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## **REPORT**

of the Commissioner for Fundamental Rights

in case number **AJB-1953/2012**

**Rapporteur:** Dr Katalin Haraszti

**Affected organisation:** Nyírbátor Detention Facility

September 2012

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**The start of the investigation**

In Hungary, the place used for executing detention ordered in immigration proceedings is “an institution built especially for the purpose of detention and operated by the police for accommodating foreigners whose personal freedom is restricted”; it is known as a detention facility.<sup>1</sup> At the time of the investigation, the police operated detention facilities in Budapest (at Liszt Ferenc International Airport) and also in Győr, Kiskunhalas and Nyírbátor.

Statements of case objecting to the treatment of foreign nationals living in the Nyírbátor Detention Facility (hereinafter: Detention Facility) and the conditions of detention have been submitted not only by individuals, but also by non-governmental organizations.

Individuals complained of the detention conditions, in particular of inactivity, as the detainees are permitted only one hour a day outdoors, and are otherwise kept in their cells the entire day; of the limited telephone use; of restrictions on access to sanitary facilities, the limited number and poor condition of these facilities; as well as of abusive treatment by guards.

The Mahatma Gandhi Human Rights Organization complained of not only the detention conditions, but also of abuse perpetrated by guards against detained foreign nationals. According to statements published in the media by Pro Asyl, a German human rights organization, foreign nationals held in Nyírbátor are abused by guards, and that the regular administration of sedatives to detainees over the course of detention (that could last as long as one year) results in addiction to these drugs.

The 2011 Report on Hungary of the United Nations High Commissioner for Refugees (hereinafter: UNHCR) Regional Representation for Central Europe also criticized the practices of abuse and sedating of detainees at the Detention Facility.

I have compiled the complaints regarding the operation of the Detention Facility, the living conditions of detained foreign nationals, and the manner in which they are treated, and examined these complaints in a joint investigation.

**The purpose of the investigation**

The review of the living conditions of detained foreign nationals, treatment by guards, the observations of non-governmental organizations and of those listed in Chapter X of the publication “Hungary as a country of asylum”<sup>2</sup> published in April 2012 by the UNHCR’s Regional Representation for Central Europe.

In the course of the investigation, I reviewed how much time detainees spend in their cells, how often and for how long they are permitted to be outdoors, under what conditions they may use the telephone and receive visitors.

I reviewed the number and nature of extraordinary events having occurred over the last 18 months, as well as how detainees can submit complaints and also how and by who these are processed and investigated.

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<sup>1</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>2</sup> <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html>

The investigation of the health care services provided to foreign nationals detained at the Detention Facility included a review of the type and quantity of the pharmaceutical drugs used at the institution.

### **The method of the investigation**

On 16 and 17 July 2012, my co-workers conducted an unannounced on-site inspection at the Detention Facility. They viewed all of the buildings that serve for the housing of the foreign nationals, examined these premises and documents. They conducted interviews with 62 detained foreign nationals, with social workers and with some of the guards. As the director of the Detention Facility was absent, my co-workers met with the deputies.

Interviews with detainees were conducted on the basis of a predetermined set of questions. My co-workers carrying out the investigation speak English, German, French, Dutch, Serbian and Croatian in addition to Hungarian, therefore – except in the cases of Afghan and Iranian detainees – they conducted the hearings without the assistance 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  
 Popal Tamim, Interpreter

### **Factual findings**

Pursuant to section 54(1) 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), in order to implement deportation or transfer or return under the Dublin procedure, the immigration authority may place a third-country national in detention who

- a)* has hid from the authority or has obstructed the implementation of the deportation or transfer in another manner;
- b)* refuses to depart, or if there are other well-founded grounds for the presumption that he or she will delay or frustrate the implementation of deportation or transfer (flight risk);
- c)* has seriously or repeatedly infringed the rules of conduct regarding the compulsory designated place of stay;
- d)* has not fulfilled his or her obligation to appear on summons, and is thereby obstructing immigration proceedings or the Dublin procedure;
- e)* has escaped from imprisonment imposed for the commission of a deliberate offence.

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 a maximum of thirty days at a time. Detention must be ordered by a ruling, and shall be executed at the time it is communicated.<sup>3</sup>

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<sup>3</sup>See section 54(3) and (4) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

After six months, immigration detention can be extended by another six months at most if, despite all necessary measures for expulsion, detention lasts another six months because the third-country national concerned does not cooperate with the authorities, or because of delays in the procedures of the authorities of the country of origin of the third-country national for the obtaining of the necessary documents for deportation, or of the country having the obligation to readmit the person on the basis of a readmission agreement or to admit him or her on another basis.<sup>4</sup>

The detention facility in Nyírbátor, a town in Eastern Hungary 260 km from Budapest, serves primarily for the implementation of detention for single men originating from outside Europe and who are to be detained for no more than 12 months. At the time of the on-site inspection, the facility could accommodate **259** detainees.

Between 1 January 2011 and 31 December 2011, **922** citizens of 44 countries arrived at the institution.

Between 1 January 2012 and 30 June 2012, **407** citizens of 36 countries were received at the Detention Facility.

At the time of the on-site inspection, there were **207** foreign nationals living at the institution, including 73 Afghans, 51 Pakistanis, 18 Algerians, 12 Libyans, 8 Tunisians, 7 Nigerians, 5 Indians, 5 Iraqis, 5 Vietnamese, 5 Moroccans, 4 Iranians, 2 Kosovars, 2 Palestinians, 2 Ivorians, and one of each of the following nationalities: Serbian, Russian, Chinese, Lebanese, Syrian, Turkish, Ethiopian and Sudanese. Of the detainees, 70 foreigners had submitted a request for asylum.

The Detention Facility is located in two buildings that once served as barracks for conscripts to the border guard forces.

Building A, which has been transformed into a detention centre, can be accessed through a set of locks using a magnetized card locking system. The windows in the Detention Facility premises in this building have been fitted with bars and glass break sensors. The building is equipped with 13 internal and 12 external cameras, fire alarm and panic alert systems.

On the two floors of the building, the cells, which are equipped with heavy iron doors with peep-holes, have sufficient space to house a total of **160** persons. The names and nationalities of the detained foreign nationals are posted on the outside of each cell door.

On the ground floor sector, 9 cells with 3 places each can lodge a total of 27 persons. The upper floor of the building is divided into two sectors separated by iron bars. The sector to the right of the stairwell has 10 three-person cells, 3 four-person cells and 6 five-person cells, for a total capacity of **72** persons. To the left of the stairwell is a sector with 13 three-person cells, 3 four-person cells and 2 five-person cells, for a total capacity of **61** persons. Each cell has its own sanitary facilities consisting of a toilet and a washbasin. At the time of the on-site inspection, there were **123** detainees living in this building.

When it was refurbished, building B was not designed to be used for detention but to operate as community accommodation, i.e. as a designated place of stay. Since May 2010, on orders of the National Police Headquarters, the two-storey building with accommodations for 99 persons has been used for immigration-related detention purposes.

There are 9 four-bed rooms, 1 six-bed room and 3 seven-bed rooms in the first sector on the upper level, to accommodate a total of **63** persons; the other sector on this level has 2 six-bed and 3 eight-bed rooms, for a total capacity of **36** persons. As the building had to be converted into a detention centre within a short time, iron bars were fitted onto the wooden doors of what were previously dormitory rooms. There is a cell which does not have its own

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<sup>4</sup>See section 54(5) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

door opening into the hall, but which can only be accessed by going through the cell next to it. None of the cells have sanitary facilities. The sanitary facilities (where the toilet, washbasin and shower are located) can only be accessed through the hall. Because of frequent breakdowns in the sanitary facilities, it sometimes happens that there is only one shower, toilet or washbasin available in the building for every 10 to 15 detainees. At the time of the on-site inspection, there were **84** foreign nationals living in building B.

The oldest inhabitant of the Detention Facility was a 49-year-old male Iranian national who had arrived at the institution on 18 June 2012. The detainee who had been there the longest was a 42-year-old male Palestinian national who had arrived on 11 October 2011.

At the time of the on-site inspection, 41 foreign nationals were being held at the institution who had been in detention for more than 6 months. These included 10 Afghan nationals, 8 Pakistanis, 7 Algerians, 5 Libyans and citizens of a few other countries.

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

– *The right to human dignity*: “Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to protection from the moment of conception.” (Article II of the Fundamental Law of Hungary);

– *Prohibition of inhuman and degrading treatment*: “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);

– *The right to communications*: “Everyone shall have the right to have his or her privacy, family life, home, communications and good reputation respected.” (Article VI (1) of the Fundamental Law of Hungary);

– *Freedom of religion*: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall enable anyone to freely choose or change his or her religion or other conviction, to manifest or abstain from manifesting such religion or other conviction, to practice or teach – either individually or together with others, in public or in private – one’s religion or belief through religious acts or ceremonies, or in any other way.” (Article VII(1) of the Fundamental Law of Hungary);

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

– *The right to submit grievances*: “Every person shall have the right to submit a written application, complaint or proposal, whether individual or joint, to any organ which exercises public power.” (Article XXV of the Fundamental Law of Hungary)

### **Legislative instruments applied**

- Act CXI of 2011 on the Commissioner of 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, Environmental 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.

