, as well as the detained foreigners under confidential conditions, using a previously prepared set of questions. Foreigners not speaking English, French or German were interviewed in Serbian, Croatian or Albanian, depending on which language they spoke.

**Date of the visit:** 26-27 January 2015.

### **Participants in the visit**

Head of the visiting team: dr. Katalin Haraszti, lawyer  
Members of the team: dr. Gergely Fliegauf, psychologist  
dr. Rita Rostás, psychologist, pedagogue  
dr. István Sárközy, lawyer  
Dr Katalin Magyarné Vuk, Serb/Croatian-Hungarian interpreter  
Ymaj Alban, Albanian-Hungarian interpreter

### **Facts and findings**

The GRRC is situated within the premises of the open Debrecen Reception Centre and functions as an institution providing accommodation and other services to foreigners seeking recognition as refugees with the capacity of **182** people.<sup>11</sup> The first residents of the GRRC (6 Bangladeshi, 3 Pakistani and Ghanaian, Nigerian, Tunisian and Gabonese citizens (1 each)) arrived at the facility on **19 September 2013**. Between the arrival of the first residents and 31 December 2013, in total 354 citizens of 40 countries, primarily single Senegalese, Bangladeshi, Nigerian and Pakistani men, spent shorter and longer periods at the facility. In **2014**, the institution hosted **2,038** citizens from 40 countries, ca. 75% (**1,489** people) from Kosovo.

Earlier the three-storey building functioned as one of the accommodation buildings of the open reception centre. While converting the facility into asylum detention, the external and internal tiled surfaces of the building were replaced, the rooms were painted, surveillance cameras were installed on the external and internal walls, and the building was also surrounded by approximately 3-metre high wired fence with two rows of NATO wire at the top. In order to prevent any visual perception and contact between the residents of the open reception centre and the GRRC, oriented strand board (OSB) panels were fixed to the fencing poles and the wire mesh. Inside the fence there are six guard huts with an approximately 1.5-metre high podium, each manned by 1 member of the guarding staff to monitor the movements of individuals in the exercise yard of the GRRC and on the reception centre side of the fence 24 hours a day.

Since **8 September 2014**, the GRRC has hosted only families with small children and married couples. The number of detained foreigners, between the date indicated above and the date of the visit, never reached or exceeded the upper limit of the facility's capacity. During that period nobody attempted to leave without permission and there was no disorder or any other extraordinary event. During the visit, in total **65** detainees (**33** men and **32** women), only families of Kosovar citizenship and one married couple without children, were living in the

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<sup>11</sup>In terms of the accommodation and services provided at the open reception centre, see the applicable provisions of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum, and Minister of Justice and Law Enforcement Decree 52/2007. (XII. 11.) on the organization of the asylum system.

building. As there were few detainees, the second floor was not in use. The residents spending the longest time at the GRRC - 11 individuals - arrived on 13 January 2015. The oldest of them was a man born in 1975 and the youngest was a boy born on 23 February 2013. The oldest resident of the facility was a man born in 1967, who arrived with his wife on 18 January 2015. There were no single women among the detainees.

A medical examination room, a medical isolation room, a room for detainees, temporarily isolated for disorder, rooms for visitors, offices of the refugee authority and the commander of the guards, staff changing rooms, community and recreation facilities, a court interview room and other store rooms are situated on the ground floor. Detainees can reach the exercise yard, intended to be used for being in the fresh air, not only from the ground floor, but also from the first floor.

The rooms used for the accommodation, meals, washing and cleaning as well as exercises of the detainees, were situated on the first and second floors of the building. There are 13 dormitories of identical size with a 36 m<sup>2</sup> floor area and 3.2-metre internal height, containing 7 beds each. Although there were no protective rails on the windows of the bedrooms, they could only be opened slightly because of the metal rods fixed to the window frames. The sanitary facilities, separated by sex, were accessed from the corridor. One of the three community rooms on the first floor served as a sitting room. This 41 m<sup>2</sup> floor area room contained a television. The second was a play room for children, and the third was used as the dining room.

The 36 m<sup>2</sup> room, reserved for detainees isolated due to disorder for no more than 24 hours, contained two cage-like structures, separated by rails reaching the ceiling. During the visit there was no-one in the isolation room, which contained no furniture. One isolation room contained empty cardboard boxes and the other was used to keep pillows not in use. There was a table-tennis table in the room between the window and the isolation cages.

The institution manager and deputy, as well as the **18** social workers (15 women and 3 men) were employees of the Office of Immigration and Nationality. They included 7 teachers, 2 kindergarten teachers (kindergarten pedagogues), 2 cultural organisers, 7 social workers and 1 was a qualified special needs therapist. Apart from Hungarian, the social workers have foreign language skills at levels indicated below:

English intermediate level	5 persons
French intermediate level	1 person
German intermediate level	2 persons
German high level	3 persons
Russian high level	3 persons
sign language course completed	1 person

Apart from salaries of the social workers, the Office of Immigration and Nationality also paid the benefits of **5** otherwise unemployed individuals directed to perform tasks in the community (2 maintenance workers and 3 social work assistants). The social work assistants were responsible for boiling water and preparing food and hygiene kits, as well as changing the bedding.

The police guard foreigners subject to asylum detention on the basis of a request from the Director General of the Office of Immigration and Nationality (hereinafter “Director General”), pursuant to an agreement signed by the executive officers of the two organisations. The members of the guard staff of the GRRC were employed by the Hajdú-Bihar County Police Headquarters. The guard staff of **24** policemen and **155** armed security guards included only **8** women (1 policewoman and 7 female armed security guards). The policewoman, formally working in the position of a police escort, performed the administration tasks of the

police commander of the guard staff, who held higher qualifications and the rank of an officer.

The aliens policing authority and the refugee authority may outsource to armed security guards certain services such as guarding or escorting people, which require the qualifications and the right to apply measures and use coercive measures as defined by law.<sup>12</sup> Of the 155 armed security guards, 1 guard had higher qualifications, 82 had completed secondary education, 61 held vocational training certificates and 11 had completed primary school. Prior to taking up their jobs, the armed security guards attended a training programme of 210 lessons, including 32 hours of theoretical and practical examinations, developed by the Law Enforcement Directorate General of the National Police Headquarters. Within the framework of a five-module programme, they learned the legal and technical requirements and then were trained in immigration policing, refugee matters, self-defence and weapons handling. At the end of the training programme they had to pass written and practical examinations. In the written exam, the candidates were tested on law and technical issues, while during the practical examination they had to demonstrate self-defence techniques and their skills in shooting handguns.