## **Findings of the investigation**

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

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(1) of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: the ACFR), proceedings of the Commissioner begin by a complaint submitted by the person alleging the violation.

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 the most vulnerable social groups. In the case of foreigners who do not speak Hungarian, it can be presumed that, due to their lack of knowledge of the Hungarian language and the local circumstances, especially in the particularly vulnerable situation that detention involves, they would not even be able to file a complaint if their fundamental rights were violated.

Pursuant to section 18(4) 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. Acting within the scope of powers defined above, I reviewed *ex officio* the circumstances of the detention at the facility that were not included in the complaints submitted to me by foreign nationals.

### **Admission and designation of accommodations for foreign nationals detained at the Detention Facility**

The foreign nationals interviewed at the Detention Facility were brought to the institution by the police. After the arrival of the foreign nationals, they are handed over by the transferring police officer to a designated staff member of the institution. As foreign nationals can only be admitted to the institution if there is a ruling of the competent immigration authority ordering detention, or a court order extending detention, the police officer making the transfer begins by inspecting these documents, then inspects the items listed in the record made of the valuables in the possession of the foreign national. After these are handed over, the guards inspect the clothing and baggage of the foreign national, and confiscate any items which the detainee could use to injure himself or others in the course of detention. The items are placed in a deposit and a record of this is given to the detainee.

The guards inspecting the baggage and clothing of foreign nationals also keep records of the items that the detainee keeps with him during detention.

Foreign nationals can choose from three types of meals: normal, pork-free, or vegetarian. The staff member of the Detention Facility admitting the newcomer must ensure that the new arrival receives his or her choice of food by the next meal.

Newcomers can only be accommodated after a prior medical examination, with the written approval of the doctor carrying out the examination.<sup>5</sup>The doctor's office, the related service areas, as well as the medical isolation ward

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<sup>5</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.

are all found on the ground floor of building A. In addition to the medical examination that is part of admission, this is also where detainees are treated by the general practitioner.

There is a bench in the spacious waiting area in front of the doctor's office. Foreign nationals arriving before noon and in the early afternoon hours wait here for the medical examination that constitutes part of admission. Foreign nationals arriving in the evening or at night are placed in a medical isolation ward. In the medical isolation ward, there is one cell with two beds and one with three beds, both fitted with heavy iron doors with peep-holes. Cells are furnished with bunks bolted to the floor. Each cell has one table and as many chairs as there are bunks. Each cell has its own sanitary facilities with a shower, washbasin and toilet.

As a general rule, guards check on persons held in the medical isolation ward usually by looking through the peep-hole on the door once per hour, or once every 20 minutes if the foreign national is alone in any area.

When my co-workers arrived, there was a Libyan man in the two-bed cell, who was washing the floor of the cell at that moment. The reason why he was in the the medical isolation ward was that while in the yard, during the one-hour outdoor exercise period, he had had an argument with and assaulted another detainee. For this reason, the guards had separated him from the others for a few hours.

Two Afghan men were held in the three-bed cell. They complained of a skin disease that caused severe itching, and were waiting to be seen by a doctor.

Both rooms were in a dilapidated, neglected condition. The state of cleanliness of the cells as well as that of their sanitary facilities were not even close to the level one would expect for a medical isolation ward. It was obvious that the three-bed cell, filled with dust and garbage, had not been cleaned for days. The worn-out, threadbare mattresses lying in the middle of the cell floor did not even have protective covers on them.

*The placement of detainees at the Detention Facility waiting for a medical examination or undergoing medical treatment in a dilapidated, unclean medical isolation ward jeopardizes the fulfilment of the right to physical and mental health guaranteed in Article XX(1) of the Fundamental Law.*

At the time of the on-site inspection, one retired police doctor, employed by the institution on a contractual basis, and 5 medical assistants provided care to the detained foreign nationals.

The police doctor, who is also responsible for carrying out the medical examination required on admission and for the general care of detainees, is in his office from 10 am to 12 (noon) on weekdays. On weekdays, if a large number of foreign nationals arrive, the police doctor will carry out the pre-admission medical examinations after his regular office hours as well if necessary. On weekends or holidays, the pre-admission examination of foreign nationals arriving at the institution and general care are provided by the regional doctor on duty, based on an agreement between the police and the Nyírbátor Regional Healthcare Centre. The doctor on duty comes to the Detention Facility when called by the designated staff of the institution. The medical examination of foreign nationals arriving during the day is carried out that day; those arriving during the night are examined the next day at the latest.

The assistants are responsible for the purchase, distribution and record-keeping of medications for foreign nationals accommodated at the Detention Facility, minor medical treatments, public health checks, for making appointments with specialists and for laboratory tests, for providing first aid if necessary and also assist in the medical examinations. The assistants work 12-hour shifts, from 7 am to 7 pm. This means that during the day, there is always one of them present at the institution. Assistants are only available at night in exceptional cases, and can only work night shifts if this is possible given their maximum

number of monthly working hours. The residents of the Detention Facility could be ensured continuous, 24-hour care if there were six medical assistants.

The Detention Facility is a place where over two hundred persons are detained 24 hours a day for periods of up to one year. *Accordingly, the fact that not even a medical assistant is available at night at the institution jeopardizes the fulfilment of the detainees' right to physical and mental health guaranteed in Article XX(1) of the Fundamental Law.*

In the first step of the pre-admission examination, foreign nationals meet with the assistant on duty, who takes their height and weight measurements, their blood pressure, and creates a permanent medical record for them containing the measured data. These are later verified by the doctor.

During the medical examination, the police doctor assesses the medical status of the foreign national. The purpose of the examination is to determine whether or not the foreign national can be placed in a communal living situation.

Despite the fact that detainees may keep in their possession medications that have either been prescribed by the doctor or have been permitted,<sup>6</sup> during the pre-admission medical examination, the assistants remove from the foreign national any medication that was in his possession, and keep it until he or she leaves. If the foreign national must take a certain medication, this must be given to him or her by the assistant on duty in accordance with the police doctor's prescription, in the amount and at the times of day indicated by the doctor.

If the medical examination finds traces of external lesions on the foreign national, the doctor must ask the latter for a statement on the causes and the circumstances of these lesions. The statement of the foreign national must be recorded in minutes, and one copy of these shall be sent to the prosecutor supervising the lawfulness of the detention facility.<sup>7</sup> If the medical examination upon admission did not find any traces of external lesions on the foreign national, this must be indicated on the person's permanent medical record.

The results of the medical examination must be shown on the foreign national's permanent medical record. If the foreign national suffers from a chronic, but not contagious, condition, then the note "may be admitted with regular medical examination" will be entered into his or her permanent medical record; if he suffers from a contagious illness that does not require placement in a healthcare institution, the note "must be quarantined" is entered into his or her record. Persons suffering from contagious diseases or who are carriers of pathogens cannot be placed in a communal living situation, and are thus placed in the medical isolation ward until treatment is completed and/or symptoms cease.

If the foreign national is deemed to be "placeable in communal living after further specialist medical examinations" or requires "immediate transfer to a healthcare institution", the police doctor must immediately take measures for necessary treatment, besides noting his/her medical opinion in the permanent medical record and arranging for further tests and examinations. In 2011, the medical service of the Detention Facility treated 5 foreign nationals with hepatitis, 4 with head lice, and 15 infected with scabies. In the first half of 2012, they treated one detainee infected with HIV, 2 with head lice, and 22 infected with scabies.

If there are no medical reasons preventing the admission of the foreign national, the police doctor writes "may be placed in communal living conditions" in his medical file.

*I found no circumstance indicating any irregularity in connection with any fundamental right as regards the admission procedures for foreign nationals to the Detention Facility.*

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<sup>6</sup> See section 15(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>7</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.

## **Accommodation and meals provided to foreign nationals held at the Detention Facility**

If there is no medical reason preventing the admission of the foreign national, the guards will escort him to the designated cell, show him his bunk and the shelf where he can store those personal items that he is permitted to keep with himself.

When placing new arrivals, the staff of the Detention Facility attempts to, as much as possible, place detainees of the same culture and speaking the same language together in a cell. If there is no more room in such a cell, then the new arrival will be placed in a sector where there is another foreign national speaking one of the languages that he or she speaks.

At the time of the on-site inspection, there were 24 Pakistanis, 19 Afghans, 18 Algerians, 12 Libyans, 8 Tunisians, 7 Nigerians, 5 Moroccans, 5 Iraqis, 5 Vietnamese, 4 Iranians, 3 Indians, 2 Kosovars, 2 Palestinians, 2 Ivorians, and one of each of the following nationalities: Serbian, Russian, Lebanese, Syrian, Turkish and Ethiopian living in Building A.