All police officers and armed security guards serving on the premises of the GRRC wore uniforms and badges<sup>13</sup> and performed their tasks equipped with handcuffs, teargas spray and batons. The armed security guards monitored the facilities, guarded and escorted people, and also checked parcels and clothes under the supervision of the police officers. Policing measures<sup>14</sup> could be applied and personal liberty could only be limited<sup>15</sup> by the police officers supervising the activities of the armed security guards.

Medical services are provided to the residents of the GRRC by 2 physicians - 1 family practitioner and 1 paediatrician - and 4 medical assistants. All of them are employed by a company engaged in medical services. They speak English and German at intermediate level. The paediatrician lived in Libya for five years and also speaks Arabic. The family practitioner sees patients between 8:30 a.m. and 10:30 a.m. on working days, while the paediatrician sees patients between 1 p.m. and 2 p.m. on Mondays and Wednesdays. When a foreigner arrives at the facility at the weekend or on a public holiday and needs to be admitted, the family practitioner performs the required medical checks outside working hours, too. The medical assistants work in a continuous schedule, on the basis of a 24-hour rota and are therefore available to the foreigners 24 hours a day. Detainees requiring specialist care or treatment were treated at the clinical centre of the University of Debrecen, while infectious patients were treated at Kenézy Gyula Hospital. Foreigners are transported for medical examinations and treatments within the framework of outpatient care and are taken to inpatient care institutions by the police, while in the event of an emergency they are transported by the National Ambulance Service, called out by the GRRC. During transportation and medical care foreigners are guarded by the armed security guards under the supervision of police officers. During the asylum detention period, the interpreters attending consultations with the doctors are provided by the GRRC at the request of the physician. The costs of the health services provided to the detainees are covered by the Office of Immigration and Nationality.

## **Admission of residents into GRRC**

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<sup>12</sup>See Section 1 (6) of Act CLIX of 1997 on Armed Security Guards, Nature Conservation and Field Guards.

<sup>13</sup>See Section 8 (2) of Act CLIX of 1997 on Armed Security Guards, Nature Conservation and Field Guards.

<sup>14</sup>See Sections 29-46 of Act XXXI of 1994 on the Police

<sup>15</sup>See Sections 33 and 38 of Act XXXI of 1994 on the Police

Some of the Kosovar citizens detained at the GRRRC had been caught by the border police after they had illegally crossed the country border. Their asylum applications were registered by the Office of Immigration and Nationality, which designated them an open reception centre as a place of compulsory residence until their applications were judged. The refugee authority provided the asylum-seekers with documents entitling them to use public transport free of charge, as well as the resolution on the designation of their accommodation facilities but, instead of going to the reception centre, they decided to aim for a destination in Western Europe. My colleagues also met Kosovar citizens who arrived at the reception centre designated for them as a place of compulsory residence, spent a few days there and then left for Western Europe before their asylum applications were assessed. The police checked the foreigners at a settlement in Western Hungary and arrested them due to lack of valid travel documents and documents required for the continuation of their journey, and then handed them over to the refugee authority. The Office of Immigration and Nationality imposed asylum detention on the asylum-seekers delivered by the police with reference to a risk of flight and designated the GRRRC as the accommodation. The detained asylum-seekers were transported to the facility by the police. A foreigner may be admitted at the institution only based on a decision of the refugee authority ordering detention or a court decision ordering the extension of asylum detention. After the deadline specified in the decision of the refugee authority ordering detention or the court decision extending detention has passed, or when the termination of detention is ordered, the foreigner must be released immediately.

*During the visit, all residents of GRRRC were staying at the facility pursuant to an effective decision of the refugee authority or the court within the period specified therein.*

Two armed security guards were on duty at the entrance of the GRRRC. One secured the corridor and the other managed the gate. Whenever a foreigner arrives, the police officers present the decisions ordering or extending asylum detention, the valuables and cash of the individual concerned and a copy of the list thereof; whenever there is any visible sign of injury, the medical diagnosis establishing it is also presented to the GRRRC duty officer. During the admission process, the armed security guard on duty also checks the baggage and clothes of the foreigner, in order to be able to confiscate any item capable of launching an attack or self-harm. Some of the interviewed foreigners objected to the fact that, during the admission process, the clothes of detained women were also checked by male armed security guards. One of the detained women had to leave the GRRRC site to attend a specialist medical examination and, similarly to the initial admission process, when she returned, her clothes were checked again by a male armed security guard.

According to the specific position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "CPT"),<sup>16</sup> the detained individuals must be examined by a member of the guard staff of the same sex.<sup>17</sup> The activities of the police officers serving within the guard staff of GRRRC are covered by the provisions of Act XXXIV of 1994 on Police (hereinafter "Police Act"), while the activities of the others are governed by the provisions of Act CLIX of 1997 on Armed Security Guards, Nature Conservation and Field Guards (hereinafter "Armed Security Guards Act"). Unlike Section 31 (2) of the Police Act, according to which "*with the exception of cases of utmost urgency, clothing shall be checked by an individual of the same sex as the individual subjected to the measure*", the Act on Armed Security Guards does not contain such a provision. Nonetheless, point 23 of Order 17/2013 of the Director General of the Office of

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<sup>16</sup> See Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of Strasbourg of 26 November 1987, promulgated by Act III of 1995.

<sup>17</sup> See also point 23 of the general report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).



Immigration and Nationality states that, during the admission of an individual subjected to asylum detention, “*clothing shall be checked by an armed security guard*”. However, in terms of the implementation of those checks, the order only states that “*no other detained foreigner can be present while clothing is being checked*”.

*In relation to the principle of no degrading treatment, specified in Article III (1) of the Fundamental Law, it causes an irregularity that, due to lack of adequate procedural rules, the clothes of detainees arriving at the GRRC site are checked by a member of the armed security guards of a different sex.*

Newcomers at the asylum detention centre can only be accommodated after a prior medical examination, with the approval of the physician carrying out the examination.<sup>18</sup> Foreigners arriving outside working hours are first checked by the medical assistant on duty, and later also by the physician. One woman complained that, during the admission process, she had to strip naked in front of a male guard. According to unanimous statements of the detainees, the guard escorted all family members to the medical exam where they all had to strip naked. One of the men stated that “*he had never felt as humiliated*” as when he had to strip naked in front of his daughter. Several heads of families also said that, during the medical examination, the two armed security guards escorting them were also present. Only one of them could fit in the part of the medical examination room designated for such purposes and separated by a curtain, and so the other was able to watch them undisturbed. The same complaints are also supported by the observations of the members of the visiting team, who also witnessed male armed security guards following detained women into the medical examination room. My colleagues also ascertained that the part of the examination room separated by the curtain is too small to hold comfortably a man of average build.