In Building B, there were 54 Afghan nationals, 27 Pakistanis, 2 Indians and one Chinese national.

*I found no circumstance indicating any irregularity in connection with any fundamental right as regards the designation of the place of accommodation for foreign nationals held at the Detention Facility.*

Foreign nationals must follow a strict daily schedule. Wake-up is at 6:30 am, and they have until 7:00 for personal hygiene and to clean the cell. Detainees may shave every other day, in the presence of a guard. They are given 30 minutes during the period between 7:30 and 8:30 to eat breakfast. Lunch is 40 minutes sometime between 12:30 and 2 pm. Supper lasts 30 minutes between 5 and 6 pm. Lights out is at 10 pm.

At the time of admission, the foreign national is provided with bedding, bed linen and two towels. He is also given a toothbrush, toothpaste, shaving cream and a safety razor. For security reasons, detainees may only shave in the presence of a guard. When interviewed, virtually all of the foreign nationals noted that on a monthly basis, they received only two containers of shampoo (of the size generally provided in hotels), one piece of soap (also of the usual hotel size) and only one roll of toilet paper. The detainees especially complained that once they had used up their monthly toilet paper allowance, they could not get any more. Those who could afford it would use their money deposited on arrival to buy extra hygiene items.

Families of detainees can send them money through Western Union. If a foreign national receives money, he can only get to the bank that pays out transfers if the guards are willing to take him there. In some cases, because of limited vehicle capacity, detainees were not able to get to the bank for weeks.

In the course of the banking transaction, in order for the transfer recipient to receive the money, he must show a personal identification document and fill out a form. The most common problem is that there are differences in the spelling of the name of the foreign national between the document authorizing stay issued by the Hungarian authorities and the name of the designated recipient of the money transfer. In these cases, the recipient cannot be given the money transfer.

Detainees can buy products authorized for sale on the territory of the Detention Facility – primarily food, tobacco products, hygiene products, stationery and telephone cards – at their own expense, in the manner and at the times designated by the director of the Detention Facility.<sup>8</sup>

The foreign nationals living in the Detention Facility can buy products every other week on Tuesdays, Wednesdays or, if requested, on Thursdays. The sale of products is

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<sup>8</sup> See section 15(6) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the Rules of Executing Detention Ordered in Immigration Proceedings.

carried out in cooperation with a local shop belonging to the “Coop” chain. Detainees housed in Building A can make purchases on odd-numbered weeks, and those living in Building B can do so on even-numbered weeks. On the designated days for purchases, an employee of the Coop shop comes to the Detention Facility and writes down the orders of the foreign nationals.

The shop sends the goods that were ordered, in packages bearing the name of the person ordering, to the Detention Facility. The price of the goods is paid out of the foreign national’s money held in deposit, after an itemized settlement of accounts. Those foreign nationals who had money to make purchases complained of the limited range of choices and high prices. According to statements made by the foreign nationals, because the employee of the Coop shop does not speak any language other than Hungarian, it sometimes happens that they receive items other than the ones that they had ordered. If a detainee receives the wrong product, he is not obligated to pay for it, but the exchange and replacement of products is a source of additional tension.

*Appropriate hygiene standards for detainees are crucial not only for their personal comfort, but are also in the interests of the entire community. Therefore, the continuous provision of basic hygiene products should not depend on the detainees’ financial situation. The lack of soap, shampoo, and in particular toilet paper provided for the basic hygiene needs of detainees results in an infringement of the right to human dignity guaranteed in Article II of the Fundamental Law and of the right to physical and mental health guaranteed in Article XX(1) of the Fundamental Law.*

Detainees may not be obligated to carry out work besides cooperating in keeping clean those areas used by them.<sup>9</sup> The cleaning of the cells and the connected sanitary facilities in Building A is the responsibility of the detainees housed there, while the institution is responsible for having common areas cleaned. According to the reports of foreign nationals interviewed, it appears that cleaning causes tensions between the guards and detainees from time to time.

Several of the foreign nationals detained in Building A described a conflict that had occurred about two weeks before the on-site inspection. They claimed that the guards had told one of the detainees to clean up the cell. The latter asked for cleaning equipment and supplies in order to perform what he had been instructed to do. Because the man was not given this cleaning equipment, he announced that cleaning was not his job.

Later, the guards took the foreign national who had refused to carry out instructions away to a “security” area that is not under camera surveillance, and beat him so severely that one of his teeth broke.

My co-workers performing the on-site inspection also spoke with the detainee who had suffered the abuse. He claims that the guards beat him after mealtime. Initially on the grounds that he was taking food back to his cell, the guards kept him back, thoroughly inspected his clothing and even looked in his mouth. After the others had returned to their cells, they took him to the “security” isolation area, where they beat him. As proof of his story, the foreign national showed his gums, where the root of his tooth was still visible at the time of the on-site inspection. According to his recollection, six guards assaulted him. However, because of the sudden stress, he was only able to note one of the guards’ ID number. He gave my co-workers this ID number.

The inhabitants of Building A also reported another incident that had occurred about 10 to 12 weeks before the on-site inspection. In that case, the guards had asked one of the Afghan detainees to pick up the cigarette butts off the floor, using only his hands. At first, the foreign national refused to perform the instructed task, stating that he does not smoke. Later,

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<sup>9</sup> See section 17(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.

somewhat reluctantly, he cleaned up the area. According to the statement of the Afghan man, once he had cleaned up, a security guard with a goatee about 180-185 cm tall twisted his arm behind his back, then a blond-haired armed female guard who was with him slapped him in the face twice with her hand.<sup>10</sup> There were no other eyewitnesses of the incident.

One of the reasons of the tensions in connection with cleaning is that there are no regulations with regards to what cleaning equipment and supplies the Detention Facility must provide to the detainees in order for them to keep the areas they use clean. On the first day of the on-site inspection, the Libyan detainee interviewed in the two-bed cell of the medical isolation ward was mopping the floor with nothing but a single filthy threadbare rag. From time to time, he had to go and rinse out the rag in the washbasin found in the sanitary facilities. Because there was no mop, he wiped the floor by wrapping the wet rag around his bare foot.

With respect to the obligation prescribed by legislation of the detained foreign national to maintain cleanliness in the areas used by him or her, it cannot be expected that detainees clean their cell without a word of protest with their bare hands and with a single filthy, threadbare rag. A similar situation arises if a detainee is, on the instruction of the guards, made to clean up litter on the floor of the cell with his bare hands, without a broom or dustpan.

Regarding the situations complained of – rightly, in my opinion – by detainees, these and the tensions caused by them could be prevented if the Detention Facility would provide each cell with a broom, a dustpan, a mop bucket with a wringer, and a mop with a handle; as well as at least a toilet brush for those cells that have their own sanitary facilities.

*Failure by the Detention Facility to provide detainees with the cleaning equipment and cleaning supplies needed for them to fulfil their obligation to maintain the cleanliness of areas used by them results in an infringement of the prohibition of degrading treatment guaranteed by Article III(1) of the Fundamental Law.*

The institution provides detained foreign nationals with three meals a day. With the HUF 750/day/person funding for provisions, food of an energy content of at least 10,900 joules per day must be provided to the detainees, also taking into consideration the dietary requirements of foreign nationals' religions.<sup>11</sup>

The food for the detainees is prepared on the premises by the kitchen of the police facility that is also located there. Because the overwhelming majority of foreign nationals are of the Muslim faith, the detainees are only given pork-free meals. Although at the time of the on-site inspection, it appeared that the Detention Facility was providing meals with the energy content prescribed by law, several detainees complained that the daily amount of food provided is insufficient and that their diet is rather monotonous.

On both days of the on-site inspection, my co-workers ate the lunch that had been prepared for the foreign nationals. Lunch on the first day consisted of potato soup, beef stew with noodles and cabbage salad. On the second day, it was bouillon with semolina dumplings, then beef stew, rice, and pickles (gherkins). The quantity and quality of the food was adequate, although my co-workers also found the detainees' diet a bit monotonous.

The meals prepared at the police kitchen are brought to the Detention Facility by kitchen staff. Food is then distributed under the supervision of the guards. Detainees eat in several groups in rooms designed for this purpose and which are used for community purposes at other times. At the time of the on-site inspection, there were 35 seats in the dining

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<sup>10</sup>A few days after the visit of the Hungarian Helsinki Committee on 10 July 2012, the complaint of the foreign national was recorded in minutes. See document number 1-7/543-40/2012 dated 16 July 2012.

<sup>11</sup> See section 5/B(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.

hall of Building B, which was not enough for the entire guard staff to eat at once; thus the 84 detainees ate in 3 groups.

The last meal of the day, supper, is served between 5 and 6 pm; however, the earliest time of breakfast the next day is at 7:30 am. As in practice 12 hours elapse between these two meals, most of the detainees get hungry during this time. It sometimes happens that the foreign nationals, in order to forestall or remedy late night hunger, or hunger that prevents them from getting a good night's sleep, attempt to bring a slice or two of bread with them back to their cell.