According to the CPT Guide, any detainee deprived of clothing may be checked in any way out of sight of the member of the guard staff of a different sex.<sup>19</sup> However, neither the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail, nor Order 17/2013 of the Director-General provides for the conditions to be applied to the medical checks for detained foreigners. Even though it is not expressly stipulated by law, the guards of GRRC should still be expected to proceed in their treatment of detainees by respecting human dignity, including especially in their sense of decency.

*The fact that a female detainee is obliged to be naked in front of a male armed security guard, or that a male detainee must do the same in front of his children of minor age of a different sex and that they must endure the presence of a member of the guarding staff of different sex during the medical examination is capable for creating shame in the person concerned, and therefore causes irregularity in connection with the degrading treatment, prohibited under Article III (1) of the Fundamental Law.*

In the GRRC’s medical service, both physicians and the four medical assistants are women, and therefore all medical examinations and medical services to men are also performed by them only. During an examination they measure the weight of the foreigner and then check for any external sign of injury, or whether they suffer from any infectious disease. The weight of the foreigner and whether or not they detected any sign of external injury on their body are stated in the medical examination statement. According to the medical staff members, no signs of external injuries were detected on foreigners arriving after 1 January 2014. If the medical examination concludes that the newcomer suffers from infectious disease or carries a pathogen, they will be isolated by the medical service and the public health

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<sup>18</sup>See Section 3(1) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail

<sup>19</sup> See point 23 of the 10th general CPT report.

institution of the competent district office will be informed immediately. If a foreigner cannot be accommodated in the community due to her/his health condition, s/he must be taken to a health institution immediately. During the visit there was no infectious patient or pathogen carrier or individual subject to hospital treatment among the residents of the GRRC, and nobody was staying in the isolated medical room either. *Contrary to a statement of the GRRC staff, according to which the rooms allocated for waiting to be seen by the physicians and the furniture therein were cleaned daily, some dry mucous stains could be observed on the dark blue waterproof surface of a mattress of the medical isolation premises.*

Three detainees complained about the medical services. They said that, due to failings in the interpretation services, they were unable to communicate their complaints to the physician adequately. One of the women decided to leave home to seek treatment for her heart problem because the family found a specialist only in Germany. The couple arrived at the GRRC in 18 January 2015, but the medical documentation relating to the admission process of the woman only stated that she “had stomach complaints”. Prior to accommodating her in a bedroom, lice prophylaxis was performed on her. The other woman reported having two abortions in Kosovo. She complained that even though she had indicated her intention to visit a gynaecologist to the physician, instead of seeing a specialist, she was given Paracetamol. Her medical documentation stated next to the abortion details that “at the moment she had no complaints”. According to the documents, lice prophylaxis was conducted on her too. The third woman, admitted to the facility on 21 January 2015, fell ill on the second day of the visit and was taken to hospital. According to a report by her husband, her nose was bleeding. According to the documents, issued for the medical examination of the woman conducted during the admission process, she was four and a half months pregnant. According to the last entry made in the medical documentation, she was taken to the outpatient gynaecology clinic under police surveillance. A bleeding nose was not mentioned.

*The reasons for the contradiction between the data included in the medical documentation on admission and the complaints of the detainees could not be clarified subsequently. As, based on the statements of the detainees, they would need more attention and care primarily from social workers due to their health and mental conditions, my colleagues informed the executive officer of the GRRC about the complaints.*

### **Accommodation of, and services provided to, the detainees**

Registration of the newcomers to the GRRC is the responsibility of the social workers. If, in the physician’s opinion, the foreigner can be placed in the community, the social workers inform them, in their mother tongue or in any other language understood by them, of the house rules of the asylum detention facility, their rights and obligations, the possibility of the application of means of restraint against them and their right of appeal. The foreigner then receives a plastic photo ID card necessary for using the facilities and services provided by the institution, and also bedding, toiletries, the house rules translated into a language spoken by the foreigner and, if necessary, seasonal clothing. The hygiene kit contains soap, shampoo, a tooth brush, tooth paste, toilet paper and mouth wash. The kit does not contain any shaving cream or sanitary pads. Female detainees are supplied cotton wool upon request. A report is prepared on the supplies provided in the admission process, the acceptance of the written report and verbal information, one copy of which is handed over to the foreigner by the social worker and the other is kept in the detainee’s file by the institution. The information is displayed in several languages on the corridors of the residential floors of the institution.

Following the signature of the report, the social workers accompany the foreigner to the accommodation allocated to her/him and show her/his bed. In each bedroom, each person must have at least 15 cubic metres of air space and 5 square metres of floor space, and

married couples and families with minor children must be allocated a separate living space of at least 8 square metres, taking the number of family members into account.<sup>20</sup>

*All the GRRC accommodation satisfied the statutory requirements pertaining to the air space and living space to be provided for individuals subject to asylum detention. In this regard, the inspection found no circumstance indicating any infringement in connection with any fundamental right.*

Despite the fact that the institution, capable of accommodating 182 individuals, contained only 65 detainees, there was a room where one family with three children and another couple without children were accommodated. GRRC staff were unable to give any acceptable explanation as to why the statutory provisions were ignored.

*By accommodating a family with a minor child and a married couple without children in a shared room, the GRRC disregarded a provision of Section 3 (8) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail, according to which “families and married couples must be provided a separate living space that satisfies the basic requirements of family cohabitation.”*

The food provided to detained asylum-seekers each day must have an energy content of at least 10,900 joules.<sup>21</sup> As the majority of the detainees are of Muslim religion, the residents are only given pork-free food. The GRRC provides food to detained adults three times a day, while expectant mothers, mothers with small children and minors are provided a litre of milk and fruit every day and, if justified on medical grounds, some other equivalent food. Foreigners receive lunch exclusively in the form of cooked meals.