In accordance with section 15(2) of Decree 27/2007 (IV. 31) of the Minister of Justice and Law Enforcement on the Rules of Executing Detention Ordered in Immigration Proceedings, detainees may keep in their possession items of personal use, including food.

There is no doubt that the Detention Facility can limit the number of items for personal use that detainees keep with them, because of limited storage space.<sup>12</sup> However, the Detention Facility is bound in this respect by the provision stating that the foreign national may not have in his possession "objects or materials that pose a risk to the security and order of the detention facility, to his own life or physical integrity or to that of others".<sup>13</sup>

According to the house rules of the institution, detainees are forbidden to bring into and store in their cell foods that spoil at room temperature. In addition, the foreign national is not permitted to have food stored in glass or metal cans in his possession.<sup>14</sup>

Despite the fact that bread is usually stored at room temperature, and even though having bread in one's possession does not pose a risk to the order of the Detention Facility, to the life or physical integrity of other detainees, it cannot be taken in to the cells. Guards try to prevent foreign nationals from smuggling bread or other food back to their cells in violation of the house rules. For this purpose, the guards regularly search the detainees' clothing (including underwear) and their oral cavities after mealtimes.

Several detainees complained that the guards not only look into their mouths, but often mock them at the same time. Given that only a very limited amount of food can be concealed in the oral cavity, the foreign nationals find this search method to be degrading. They try to resist it, which leads to conflicts with the guards, which in turn leads to violent treatment.

In addition to the fact that the section of the Detention Facility's house rules that prohibits detainees from bringing even bread back to their cells is contrary to the provisions of section 15 of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement, the manner in which the guards enforce this rule results in an infringement of Article III(1) of the Fundamental Law which prohibits degrading treatment.

This year, Ramadan began on 20 July 2012, that is, after the on-site inspection. During this period of fasting, persons observing the Muslim faith eat only twice a day, before sunrise and after sundown. At the Detention Facility, nearly 80 detainees indicated that they would like to fast during this time. Several of the detainees were concerned that, because of the restrictions imposed by the house rules, they would not be allowed to bring food into their cells during Ramadan either, therefore they would not have anything to eat early in the morning, before sunrise, and thus would only eat once a day.

The Detention Facility's staff stated that they would ensure that all foreign nationals observing Ramadan would be able to fulfil all their religious requirements.

During their detention foreign nationals are permitted to freely use the areas found in the living areas, such as the cell, the community areas designated for eating and free-time

<sup>12</sup> See the first sentence of section 15(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.

<sup>13</sup> See section 15(2) 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>14</sup> See the information sheet on the fundamental rights and obligations of foreign nationals held at the Detention Facility.

activities, the isolated areas, as well as the washbasin, shower and toilets, all in accordance with the house rules, and can circulate without restrictions about the parts of the Detention Facility designated for this purpose.<sup>15</sup>

After breakfast, all of the detainees return to their cells, after which the guards lock the doors, or the bars in the case of Building B. Foreign nationals who are undergoing any type of medical treatment receive their dose of medication between 8:30 and 9 am from the medical assistant on duty. After the distribution of medications, the guards unlock the doors of the cells, and detainees are permitted to circulate freely within their sector.

Residents of the Detention Facility are permitted to be out of doors for one hour a day. They can go to this area – specifically designed for this purpose and surrounded with an approximately 4-metre high fence topped with NATO wire – at the time designated in the house rules, one sector at a time. Those who are in the exercise area – as there is little else to do – generally walk, talk, play cards, or play football using the foam ball they requested from the social workers.

Recently, the institution has planned developments, using funding received from the European Return Fund, whereby each sector would have its own exercise yard. Once this is completed, detainees will be able to go into the yard during those periods of the day when they are free to move about their sectors.

The next “lock-up” begins at 11:30 am, at the guards’ lunch-time. Detainees wait in their cells while the guards have lunch. After the guards’ lunch-time, detainees begin taking their lunch in groups, starting at 12:30 pm.

The next “lock-up” is at 1:30 pm, which begins because of the afternoon distribution of medication. At 2 pm, the guards unlock the doors of the cells, and detainees are again permitted to circulate freely within their sector.

Between 5 and 7:30 pm, after supper and after the evening distribution of medication, there is “lock-up” again when the guards on night shift take over from those on day shift, and roll call is performed. Between 7:30 and 10 pm, the foreign nationals can again move about freely within the sector.

Several of the Muslim detainees held in Building B complained that as there are no sanitary facilities within the cell, they cannot perform the ritual washing before compulsory evening prayers in time, because the shift transfer of the guards takes too long, and that they only open the cell doors later.

Members of the guard did not contest the fact that the transfer of shifts sometimes takes longer than usual, but did not understand why the fact that cell doors were opened 15 or 20 minutes later could present an issue for detainees.

According to the freedom of religion guaranteed in Article VIII(1) of the Fundamental Law, anyone may freely to practice his or her religion through religious acts or ceremonies, either individually or together with others, in public or in private.

Given that, in the case of the Muslim faith, performing the evening prayer and the ritual ablutions preceding it constitutes an integral part of religious observance, the institution has an obligation to remove any obstacles to this practice.

*The fact that Muslim detainees held in Building B of the Detention Facility are not able to perform ritual ablutions preceding evening prayer on time (because they do not have free access to the sanitary facilities) infringes the right to freedom of religion guaranteed in Article VIII(1) of the Fundamental Law.*

At lights out, all detainees must be in their cells, and on their own designated bunks. In Building A, there is “lock-up” between 10 pm and 6 am the next morning.

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<sup>15</sup> See section 5/A(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.

In Building B, the detainees do not have sanitary facilities attached to their cells and can only use the toilets that can be reached via the corridor; thus and for them, “lock-up” is two hours later, at midnight. This means that although lights out is also compulsory for foreign nationals in this building, their cell doors remain open for another two hours, during which time they may freely use the toilet if necessary. Between midnight and 6 am, the detainees may only access the toilet if the guards let them out. All of the detainees interviewed in this building complained of the conditions for access to the toilets.

First, the foreign nationals complained that the only way they could summon the guard was by knocking loudly on the outer wooden door, which would wake up their cell-mates. Their other complaint was that certain guards use delays in permission to use the toilets as a means for retaliation in the case of personal conflicts they may have with certain detainees. In such cases, no matter how loudly the detainee knocks at the door, the guard will not notice him even in the most quiet early morning hours and will not let him out to use the toilet. In response to the fact that they are not let out to use the toilets because of lock-up at night, detainees keep empty mineral water bottles in their cells and urinate into them if necessary. They showed these bottles to my co-workers.

Members of the guards denied that they deliberately prevented the foreign nationals from accessing the toilets after the midnight lock-up. However, they did not deny that it was indeed possible that on certain occasions the foreign nationals did have to wait for some time before the guard heard the knocking and let them out. The reason for this is that only two guards are on duty at night on the two-storey building, and because they are also responsible for checking on the detainees hourly. The guards on duty must go everywhere together, and must make hourly records of their movements. It sometimes happens that they hear the knocking of a detainee on the first floor, but cannot let him out immediately, because they are in the process of checking on the second-storey cells, or because they are waiting for another detainee to return to his cell after using the toilet.

A fundamental expectation of detention facilities is that detainees must be ensured access to toilets in an adequate hygienic condition at any time of day without any restrictions. The fact that foreign nationals held in Building B of the Detention Facility only have access to toilets if the guards cooperate can present an infringement to their right to human dignity if the delay or hindering thereof is used as a means of retaliation for personal grievances.<sup>16</sup>

The fact that foreign nationals detained in Building B of the Detention Facility do not have free access to the toilets after the midnight lock-up and are forced to urinate into empty water bottles in front of their cell-mates constitutes an infringement of the prohibition of degrading treatment found in Article 3(1) of the Fundamental Law.

In 2012, before the on-site inspection, the National Meteorological Service of Hungary twice issued “red alerts” for high temperatures because the average daily temperature was over 27°C for at least three consecutive days.<sup>17</sup>

My co-workers asked the foreign nationals if any measures were taken to make the extreme heat in the closed building more bearable. Although the foreign nationals found it difficult to endure the day-long heat, they did not see any changes during the aforementioned period.

Residents of Building A complained that although they would have liked to take at least a cooling shower during the day, the guards did not permit them to do so. As they could not shower, they could only cool down by using the washbasin in the cell’s sanitary facilities.

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<sup>16</sup> See also sections 42-50 of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on a visit it made in the United Kingdom between 29 July and 10 August 1990. <http://www.cpt.coe.int/documents/gbr/1991-15-inf-eng.pdf>

<sup>17</sup> A red alert heat warning was issued first for 19-21 June 2012, then between 30 June and 10 July.