*On both days of the visit the members of the visiting team had the same lunch as provided for the detainees, and they found its quality and quantity to be acceptable. Relating to the food provided to the detainees of major age, the inspection revealed no circumstance indicating any irregularity in connection with any fundamental right.*

With the exception of the bedrooms, the rooms of GRRC are cleaned by a company contracted by the GRRC. Cleaning their accommodation is the responsibility of the resident foreigners. The required cleaning tools and materials are provided by the GRRC. The bedding is changed by social workers fortnightly, and is laundered centrally. The detainees clean their own clothes. Foreigners may ask for detergent and a ball from the social workers on duty. They could wash their clothes at the basins outside the shower room, but they were also able to ask for a washing ball from the social workers. Even if families with 3-4 children were staying in the facility, the foreigners had never heard of the laundry room on the residential floor. Their statement was confirmed by the fact that, during the inspection of the GRRC rooms, my colleagues had to wait for almost 15 minutes until the staff found the key to the laundry room. The uncleansed laundry, which had clearly been out of use for a long time, contained one rotary washing machine and one spin drier.

*The families had to dry their freshly washed clothes on the furniture and radiators in their bedrooms and on the metal rods preventing the windows from opening. As the windows could only be opened slightly, the dormitories could not be ventilated properly. Given the moisture emitted by the drying clothes, the air of the dormitories, which lacked oxygen, was very humid. In this situation the use of the laundry room, especially the spin drier could significantly improve the conditions of detention of families with small children.*

Male detainees could shave once a day, starting at 9 p.m., for one hour, under the supervision of armed security guards. Almost all interviewed men objected to the fact that the hygiene kit provided during the admission process did not contain either shaving foam or

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<sup>20</sup> See Section 36/D (1) a) of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum.

<sup>21</sup> See Section 9(1) of the Minister of Interior 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail

shaving cream. Without shaving cream some decided not to shave, while others were forced to ask their companions for it. Several people complained that, during the admission process, the guards took their razors and that they were forced to use disposable plastic razors distributed by the social workers in the evenings. After the shaving hour, the social workers collect the razors and re-distribute them the following day. The foreigners explained that, as they had no possibility to keep or mark the razor allocated to them, there was a chance that next time they had to shave using a razor previously used by a different person.

*In relation to the complaints of the detainees concerning the use of razors, the guards of GRRC explained that the razors are taken away from the foreigners during the admission process for security reasons. This practice is surprising because even individuals in pre-trial detention and those serving their final and absolute prison sentence can keep shaving foam not containing any propellant gas, razors with disposable heads or disposable razors, and electric razors with permission.<sup>22</sup> It is unacceptable for public health considerations too that the detainees had to shave with a razor not provided for their exclusive use.*

The GRRC residents must stay in their bedrooms at night between 11 p.m. and 6 a.m. of the subsequent day, but they still have unlimited access to drinking water and toilets even then. They can use the rest of the residential floor i.e., the dining room, sanitary facilities and activity rooms according to their daily schedule. They can go out to the exercise yard to be in the fresh air at any time, with the exception of the rest time at night, and stay there for any time under the supervision of the two armed security guards on duty. The male detainees spent most of the day in the building. They usually talked to each other, played cards, or smoked. The cigarettes were lit for them by the armed security guards. It caused tensions that some men ran out of cigarettes and the social worker responsible for purchases was on holiday on the first day of the visit. They did not like the fact that they were able to collect the goods ordered on the previous Friday only on Tuesday. The foreigners receive detailed statements of the items ordered by them and purchased by the employees of the institution. Some objected to the fact that they had to finance their purchases from their EUR deposits but received the change in Hungarian forints and therefore they were unable to understand the receipt. Women generally stayed in their bedrooms, cleaning, doing the washing or dealing with the children. Many complained that the social workers did not organise any programme for the adults, and therefore detention was not only a physical but also of a psychological drain on them due to everyday lack of activity. Several people mentioned that, while being detained in Nyírbátor, the social workers organised not only female and child programmes, but also other events in the fresh air, and therefore detention was less stressful for them.

The television in the community room received only Arabic-language channels and so foreigners did not receive any news about Hungary or Europe. Their only meaningful activity was thirty minutes on the internet at day, at pre-arranged times, based on written applications, in the presence of two armed security guards. The detainees complained that the computers were very slow and the internet connection also often broke down. Nearly half of the computer time is spent on contacting their remote family members. As the detainees thought that the telephone cards required for using the public phone within GRRC were too expensive, instead of making calls they asked their relatives to call them.

According to the daily schedule, detainees were able to use the public education and recreation options and services of the institution between 6 a.m. and 11 p.m. The social workers are responsible for organising community programmes to find a meaningful way for

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<sup>22</sup> See Annex 1. point 1.9 of the Minister of Justice Decree 16/2014 (XII.19.) on the Detailed Rules of Confinement Replacing Prison Sentence, Confinement, Pretrial Detention and Disciplinary Fines.

the detainees to spend their leisure time.<sup>23</sup> *However, neither MOI Decree 29/2013 (VI. 28.) nor the Director General's Order 17/2013, or the daily schedule of the GRRC contain any provision on the frequency or duration or the type of activity to be offered to adult detainees by the social workers. This inadequacy could be the reason that the social workers were unable to present any documentation indicating the type of the programme or the days of the week when it was offered to adults, or the individual responsible for the organisation and implementation of the actual programme.*

In response to the question on the daily activities of foreigners, social workers said that most of them played table-tennis. On the contrary, my colleagues saw only two table-tennis tables at the GRRC facility: one was covered up in the yard, and the other one<sup>24</sup> was locked in the isolation room. During the two days of the visit, neither of the table-tennis tables was in use.

### **Services to and activities organised for the detained minors**

In view of Article 21 of the revised Reception Conditions Directive, pursuant to which *"Member States shall take into account the specific situation of vulnerable persons such as minors in the national law implementing this Directive"*, my colleagues paid special attention to the conditions of the services provided and activities organised for the children detained at the GRRC. Of the 65 foreigners detained during the visit there were **26 minors**, including a one-and-a-half year old child with Down syndrome. The institution provides five meals to children<sup>25</sup>, the distribution of which is the responsibility of the social workers. Families are given infant food or baby food for babies. Hot water required for mixing the infant formula may also be requested from the social workers. The other children receive the same food as adults in three main meals a day. Families receive the elevesnes provided to minors together with the breakfast, and the afternoon snacks are served together with lunch. This practice is behind the complaint of the detainees that, contrary to the information displayed on the corridor, meals are provided only three times and not five times a day. In the parents' opinion, children are given much less dairy products and fruit than they would require for healthy development. Some foreigners complained that they would be willing to buy milk for their children, but there was no fridge in their room and therefore they could not store milk properly. One married couple complained that their children lost a great deal of weight during the almost two weeks of detention. My colleagues weighed all three children of the family on the scale of the medical examination room, and then compared the measured weight to the figures measured by the assistant at the time of the admission of the family. The weight of the children at the time of admission was the same as measured by my colleagues during the visit.