In the Building B sectors, sanitary facilities are freely accessible through the corridor, thus the detainees can take showers at any time during the day. They complained that although the windows are covered by bars on the outside, the windows had to be kept closed at night on the instructions of the director of the Detention Facility. It was mostly those living in six- and seven-bed cells who complained of the stuffiness at night, as the building was still hot from the heat of the day and because the windows were kept closed.

Section 129(1)k) of Act II of 2007, prescribing basic requirements for a building operating as a detention facility, states that foreign nationals may only be detained in premises where “windows and natural ventilation are available”. The natural ventilation of cells cannot be restricted, not even on the grounds of the security of detention. The measure of the director of the Detention Facility prohibiting detainees in Building B from opening the windows in their cells at night renders the premises inadequate for the implementation of detention.

*Housing foreign nationals who are subject to detention by the immigration authorities in premises without natural ventilation is not only contrary to section 129(1)k) of Act II of 2007, but also jeopardizes the fulfilment of the right to physical health guaranteed in Article XX(1) of the Fundamental Law.*

On weekdays, detainees may only receive visitors during working hours, and on holidays, during the times that correspond to normal working hours.<sup>18</sup> The majority of the foreign nationals had never had visitors and did not expect to receive any family members or friends for the duration of their detention.

The area for receiving visitors is found on the ground floor of Building A. The room has two doors: one opens onto the inner corridor, the other onto the courtyard. The lower part of the wall separating the detainee from visitors is made of brick, while the top part is of transparent plastic. Holes have been cut in the sheet of plastic, through which the persons several meters apart on either side of the wall can see and hear one another. They are only permitted any physical contact with the visitor in exceptional cases if allowed by the guard on duty, and even then only for a few seconds. One detainee complained vehemently that he had not been permitted to embrace his wife when she visited him, even though he had not seen her for several months.<sup>19</sup>

As the foreign nationals housed at the Detention Facility are not criminal offenders serving a sentence of imprisonment, there appears to be no justification for imposing restrictions on visits that are comparable to the conditions imposed in prisons.

Telephone calls can only be made on the telephones provided by the Detention Facility and at the expense of the detainee;<sup>20</sup> however, the institution has only three telephones that can be used by detainees. There are two telephones in Building A and one in Building B. These can be used for 5 minutes at a time by detainees having a telephone card every other day between 9 and 11:30 am, from 2 to 5 pm and from 7:30 to 9 pm.

Detainees can buy telephone cards at their own expense, from their money held in deposit. All three telephones are located outside of the sectors, thus they can only be reached under the supervision of the guards.

Detainees must give the guards advance notice of their intention to make a telephone call, and the guards then escort them in groups of ten to the telephones. While one person talks, the others wait. As none of the telephones are equipped with a timer, the guard on duty

<sup>18</sup>See section 7(5) 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>19</sup>The conditions for receiving visitors at the Detention Facility were also criticized in section 44 of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on a visit it made to Hungary between 24 March and 2 April 2009.<http://www.cpt.coe.int/documents/hun/2010-17-inf-eng.htm>

<sup>20</sup> See section 15(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.

is responsible for enforcing the time limit specified in the house rules. Once the time limit is up, the guard hangs up the telephone.

Written complaints submitted about telephone use alleged that at times, the guards did not even permit 5-minute calls, and that most of the time they would hang up the phone suddenly, before the discussion of a problem had finished. The most common complaint of detainees was that, because they do not have money for telephone cards, they would call family members asking them to call them back, so that their relatives could pay for the call. The significant geographical distances and the related time zone differences consume a lot of time in connecting the call; and thus, when the family member returns the call – perhaps whom they have not seen for months – they cannot talk for five minutes, nor even for less time than that.

According to the guards, the instruction that they have to fulfil regarding the five-minute duration of calls should not be counted from when the conversation begins, but from the time the detainee lifts the receiver, and that they have to hang up once five minutes from this time have elapsed. They also emphasized that there are not enough telephones for detainee use, and that the current system for telephone use is a source of continuous tension and therefore generates numerous conflicts.

The staff of the institution said that to their knowledge, the reason that the service provider currently providing the telephones does not want to install any more for free is that the preferred mode of calling by detainees is to ask they person whom they call to call them back and pay for the call, thus the profit goes to the the originally called person's service provider. The Detention Facility could rent more telephones that can be operated with cards, but the Police Headquarters of the Szabolcs-Szatmár-Bereg County cannot afford to cover the cost of this (approximately HUF 10,000/telephone/month).

Residents of the Detention Facility can have access to the Internet for 30 minutes at a time between 9 and 11:30 am or between 2 and 5 pm, at prearranged times. Given current capacities, this means that on a daily basis, 20 foreign nationals per building can take advantage of this opportunity; a detainee can have access to a computer about once every four days. Despite the telephone problems, the computer rooms do not have web cameras, microphones or headphones.

According to the rulings of the European Court of Human Rights, detainees must be given the opportunity to stay in regular contact with their families.<sup>21</sup> One of the special features of detention by immigration authorities is that the friends and family of detainees generally live very far away, often on another continent, and thus are not able to visit their detained family member. Because of the absence of personal contact, the importance of other forms of communication, such as the telephone, increases significantly. However, contact with faraway family members should also be accessible to detainees who do not have money. The Internet is a cost-effective means for this.

*The method of telephone use applied by the Detention Facility, which precludes foreign nationals who are unable to purchase telephone cards from any telephone calls whatsoever, even if people call them (which does not cost the institution anything), jeopardizes the fulfilment of Article 3(1) of the Fundamental Law which prohibits inhumane treatment.*

Many of the interviewed foreign nationals complained of health problems. One Pakistani detainee, in addition to post-traumatic stress symptoms such as sudden and dramatic weight loss, extreme anxiety and sleep disturbances, and intense itching of various parts of the body, stated very clearly that “something is moving in his rear”.

Detainees said that neither the police doctor nor the assistants speak foreign languages, and thus do not understand their complaints. Sometimes the psychologist of the *Menedék*

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<sup>21</sup> See e.g. *Kuznetsov v. Ukraine* judgement of 29 April 2003, no. 3904, or *Poltoratsky v. Ukraine* judgement of 29 April 2003, no. 388112/97.

*Egyesület* (Hungarian Association for Migrants) or one of the social workers acts as an interpreter during medical examinations, but this is only possible on occasion. The majority of detainees believed that they always get the same medication, regardless of their current medical complaint.

According to the account given to me by the Detention Facility, in 2011 the police doctor most frequently prescribed an anxiolytic tranquillizing medication called “Rivotril”. A total of 7168 pills with 2 mg of active agent each, and 629 of the version that contains 0.5 mg active agent had been administered to detainees. A total of 2088 pills of the “Ambrobene” tranquillizer, 1100 pills of “Frontin” containing 0.25 mg of a soporific and sedative active agent and 1350 of the version that contains 0.5 mg of this active agent had been administered. Over a year, 2305 “Aspirin 500” tablets were consumed, 2432 “Béres” vitamin C pills and 1562 effervescent calcium tablets.

In the first six months of 2012, 2174 “Rivotril” pills with 2 mg of active agent each, and 685 of the version with 0.5 mg active agent had been administered to detainees. A total of 2163 pills of the “Ambrobene” drug, 695 pills of “Frontin” containing 0.25 mg of a soporific and sedative active agent and 342 of the version containing 0.5 mg of this active agent had been consumed.

The quality and quantity of these drugs as well as the reports of the foreign nationals interviewed in the course of the on-site inspection confirm the information gathered by the United Nations High Commissioner for Refugees to the effect that a high degree of insecurity and anxiety can be experienced among the foreign nationals held at the Detention Facility, and it is also common to find detainees suffering from post-traumatic stress disorder symptoms of varying severity.<sup>22</sup> In order to endure detention, these foreign nationals need sedatives and sleeping pills on a regular basis.

One of the widely known characteristics of the active ingredient in “Rivotril” is that it can cause addiction even after a short term of use. Considering the psychological state of the foreign nationals housed at the institution, as well as the quantity and quality of anxiolytics and sedatives consumed by them, it would be justified for there to be a psychiatrist to hold office hours at the institution at least once a week, and who would not only treat the detainees but also supervise psychological therapy.

A basis for the expected level of medical care is that the patient must be able to inform the doctor of his symptoms. As the detained foreign nationals are not in a position to choose the doctor treating them or the interpreter needed to communicate with the latter, the Detention Facility must ensure these conditions. My co-workers did not receive any information as to how the management of the Detention Facility plan to resolve the problems regarding medical staff and problems communicating with the detainees – perhaps by using the help of foreign medical students at the University of Debrecen, or by applying for grants.