*On both days of the visit, my colleagues found that the social workers distributed the fruit and dairy products to the detained minors as included in the daily menu in the form of elevesnes or afternoon snacks. In this regard, the inspection found no circumstance indicating any infringement in connection with any fundamental right.*

Pursuant to the UN Convention on the Rights of the Child, authorities of the states parties shall ensure that *"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into*

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<sup>23</sup> See Section 8 of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

<sup>24</sup> See Section 7(3) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

<sup>25</sup> See Section 9(1) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail

*account the needs of persons of his or her age*".<sup>26</sup> Contrary to that, the GRRC rooms did not only lack a fridge; they were not equipped with a cot or feeding chair, or a basin or toilet suitable for minors, nor even a potty. Mothers with small children indicated that the three nappies allocated per day were not enough for children aged less than 2. One of the mothers complained that a child, older than the age indicated above, who had been potty trained before, wet the bed at night but was no longer eligible for nappies. In relation to the complaints, the social workers responded that foreigners could buy additional nappies for their children if they thought it was necessary at their own cost.

*Despite the fact that, since 8 September 2014, the GRRC has been primarily designated to serve as an asylum detention centre for families with small children, neither the applicable laws, nor Order 17/2013 of the Director-General of the Office of Immigration and Nationality provided for the equipment and furniture as a requirement for the institution to satisfy the needs of the detained minors in accordance with their age.*<sup>27</sup> *This inadequacy constituted an infringement related to the rights of the child, granted in Article XVI (1) of the Fundamental Law.*

In order to provide the education corresponding to the level of development of the school-age minor subjected to asylum detention, the director of GRRC must immediately contact the school district of the Klebelsberg Institution Maintenance Centre which has jurisdiction over the asylum detention centre site.<sup>28</sup>

*During the visit, the school-age minors were taught by teachers from Csapókerti Primary School in Debrecen, who gave lessons to children aged 6-11 for one hour a week and to children aged 12-16 also for one hour a week. The programme was very popular among both the children and the parents. The inspection did not come across any irregularity in relation to any fundamental right with regard to access of children of school-age to public education.*

Pursuant to Article 11 (2) of the revised Reception Conditions Directive, where minors are detained "*they shall have the possibility to engage in leisure activities, including play and recreational activities, appropriate to their age*". In the contacts of the activities referred to above, minors subject to asylum detention must be provided "*the conditions and equipment required for recreational activities, appropriate to their age and development, including especially a playroom, or activities organised by a child pedagogue or a specially trained social worker*".<sup>29</sup>

According to the daily schedule of the GRRC, child activities are organised twice a day, from 9:30 a.m. to 11:30 a.m. and then between 2 p.m. and 4 p.m. The interviewed social workers described the use of objects in the playroom, suitable for drawing, colouring and a puppet theatre, line games, singing and reciting poems as activities for children. Only one social worker mentioned attempts to plan for those activities. Programmes in the fresh air were not even mentioned. Despite the fact that 10 of the 18 social workers had qualifications specifically relating to the education of minors (teachers, kindergarten teachers [kindergarten pedagogues], special needs therapist) on the first day of the visit the morning child activity was delivered by one female unemployed person with assistant special needs therapist

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<sup>26</sup>See Article 37 c) of the Convention on the Rights of the Child signed in New York on 20 November 1989, promulgated by Act LXIV of 1991

<sup>27</sup> In relation to the conditions of detention of families with small children, see point 93 of the judgment of European Court of Human Rights in the Popov v France case.

<sup>28</sup>See Section 18(2) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail

<sup>29</sup>See the first sentence of Section 18(2) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

qualifications, ordered to perform work for the community (hereinafter “assistant special needs therapist”).

The social workers opened the playroom only for the period of the child activities on both days of the visit. The bright, rectangular, bedroom-sized room contained four long tables, benches and two plastic chairs. They were in the corners. Children’s drawings were displayed on one of the walls. The toys, books, colouring books, pens, soft toys, puzzles and other skill development games and cards were stored in four large cardboard boxes. The toys, games and drawing equipment were supplied from Békéscsaba, but the institution also accepts donations. The children are not allowed to take toys out of the playroom. Only soft toys, generally originating from donations, can be taken to the bedroom when a child is ill. Such toys do not need to be returned later. The children can keep them and take them away when they leave.

At the beginning of the children’s activities starting at 9:30 a.m. observed on the second day of the visit, there were 13 children (5 boys and 8 girls) in the playroom. The floor was covered by a carpet and so the children took off their shoes prior to entering. During the two-hour programme some children left and returned after a while. The highest number of children (18) stayed in the room between 10 and 11:00 a.m. The youngest attendant of the programme was one year old, and the oldest was 15 but the majority were aged between 5 and 10. Thirteen children remained at the end of the activity. The programme was delivered in the presence of two armed male security guards. At the beginning of the programme, one of them was sitting on the plastic chair in the corner. He did not take off his shoes. The other was observing the activity from the door. After a while, the armed security guard sitting on the chair also left, and then both observed the activity from the door.

At the beginning most children were drawing or colouring in pre-printed shapes. Then they put their completed work on the wall. A few children studied hard back picture books; others were playing with soft toys. There were children building a castle from hardback books. The books, exercise books and child newspapers were in Hungarian; there was only one storybook in English. Later the social worker played with a ball with six children sitting in a circle, while they tried to learn each other’s first names. Then some children sang and recited poems under the leadership of the assistant special needs therapist. The participants stood up one after the other and presented a song or poem in Albanian, which the others rewarded with applause. After that the social worker proposed a round game and began to sing in Hungarian. The children did not understand the song and began to sing in Albanian. They obviously enjoyed the activity. During the programme a few mothers came into the playroom to watch their children, others only looked into see whether everything was in order. After an hour the social worker was replaced by another social workers and the special needs therapy assistant remained. During the activity the social workers spoke a few words in German and English to the children, and communicated with them through gestures. None of them spoke Albanian.

There is no playground or a football pitch in the yard of the GRRC. As the parents stated, the social workers do not organise any open-air programme or even a walk for the children. As it had been raining for several days prior to the visit, there was a lot of mud in the exercise yard. There was no grass or any other cover on the wet soil, not even any gravel; the area was not suitable for even a short walk. My colleagues also saw some balls in untouched packaging in the store room of the GRRC. It can be hoped that, when the good weather sets in, the detainees will be able to use them too.

According to the reports from the social workers, there have been no conflicts in the institution since it has been occupied by families. The detainees did not express any dissatisfaction either towards the social workers or the guards, and there are no disputes between families either. According to the observations of the visiting group, the threatened position of the parents were felt even by the very small children, as the grilles and the

continuous presence of the armed security guards were clear signs, demonstrating the situation even to them. Consideration should be given to the idea of not requiring the continuous presence of male armed security guards at least during the periods of child activities. If continuous surveillance is required in the playroom for security and guarding considerations, the function should be performed by installing cameras or involving female members of the guard staff. It is likely that, apart from the stress caused by detention, these children also suffered numerous losses recently, as a result of which they tried to comply with their parents' expectations through good behaviour. Attempts should be made to take them out from the extraordinary situation caused by detention, at least temporarily, through the magic of carefree play during well-organised child activities.

*Contrary to that, in relation to child activities, the social workers were unable to present any document that would have revealed details of who organised the child activities scheduled for the days of the week, or the programmes organised for them. The social workers should pay a lot more attention to the design and delivery of activities organised for minors than was observed in order to ease the tension in the children temporarily and to assist them specifically in coping with the stress of detention.*

### **Isolation of the detainees**

The visiting team also inspected the rooms of GRRC, which were used for the isolation of detainees from the others for some reason. The most important consequence of the isolation of foreigners subject to asylum detention within the institution is the even further limitation of their rights, which are already limited by the detention. Considering the further limitations resulting from isolation do not originate from the detention itself, they need to be specifically explained. At the time of the visit, foreigners staying in the institution could be isolated for health reasons,<sup>30</sup> or for disorderly behaviour<sup>31</sup>.

Pursuant to Section 3(1) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail, an individual subject to asylum detention “*may be placed in a community only following a prior medical examination, with the written consent of the physician conducting the examination*”. During the visit, foreigners subject to asylum detention arriving outside medical examination hours had to wait for the medical examination, which was part of their admission, in the two rooms of the medical service, situated on the ground floor of the building. When a group of people arrives, the guards may have to use the rooms designated for receiving visitors and isolating detainees with disorderly conduct for foreigners waiting to be admitted. The guards lock the doors of the rooms used by foreigners waiting for admission. If one of the people in the waiting room needs to go to the toilet, which is on the corridor, or has any other request, they need to knock on the door. If required, the armed security guard escorts the foreigner waiting behind the closed door to the toilet and then back. Despite the fact that the individuals waiting for the medical examination do not have unlimited access to toilets or other supplies and services provided by the GRRC, at present there are no legal regulations on the time within which the institution must admit a foreigner subject to asylum detention from the time of arrival. Without any statutory deadline, the period of medical isolation prior to admission cannot be

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<sup>30</sup>See Section 3(2) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

<sup>31</sup>See Section 7(3) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.



checked or controlled. At present there is no legal guarantee that would prevent a family with small children arriving on Friday afternoon to be forced to wait for the medical examination in the medical isolation room, which is a prerequisite of their admission, until Monday morning. Unless otherwise provided for in the regulations, any foreigner waiting to be admitted is entitled to the same supplies and services provided by the GRRC as the asylum-seekers already admitted, and therefore they must have unlimited access to a toilet in an appropriate hygienic state, regardless of the part of the day, i.e. also during the period while they wait to be examined by the physician.<sup>32</sup>

*The difference between supplies and the services accessible by foreigners waiting to be admitted in the institution designated for asylum detention and foreigners already authorised to stay results in an irregularity in regard to the no discrimination principle, specified in Article XV (2) of the Fundamental Law.*

Pursuant to Section 7(3) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail, “*if, by violating the order of the asylum detention centre, the foreigner endangers his/her own and others’ physical integrity, s/he may be accommodated in an isolation room for as long as necessary but not exceeding 24 hours, taking the prior opinion of the medical staff into consideration*”. As a foreigner in the isolation room cannot have contact with the other detainees, the measure results in conditions similar to those of detention in a private cell. Despite the fact that the CPT found the keeping of minors under conditions similar to those of private cell a concern,<sup>33</sup> there is no statutory provision stating that the isolation of a foreigner subject to asylum detention for disorderly behaviour can only be ordered to any detainee over a certain age. The effective legal regulations only state that the detainee must be informed of the reason for isolation immediately, in the mother tongue or another language s/he understands.<sup>34</sup> In terms of the duration of isolation, the law states that a foreigner committing disorderly conduct may be kept in the isolation room of GRRC “*as long as necessary, or no longer than for 24 hours*”. As soon as the “*event constituting the basis of the measure is terminated*”, the isolated foreigner “*is returned into the community after a medical check*”.<sup>35</sup> Despite the severe legal limitation leading to detention, similar to a private cell, there is no legal regulation stipulating who may order the isolation of individuals for disorderly conduct or the duration of the “*required period*” or the way of documenting it. Even though the family practitioner providing medical services to the residents of the GRRC provides consultation between 8:30 and 10:30 a.m. on working days, the guards could not say whether or not she is also recalled to conduct the medical examination required for returning foreigner from the isolation room into the community.

Apart from the procedural rules applicable to the placement in an isolation room, no other legal regulations stipulate the conditions of accommodation the GRRC should provide for disorderly individuals during the period of isolation. It is unclear how the isolation room should be shaped, what size it should be and what furniture and equipment should be provided in it. During the visit the hand or even the arm of one adult could be pushed through between the 1 cm diameter circular steel bars with a distance of 7-8 cm between them, separating the two isolation cages of the GRRC; as such, harm caused by the detainees kept there to themselves or to each other could not be excluded. According to the applicable legal

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<sup>32</sup>See Section 7(1) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail

<sup>33</sup> See point 35 of the 9th general CPT report.