*The fact that the medical staff employed by the Detention Facility for the purpose of treating detainees do not speak any foreign languages whatsoever and that no interpreter is provided for medical examinations jeopardizes the fulfilment of the fundamental right to physical and mental health guaranteed by Article XX(1) of the Fundamental Law.*

### **Staff of the Detention Facility**

There are 56 professional police officers and 158 armed guards employed at the Detention Facility. The costs of the 4 social workers and the 1 psychologist employed by

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<sup>22</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. Available at: <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html>

Menedék Hungarian Association for Migrants are funded by the European Return Fund. In addition to those listed above, the Szabolcs-Szatmár-Bereg County Police Headquarters employs 1 general practitioner on a contractual, part-time basis.

Of the **56** professional police officers, **9** were women and **45** were men. **Eight** police officers have higher education qualifications, while the others have secondary education qualifications. **Two** of the police officers have passed a state examination for intermediate language skills in English, and **1** in Esperanto; while the basic state language test has been passed by **10** officers for English, and **3** for German. **Three** police officers have beginner language skills in English and **1** has beginner skills in Russian.

The police employed the armed security guards pursuant to a decision 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, Environmental and Field Guards as well as of the Labour Code for the purpose of performing guarding and escorting tasks. At any time of day, between 7 and 11 professional police officers and 30 to 40 armed guards are on duty.

The members of the armed security guard wear blue uniforms, baseball caps, dark boots and identification numbers. For the performance of their duties on the territory of the Detention Facility, they are equipped with a rubber truncheon, handcuffs and tear gas spray. When the armed security guards check in for work, they have to turn in their service firearms and leave them in a weapons room specially designated for this purpose. They are only permitted to have firearms when escorting or transferring foreign nationals to external locations. On the first day of the on-site inspection, my co-workers met with several armed security guards who were not wearing identification numbers, which they reported to the deputy director of the Detention Facility.

Of the **158** armed guards, **20** are women and **138** are men. **Six** guards have completed post-secondary education, **81** have a secondary school diploma and **71** have graduated from a vocational school program. **One** armed security guard has an intermediate level language examination certificate in English, and **2** had an intermediate level language examination certificate in German. **Six** armed security guards have basic language skills in English and **1** has basic language skills in German. **Fourteen** armed security guards have beginner's level skills in English, **12** have beginner's level skills in German, and **4** have beginner's level skills in Russian.

Since the overwhelming majority of the armed security guards basically do not speak any foreign languages, communications between them or between detainees is largely conducted through gestures. According to the findings of the on-site inspection, the armed security guards walk into cells without any greetings and, despite the fact that the names and the nationalities of the foreign nationals detained in a cell are all posted on the door of the cell, they call detainees not by their name, but by the name of their country of origin.

According to a decision of the Constitutional Court, one's own name is a fundamental determining factor of the identity of a person, which serves both to identify the person and differentiate him or her from others. The right to one's name is a fundamental element of self-identification, and cannot be alienated by the state nor can its essential content be subjected to restrictions.<sup>23</sup> No one can be deprived of his or her name or of the name registered for him or her by the state; thus a foreign national detained because of a violation of immigration law can also not be deprived of his or her name.

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<sup>23</sup>See Constitutional Court decision 58/2011 (XII. 7.).

*The practice of the guards of the Detention Facility of calling detainees not by their name, but by their country of citizenship violates the right to one's own name, and is thus an infringement of the fundamental right to human dignity in Article II of the Fundamental Law.*

With one or two exceptions, the foreign nationals interviewed at the on-site inspection either complained of having suffered violent treatment by the guards or that one of their co-detainees had sustained such treatment, or that they had witnessed such incidents.

Given the petitions submitted by foreign nationals alleging violent treatment by guards, and also the relating news items in the media and the complaints of detainees, I also reviewed the list of extraordinary events having occurred in the institution in the 18 months prior to the on-site inspection.<sup>24</sup>

The following are deemed to be extraordinary events: 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 detainee or of the persons responsible for guarding, escorting, transporting 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 jeopardize the order of the detention facility or the security of detention. This includes, in particular, the commission of the following acts by a detainee a detention facility: any criminal offences, escape or attempted escape, collective defiance of the lawful procedures of the detention facility's staff, the collective disturbance of the order of the detention facility; as well as attempted suicide or intentional injury to health by a detainee, or the death of a detainee.<sup>25</sup>

According to the documents of the Detention Facility released to us, the following extraordinary events had occurred in the 18 months preceding the on-site inspection:

On 10 January 2011 during a thorough inspection of a cell<sup>26</sup>, it was found that one person had broken of the legs on the left side (next to the wall) of one of the beds in the cell and had pried the attached slats of the bed, and had then put these back in such a manner that the change could not be noticed upon visual inspection. Unknown persons had pried at both of the dividing hinges on the lower left-hand side window. Based on the data available, it was clear that the residents of the cell were preparing to escape.

On 14 January 2011, an Algerian national "head-butted" a shelf in the isolation area of Building A, which left him which lesions that healed within 8 days. This foreign national had been one of the participants in the escape attempt discovered a few days previously, and showed tense, aggressive conduct while he was harming himself.

On 31 January 2011 in the course of a cell inspection, a Georgian national was found to be smoking in a non-smoking area, in the cell. The foreign national poured the contents of a plastic cup filled with cigarette butts and water on the guards, then struck the security guard nearest him once on the shoulder with his fist. Criminal charges have been instigated against the Georgian national for assaulting an officer of the law.

In the early morning hours of 14 March 2011, after the outside guards went past, a Russian national forced the lower latch of the cell window and, taking advantage of his slight

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<sup>24</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, "the following shall be deemed extraordinary events: natural disasters affecting the detention and all other events, acts or omissions which violate or seriously jeopardize the lives, physical integrity or health of the detainees, as well as the persons responsible for guarding, escorting, transporting and providing care 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 jeopardize the order of the detention facility or the security of detention."

<sup>25</sup> See 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.

<sup>26</sup> A thorough cell inspection means that the guards do not make a mere visual inspection of the cell but also inspect the bunks, the areas under the bedding and mattresses, and also search the personal belongings and clothing of the residents of the cell. Thorough cell inspections are carried out on a daily basis in the form of spot checks, affecting at least 3 but no more than 4 cells per sector on any given day.

build and weight, slipped through the bars and jumped down to the inner courtyard and absconded.

On 13 April 2011, a Georgian national, acting on his own initiative and by his own hand, made three surface cuts about 5 cm in length to the left side of his chest as well as other superficial wounds using a part of the upper blade of a disposable razor blade. All injuries healed within 8 days. By causing injury to his own health, the foreign national was trying to call the attention of the authority having ordered his detention that he did not want to return to his homeland.

On 1 June 2011, 2 Vietnamese nationals attempted to hinder a thorough cell inspection by one of them attempting to punch with a tight fist and then kick the armed guard while the other threw a plastic nut spread jar at the guards. The inspection of the detainees' bags found one toothbrush with a sharpened handle, two telephone cards with the edges filed into serrated teeth, four pieces of string each about one meter long, one shoe lace and one pointed and sharpened nail file. Criminal charges have been instigated against the two Vietnamese nationals for assaulting an officer of the law.

On 8 June 2011, 28 detainees began, by a written declaration, a collective refusal to eat, who were joined by another 18 on 9 June (for a total of 46 foreign nationals). One of the reasons for this hunger strike was that the foreign nationals felt that the asylum granting procedures were being drawn out for no reason, and also to protest that they have so little information about the state of their legal affairs and because they did not understand why they were locked up instead of being put in an open refugee camp.

The Office of Immigration and Nationality informed the 24 foreign nationals whose requests for asylum were still pending of the procedures for preliminary and detailed examination, of the mode and substance of judicial review as well as of the legislative changes that came into effect on 24 December 2010 that affect asylum procedures.

The other 22 foreign nationals, whose asylum procedures had already been legally completed or who had not even submitted a request for asylum were informed by staff of the Office of Immigration and Nationality of the legislative changes that came into effect on 24 December 2010 affecting them, in particular about the duration of administrative detention, the conditions for the extension of detention, the option of voluntarily repatriation and of the sequence of official procedures. After hearing this information, the foreign nationals resumed taking their meals.

On 3 September 2011, two Georgian nationals assaulted a third person of unknown nationality who had been placed in their cell. He suffered a fracture of the nose healing within more than eight days. The reason for the fight was that the foreign national of unknown nationality regularly insulted his Georgian cell-mates. Criminal charges have been instigated against the Georgian nationals for assault causing grievous bodily harm.

On 25 September 2011, a Nigerian national stood in the door of the smoking room and tried to make the armed security guard on duty push him out from there. As the guard did not fulfil this request, the Nigerian national turned around and pushed him. The Nigerian national resisted the restraint measures imposed by the guards, and for this reason, criminal charges have been instigated against him for assaulting an officer of the law.

On 27 November 2011, an Algerian national pushed an armed security guard by holding both his shoulders. The guard had been conducting a clothing search after the Algerian had left leaving the dining hall. The foreign national resisted the clothing search, hitting the guard's hand once. Criminal charges have been instigated against the Algerian national for assaulting an officer of the law.