<sup>34</sup> See the second sentence of Section 7(3) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

<sup>35</sup>See the fourth sentence of Section 7(3) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail

regulations, during the period of isolation the medical staff of the asylum detention centre shall monitor the health of the detainee continuously.<sup>36</sup> Although, according to the CPT recommendation, detainees kept in a private cell must be able to communicate with the guards,<sup>37</sup> in the isolation rooms of the GRRC there is no furniture nor even a panic button. Apart from the fact that, during the visit, the two isolation rooms of GRRC were unfit for human occupancy, the interviewed guards were even uncertain in relation to whether they had to provide a continuous guard when a detainee was kept in the isolation room. We were unable to obtain any information either as to what happens when the individual kept in the isolation room is hungry, thirsty or cold, or needs to use the toilet, or does not feel well.

*In view of the conditions resulting in detention similar to the conditions of a private cell, the lack of procedural rules pertaining to isolation ordered due to the violation of the order at the GRRC, or the regulations pertaining to the conditions of accommodation of isolated individuals imposes a threat to the enforcement of the principle of no inhuman or degrading treatment, contained in Article III (1) of the Fundamental Law.*

## Summary

During the visit there were 65 residents at the GRRC, which had capacity for 182 people. During the two-day visit, my colleagues met all the detained foreigners. In relation to foreigners who were unable to report on their experience of detention due to their age, my colleagues inspected their conditions of accommodation. According to the detainees' statements, the guards treated them humanely and kindly. Even though the members of the GRRC guard, wearing uniforms and equipped with handcuffs, batons and teargas sprays, were present everywhere, and even attended child activities in the play room, nobody complained of any physical abuse or insulting or impolite remarks. Despite that, however, the conditions also observed by my colleagues i.e., that a family with small children was escorted to a medical examination by four or five armed security guards or that even ten members of the guard staff gathered in front of the entrance to the play room or the exit to the exercise yard, intimidated the detainees.

The GRRC provided at least 15 cubic metres of air space and 5 square metres of floor space per person and, with regard to married couples and families with minor children, a separate living space of at least 8 square metres, taking the number of family members into account, for the majority of the detainees.<sup>38</sup> *The staff were unable to provide an acceptable explanation as to why a family with a minor child and a married couple without any children had to share one room in the only the half occupied institution.*

It is unacceptable that the clothing of detainees entering the GRRC site are inspected by an armed guard of a different sex. It is also unacceptable that, prior to the medical examination which is part of the admission process, a female detainee is forced to strip naked in the presence of a male armed security guard, or that an adult detainee is forced to strip naked in front of his minor children of a different sex or that they are forced to tolerate the presence of a member of the guard staff of a different sex during the medical examination. *As all treatments listed above are capable of creating shame in the individual concerned, they cause an infringement with regard to degrading treatment, prohibited under Article III (1) of the Fundamental Law.*

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<sup>36</sup>See the third sentence of Section 7(3) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

<sup>37</sup>The requirements for the physical conditions in private cells are described in points 58-60 of the CPT's 21st general report.

<sup>38</sup>See Section 36/D (1) a) of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum.

One of the reasons for the practice which disregards the human dignity of the detainees is that, contrary to the Act on the Police, the applicable regulations, especially Act CLIX of 1997 on Armed Security Guards, Nature Conservation and Field Guards does not contain any provision stipulating that the criticised actions could only be conducted by an armed security guard of the same sex as the foreigner. The other reason is that, while family members subject to asylum detention must be detained together, the applicable laws do not contain any provision either on the requirements for taking into account the composition by sex of the detainees during the selection of the members of the guard service or during the organisation of their duty periods. While, of the 65 foreigners detained at the GRRC, almost 50% were women, in the 179-strong guard staff there were only 8 women i.e., their proportion was less than five percent. In this situation, it is impossible to create a service rota based on which actions relating to female detainees and the accompanying tasks associated with them could be performed by security guards of the same sex. In order to satisfy that requirement in practice, the proportion of women within the guard staff must increase to at least thirty percent.

At the time of the visit, foreigners detained at the GRRC could be isolated for health reasons<sup>39</sup> or for disorderly behaviour<sup>40</sup>. The isolation of the foreigners within the institution is relevant in terms of the fundamental law, because that measure imposed further limitations on their rights, already limited by the detention. At present there is no provision in the law stipulating the deadline by which the GRRC must admit a foreigner subject to asylum detention from the time of her/his arrival, and therefore the period of the limitation of rights stemming from isolation for medical purposes cannot be controlled/checked either. As a foreigner isolated due to disorderly conduct cannot have any contact with the other detainees, this measure leads to conditions similar to those of being kept in a private cell. Despite the severe legal limitation leading to detention, there is no statutory provision stating that isolation of a detainee subject to asylum detention for disorderly behaviour can only be ordered to a detainee over a certain age. The law does not contain any provision on who is authorised to order the isolation of individuals for disorderly conduct, or who should decide on the duration of the “*required period*” for isolation or on the method of documentation of such decisions. It is unclear what accommodation facilities the GRRC should provide for the period of isolation for disorderly behaviour or how the isolation room should be shaped, what size it should be and what furniture and equipment should be provided in it, or what to do when the isolated individual is hungry, thirsty, cold or needs to use the toilet or does not feel well. During the visit, the isolation rooms were unfit for human occupancy, for which it cannot be a plausible explanation that no-one had stayed there for a long time. *Due to the lack of detailed rules pertaining to the isolation of detainees, detention for disorderly conduct imposes a threat of the enforcement of torture, inhuman or degrading treatment, prohibited under Article III (1) of the Fundamental Law.*

Of the 26 foreigners detained in the GRRC during the visit there were **26 minors**, including a one and a half year-old child with Down syndrome, and therefore I paid particular attention to the conditions of their accommodation and activities. According to the observations of the visiting group, on both days the social workers distributed the fruit and dairy products to the minors as included in the daily menu in the form of elevenses or afternoon snacks. The school-age minors were taught by teachers from Csapókerti Primary School in Debrecen, who gave lessons to children aged 6-11 for one hour a week and to

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<sup>39</sup>See Section 3(2) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

<sup>40</sup>See Section 7(3) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

children aged 12-16 also for one hour a week. The programme was very popular among both the children and the parents. *The inspection did not come across any irregularity in relation to any fundamental right with regard to the food supplied to detained minors or access of minors of school-age to public education.*

Although during the visit there were also infants among the detainees, the GRRC did not have any cot or feeding chair, or toilets suitable for the height of the minors, or even potties, and the daily three nappies allocated to children aged less than 2 were not enough either. *The lack of equipment required for satisfying the needs of detained minors “according to their age”<sup>41</sup> resulted in an irregularity in connection with the rights of the child, granted under Article XVI (1) of the Fundamental Law.*

According to the GRRC’s daily schedule, detainees are entitled to use the public education and recreation options and services, organised by the social workers, provided by the institution between 6 a.m. and 11 p.m.<sup>42</sup> Of the 18 social workers at the GRRC, 7 had teaching qualifications, 2 were trained kindergarten teachers (kindergarten pedagogues), 2 were cultural organisers, 7 were qualified social workers and 1 was a qualified special needs therapist. Their number and qualifications were sufficient to provide professional services and activities to the 65 detainees. Contrary to that, neither the applicable laws, nor the Director General’s Order 17/2013, or the daily schedule of the GRRC, contain any provision on the frequency or duration or the type of activity to be offered to adult detainees by the social workers. During the visit the male detainees spent most of their time talking to each other, playing cards or smoking cigarettes, while women stayed in the accommodation cleaning, washing or dealing with the children. Many complained that, due to the lack of organised programmes, and as a result of inactivity throughout the day, they tolerated detention badly, not only physically but also psychologically. Several people mentioned that while they were detained in Nyírbátor, the social workers organised not only male, female and children’s programmes, but also other events in the fresh air, and therefore detention was less stressful for them. Despite the fact that, according to the GRRC’s daily schedule, children’s activities are organised at the institution twice a day, from 9:30 a.m. to 11:30 a.m. and then between 2 p.m. and 4 p.m., the social workers were unable to present any documentation, either in relation to adults or children, which would have revealed the types of activity organised for particular days of the week or the individual responsible for their organisation and implementation.

The visiting group examined the psychological conditions of 7 female and 7 male detainees. Two main sources were used for the previously drawn up questionnaire: the definition of post-traumatic stress syndrome according to DSM<sup>4344</sup>, and the I. A. Kira cumulative stress disorder model (hereinafter “CTD”)<sup>45</sup>. The average age of women taking part in the psychological test was 28.7, while for the men the average age was 33. The average age of all persons was 30.9. According to the data from the examination, the series of traumas experienced by the individuals involved in the test had already been present earlier. Even though the resident spending the longest time at the GRRC had been there for no more than two weeks, even that period had psychological signs. Women had higher CTD figures

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<sup>41</sup> In relation to the conditions of detention of families with small children, see point 93 of the judgment of European Court of Human Rights in the Popov v France case.

<sup>42</sup> See Section 19 c) of the Minister of Interior Decree 29/2013 (VI. 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

<sup>43</sup> Diagnostic and Statistical Manual of Mental Disorders (DSM) Manual

<sup>44</sup> American Psychiatric Association (1994). Diagnostic and statistical manual of mental disorders: DSM-IV. Washington, DC: American Psychiatric Association. *Based on a Wikipedia entry Available at: [http://en.wikipedia.org/wiki/Posttraumatic\\_stress\\_disorder](http://en.wikipedia.org/wiki/Posttraumatic_stress_disorder)* (downloaded: 4 February 2015.)

<sup>45</sup> KIRA, Ibrahim Aref (2002): Torture Assessment treatment: The Wraparound Approach, Traumatology, 8, 2, 54

than men, which may indicate that they find it much more difficult to cope with their current psychological condition and that their coping strategy is also weaker. Both men and women had high CTD values, which indicate that they were also suffering during the visit. The majority of the examined individuals chewed their nails, and the nail beds of some of them were bloody. Despite the fact that the symptoms listed above clearly indicate an increase in pre-traumatic signs, no psychologist is employed by the institution. Social workers should pay significantly more attention than observed during our visit to the design and delivery of the services specified by law to the detainees in order to temporarily ease the tension accumulated in the foreigners, especially in the children, helping them cope more easily with the psychological burden of detention.

### **My measures**

Pursuant to Section 31 (1) of the Act on the Commissioner for Fundamental Rights (ACFR), the NPM requests the Chief Commissioner of the Police to amend order 21/2014 (VII. 4.) ORF of the national police Headquarters on the service rules of guarded accommodation facilities of the police and on national policing tasks to be implemented in asylum detention centres in order

- to ensure that the proportion of women in the guard staff of places of detention designated to be used for married couples and families with young children should reach at least thirty percent;
- to make sure that the GRRC guards continuously monitor foreigners isolated due to disorderly conduct;
- to make sure that the clothing of detained foreigners is checked by a member of the guard staff of the same sex;
- to ensure that individuals and family members taking part in the medical examinations that constitute part of the admission process should undress in premises separated by sex;
- to make sure that naked family members of different sex are not escorted to the medical examinations in each other's presence;
- to make arrangements for escorting detainees to the medical examinations and to guard them during the examinations by members of the guard staff of the same sex;
- to ensure that child activities are supervised by female members of the guard staff.

Pursuant to Section 31 (1) of the ACFR, the NPM requests the Director-General of the Office of Immigration and Nationality to

- specify, in her order 17/2013, that the clothing of detainees entering the GRRC site are inspected by an armed security guard of the same sex;
- regulate, in order 17/2013, in whose presence the medical examination of detainees shall be conducted by the staff of the medical service and the conditions of the medical examinations;
- define, in order 17/2013, the types of activities to be provided to minor detainees by the social workers of the GRRC;
- impose, in order 17/2013, the obligation to supply at least a cot, a high chair, a basin and toilet, appropriate to the size of the minors and a potty at the asylum detention centre designated for the detention of families with young children;
- ensure that minor detainees can use the play room of the GRRC outside the periods of organized activities as well;
- ensure that male detainees receive shaving cream and razors for their exclusive use;

- make sure that the GRRC daily schedule provides community programmes for adult detainees as well;
- ensure that the GRRC also employs a psychologist;
- require adequate ventilation in the living quarters of the GRRC;
- provide access for the detainees to the GRRC's laundry room and its equipment;
- oblige the GRRC to adjust the number of nappies allocated to detained minors to the needs of the individuals concerned.

Pursuant to Section 37 of the ACFR, the NPM recommends that the Minister of Interior

- initiates amendment of Act CLIX of 1997 on Armed Security Guards, Nature Conservation and Field Guards in order to include provisions relevant to the checking the clothing of any individual subject to measures by a person of the same sex;
- initiate amendment of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum to include detailed rules regulating the isolation of foreigners subject to asylum detention for disorderly conduct;
- regulate, by amending the Minister of Interior Decree 29/2013 (VI. 28) BM on the Rules of Implementing Asylum Detention and Asylum Bail, to include a period within which the GRRC must admit foreigners subject to asylum detention.

Budapest, April 2015

László Székely