On 8 December 2011, an Afghan national jumped down from a bed placed in the sleeping section, running first into the wall and then into the iron bars of the cell door. The bars of the door caused a split open wound on the forehead of the foreign national about 3 cm

long. As the foreign national ran out of the cell, he incited the 50 to 60 other detainees on that storey of the building (also mainly Afghan nationals) to collective insubordination.<sup>27</sup>

In addition to the above incidents, the guards used physical force in 10 cases; handcuffs in 14 cases; physical force and handcuffs in 10 cases; physical force, truncheon and handcuffs in one case; physical force, chemical substance and handcuffs in one case; and in one case, handcuffs alone as a means of restraint. Of the detainees that were submitted to restraint measures, 17 were nationals of African states, 11 of Asian states and 9 of European states.

On 11 February 2012, a Libyan national attempted to hang himself in the washroom of one of the medical isolation wards, using a strip of ripped sheet about 3 cm wide and tied onto the ventilation duct. However, the fabric tore. The foreign national had not ingested food for an extended period of time, which is why he had been placed in the medical isolation ward for monitoring and for any measures necessitated by the deterioration of his state of health. The suicide attempt was noticed by the guard on duty when making one of his 20-minute rounds.

On 4 March 2012, one Libyan and one Algerian national escaped through the ground floor dining hall of Building A through the window used to serve food through. They reached the rear courtyard used by detainees as an exercise yard and were spotted by the outside guard when they climbed over the concrete wall and barbed wire. The police soon caught the two foreign nationals within the city limits of Nyírbátor.

This year, in addition to the above incidents, the guards used physical force in 10 cases, physical force and handcuffs in 10 cases and handcuffs alone as a means of restraint in 4 cases. Of the detainees that were submitted to restraint measures, 14 were nationals of African states and 12 were nationals of Asian states.

According to the reports of foreign nationals, the majority of guards treat them humanely. However, the lack of verbal communication and differences in cultural backgrounds of detainees and guards leads to misunderstandings. These situations are interpreted by some of the guards as disobedience, and they try to solve the problem through aggression. These certain members of the guards are irritated by the slightest differences in opinion, react with arrogant behaviour and in milder cases address detainees with insults or sometimes even vulgarities, or, in more serious cases, with physical assault. These guards generally work in the same group on duty and virtually all the foreign nationals interviewed by my co-workers knew their ID numbers. The foreign nationals interviewed in Building B claimed that the guards with aggressive behaviour generally work in the group that was on duty in the evening of 17 July 2012. They generally warn newcomers to their cell of the behaviour of these guards. The foreign nationals gave the ID numbers of the three most aggressive guards to my co-workers.

According to the foreign nationals, most of the guards who perpetrate abuse do not even wear ID numbers and time these events to take place when the director of the Detention Facility is away. Most of the abuse takes place in areas not covered by security cameras, such as in the "security isolation cell", in the computer room, or in the cells.

After compiling the detainees' reports of abuse by the guards and the data on extraordinary events, I extended the scope of my inspection to review the use of restraint measures.

Guards must submit a written report to the director of the Detention Facility every time they use means of restraint. Insofar as the director of the institution finds that the use of

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<sup>27</sup>According to the reports of the foreign nationals interviewed by my co-workers, the injuries to the forehead of the foreign national were caused by an assault by the guards. The foreign nationals in the next cell also heard the blows and this caused general indignation.

restraint measures was unlawful, he must write an evaluation report which is then forwarded to the Department of Public Order of the National Police Headquarters.<sup>28</sup>

If the management of the institution deems that the use of force described in the report was lawful, it shall store these documents in an archive, without filing and numbering the reports. With regards to detainees' complaints of abuse, members of the guard staff said that they had reported all of these cases and that the director of the Detention Facility had deemed the use of force to have been lawful in each case.

In response to the question of as to why the Detention Facility does not number and file these documents, my co-workers were told that as there is no obligation to forward the documents to another authority, there are no further measures necessary in the case of documents regarding the lawful use of force.<sup>29</sup> A public prosecutor who supervises the lawfulness of detention and visits the Detention Facility every two weeks also agreed that there was nothing objectionable about handling the documents in this manner.

As the documents were reviewed, we learned that the determination of the lawfulness of the use of force is based solely on the information found in the report. Thus, no one examines the traces of any external lesions, and the foreign national concerned does not even have a chance to state his side of the story.

What is more, persons detained by the authority do not have the opportunity to show their wounds to an independent doctor for diagnosis. With regards to the exceedingly vulnerable situation of the detainee, the accurate registration and safeguarding of documents related to the use of force are significant both from the perspective of the protection of detainees' fundamental rights and with regards to the fulfilment by the state of its obligation enshrined in Article I (1) of the Fundamental Law to respect and protect fundamental rights. A failure to implement the above conditions in practice would mean that there would be no reliable means to rule out possible cases of abuse by the guards.

*The fact that the management of the Detention Facility stores reports of use of force (deemed by it to have been lawful) without numbering or reliable registration and for an unforeseeable period of time jeopardizes the fulfilment of the right to submit a complaint that is guaranteed under Article XXV of the Fundamental Law.*

### **Handling requests and complaints from detainees and disciplinary measures that can be used against detainees**

In each sector of the Detention Facility, there are complaint boxes placed in the corridors. The locked complaint boxes are fastened within arm's reach onto the walls on the other side of the grill separating the sector from the other part of the corridor. The complaint boxes are opened every morning after the daytime guards begin their shift, in person by the director of the Detention Facility or by one of his two deputies. No other staff members of the Detention Facility can open the complaint boxes.

The detainees are informed of how to submit petitions for "objections, complaints, requests, and announcements of general interest" and of the times at which the complaint boxes are opened in section 10 of the house rules of the Detention Facility.

The petitions, generally written in English, are received by the secretarial staff of the director of the institution and are registered in the Records Book of Announcements of General Interest, Suggestions, Complaints and Requests (hereinafter: the Records Book). The Records Book lists the serial number of the petition, the name and nationality of the foreign

<sup>28</sup>See section 32 of Annex 3 of order 53/2010 of the National Police Headquarters.

<sup>29</sup>The director of the Detention Facility requested that the Department of Border Control of the National Police Headquarters state its opinion about the documentation regarding the use of force by civilian armed guards and the handling of documents thus generated (request no. 2590/2012 21 March 2012). At the time of the on-site inspection, no response had been given to this request.

national, the subject of the petition, and the name of the Detention Facility staff member who has been designated (by the person sorting the petitions) to handle the matter. The serial number entered into the Records Book and the name of the person assigned to the matter are also written onto the petition itself. The institution archives petitions that have been settled.

In 2011, the staff of the Detention Facility registered 7953 petitions. On the first day of the on-site inspection, on 16 July 2012, the serial number of the last petition received was 5715, while the last number on the next day was 5760; thus, 45 petitions were received in only one day. According to a random examination of petitions, most of them were not complaints but requests of varying magnitude. In some, the foreign national requested to be transferred to another cell, another requested a hair cut, etc.

*In connection with the handling of requests for everyday errands, I found no circumstance indicating any irregularity in connection with a fundamental right.*

When asked, the staff of the Detention Facility agreed that they had received complaints regarding the conduct of guards with detainees or allegations of abuse. They claimed that there had also been a case where a foreign national had written an email complaint to the National Police Headquarters, complaining that he had been tortured by the guards of the Detention Facility.

They claimed that complaints by detainees of abuse are always investigated promptly, but that the investigations were closed without any results. The reason they were closed was that all of the detainees heard in the course of the investigation withdrew their complaints, and the alleged eyewitnesses of the events were unwilling to testify. Because of a lack of adequate information, the perpetrators of abuse could not be identified, thus the administration of the Detention Facility could not report a single one of the incidents.

They were forced to close one of their first internal investigations against their will, because the Algerian national alleging abuse had to be transferred to the detention facility in Kiskunhalas, based on the orders of a superior administrative organ. I received no response to the question as to what circumstances prevented them from hearing testimony from a foreign national detained in a known place, in another police institution.

On 11 April 2012, at the detention facility in Kiskunhalas, staff of the UNHCR's Regional Representation for Central Europe interviewed the Algerian national who was the victim of the assault. According to the data at my disposal, the Algerian national claimed that he had been assaulted by the guards of the Detention Facility because he had attempted to escape from the institution. After the capture, that is after his return to the Detention Facility, he was beaten by the guards working in one shift and then by the guards in the other shift to deter other detainees from trying to escape. At the time of the interview, he listed the ID numbers of the 9 guards who had beaten him.

The investigation of the case regarding abuse of a foreign national brought before the National Police Headquarters was closed with the statement that the guards' treatment of foreign nationals did not meet the criteria for torture found in Article 1 of Decree 3 of 1988 having statutory force promulgating the UN Convention.<sup>30</sup>

The foreign nationals did not dispute the fact that the management of the Detention Facility deals with their petitions submitted alleging abuse by the guards. They generally become aware of this because the persons concerned and often the guard's co-workers on the same shift as well inflict some sort of retaliation on the detainees.

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<sup>30</sup>According to Article 1 of Law-Decree 3 of 1988 promulgating the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: "1. For the purposes of the Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The guards vehemently denied any manner of retaliation on their behalf towards detainees having submitted complaints. They did concede however that foreign nationals who complain about the actions of a guard and the detainees who witnessed the incident giving rise to the complaint remain under the supervision of the same guard for the duration of the investigation. There is currently no legislation or internal policy to protect foreign nationals residing in the Detention Facility and complaining of abuse by the guards, or to protect those who were witnesses of the incident.

*Given the lack of procedural safeguards to protect the victims of abuse, there is no guarantee that the launch of an investigation will lead to the identification of perpetrators and not to the intimidation of the victim and witnesses, which jeopardizes the effective implementation of the right to file a complaint guaranteed under Article XXV of the Fundamental Law.*

The medical examination performed on admission to the Detention Facility includes the examination of any external lesions on the foreign national. According to the case-law of the European Court, if a person is admitted to detention in good health, but develops injuries while under detention, the state must provide an acceptable explanation for the cause of these injuries.<sup>31</sup> Under Hungarian law, the prosecutor's office has the exclusive competence to identify whether the physical or mental injuries suffered by the detainee were caused by his own unlawful conduct, by the lawful application of means of restraint authorized by law, as a result of unlawful assault by the guards, or if grounds for the suspicion of the commission of some sort of criminal offence can be found in connection with the injury.<sup>32</sup>

In accordance with section 171(2) of Act XIX of 1998 on Criminal Procedure (hereinafter: CP) whereby officials have the obligation to report any criminal offences of which they become aware and falling under the scope of their duties, along with the identity of the offender, if known. Any pieces of evidence must be attached to the report. If this is not possible, then the evidence must be safeguarded.

The obligation to report a crime also applies in the case of offences committed by an unknown offender. In such cases, the identification of the unknown offender falls under the exclusive competence of the prosecutor's office.

The practice of the institution to only carry out internal investigations of petitions submitted by the detainees alleging abuse if they are not addressed to the prosecutor's office is contrary to section 171(2) of the Code of Criminal Procedure. Investigations carried out without the involvement of the prosecutor's office are not subject to the rules of criminal procedure, thus there are no legal safeguards ensuring that traces of abuse (if any) are also examined by an external, independent expert, and for the expert's findings to be recorded in a manner that is appropriate for use as evidence in criminal proceedings, if necessary. With the passage of time, traces of abuse fade and disappear, thereby making it impossible to determine whether there was a breach of rights and to ascertain liability of the perpetrators.

With regards to the review of complaints by detainees, staff of the Detention Facility cited section 10 of the house rules as grounds for their practice, whereby "petitions placed in the complaint boxes must always include the name of the (official body) to which it is addressed, as well as the name and dormitory number of the person having submitted it. If the information included in the petition is incomplete, the identity of the person submitting the petition cannot be determined, and thus we cannot address the merits of the petition."

Insofar as the petition states which official body it is addressed to, the institution must forward it to said official body. The Detention Facility only reviews petitions explicitly addressed to it and also reviews those in which the name of the official body to which it is addressed is absent.

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<sup>31</sup> *Tomasi v. France* judgement of 27 August 1992, Series A no. 241-A.

<sup>32</sup> See section 29 of Act XIX of 1998 on Criminal Procedure

It cannot be expected from foreign nationals from other cultures who do not know either the Hungarian language nor the local customs that they know the Hungarian administrative structure and that they also be familiar with the spheres of competence of the various state organs. All authorities, including the Detention Facility, must treat petitions submitted to them on the basis of their content. If the petition requires the investigation of a complaint, or the consideration of an application falling under the competence of another state organ, the petition must be promptly forwarded to the latter.<sup>33</sup>

By failing to forward to the competent prosecutor's office complaints of abuse by the guards, and by instead dealing with these complaints on their own, the management of the Detention Facility does not fulfil (or is tardy in fulfilling) its obligation prescribed under section 171(2) of the Code of Criminal Procedure regarding the prosecution of criminal offences of which it becomes aware; furthermore, it poses a threat to the fulfilment of Article III(1) of the Fundamental Law prohibiting inhumane and degrading treatment.

According to the rules on the implementation of immigration detention, if the detainee "despite having been informed of his rights and obligations in a manner determined under the rules of the institution or by legislation fails to perform his obligations", said detainee must remain in the cell designated for him.<sup>34</sup>

According to the data of the on-site inspection, detainees failing to observe the rules of the Detention Facility or committing minor breaches of discipline were separated from the others by the guards for a few hours. These foreign nationals are escorted either to the medical isolation ward or to the "security" isolation area. The area for this purpose in Building A is designed for a single person and is in practice a single-person cell. The duration of isolation varies, but according to local customary law, it cannot be longer than 24 hours.

Current legislation in force does not recognize the option of placing detained foreign nationals in solitary confinement for disciplinary breaches, thus the conditions for its application, its duration, implementation or manner of review of implementation are not regulated either. For this reason, the staff of the institution could not provide me with such documentation that I could have used to examine the merits of these issues. Another aspect of the problem of isolating detainees for disciplinary reasons is that, according to the statements of the foreign nationals interviewed, the guards beat the persons escorted to the security isolation area.

Foreign nationals who had been escorted to the medical isolation ward, including the Libyan national who was washing the floor there at the time of the beginning of the on-site inspection, did not complain of any abuse.

The guards vehemently denied the accusations of abuse by foreign nationals who had been escorted to the security isolation area.

Given that I have not been granted the authority to pursue a criminal investigation, it is beyond the sphere of my jurisdiction for me to weigh the contradictory statements placed before me, nor to ascertain their veracity through other means. Given that there are no security cameras in the security isolation area, if any violent treatment occurs here, it is very likely that – besides the perpetrators and the victim – there will be no other eyewitnesses..

In accordance with Article I(3) of the Fundamental Law, rules regarding fundamental rights and obligations must be determined by law. The isolation for disciplinary reasons of a person held under immigration detention results in a severe restriction to his right to maintain contact with others; that is, it is a special form of detention, and the method and criteria and guarantees for its application can only be regulated by statute. Given that the rules on the

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<sup>33</sup>See section 22 subsections (1) to (5) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services.

<sup>34</sup> See section 5/A(2) of Decree 27/2007 (V. 31) of the Minister of Justice and Law Enforcement on the Rules of Executing Detention Ordered in Immigration Proceedings.

implementation of immigration detention are found not in a statute, but in a ministerial decree, even these cannot be used to place a detainee in solitary confinement for disciplinary violations.

*By placing detainees in solitary confinement for disciplinary reasons and separating them from the others, the guards of the Detention Facility infringe the right to maintain contact with others guaranteed in Article VI(1) of the Fundamental Law.*

## **Summary**

Despite the fact that the Detention Facility is not intended to be used the implementation of sentences of imprisonment, foreign nationals placed in Building A practically live in prison conditions, while those placed in Building B live in even worse conditions.

Because the management of the institution prohibited foreign nationals detained in Building B from opening their cell windows at night and that they can only have access to toilets if the guards let them out, the building is, in its present condition, unfit for use as a detention facility. In cases where the foreign nationals can no longer wait for the guards to let them out to use the toilets, they are forced to urinate into plastic bottles in their cells in front of their cell-mates, resulting in an infringement of the prohibition on degrading treatment.

The overwhelming majority of the staff of the Detention Facility do not, for all practical purposes, speak any foreign languages, thus they primarily communicate with detainees through gestures. The lack of verbal communication and differences in cultural backgrounds of detainees and guards lead to misunderstandings. These situations are interpreted by the guards as disobedience, and they try to solve the problem through aggression. The tense behaviour of some of the guards and their arrogant, condescending tone used towards detainees was also noticed by my co-workers at the time of the on-site inspection. The practice of the guards of calling detainees not by their name, but by their country of citizenship violates the right to one's own name, and is thus an infringement of the fundamental right to human dignity.

Because neither the police doctor providing general medical care nor his assistants speak foreign languages, detainees are not able to properly convey their medical complaints to them. Because of the absence of verbal communication, the majority of detainees believed that they always get the same medication, regardless of their current medical complaint. The fact that the medical staff employed by the Detention Facility for the purpose of treating detainees do not speak any foreign languages whatsoever and that no interpreter is provided for medical examinations jeopardizes the fulfilment of the fundamental right to physical and mental health.

In addition to the fact that the section of the Detention Facility's house rules that prohibits detainees from bringing even bread back to their cells is on one hand contrary to the provisions of the legislation on the implementation of immigration detention, and on the other hand, the manner in which the guards enforce this rule, by searching the oral cavities of the detainees, results in an infringement of the prohibition of degrading treatment. This problem would presumably subside if there were at least one refrigerator in each sector of the institution to which the detainees could have access at any time before night lock-up.

Even with respect to the obligation prescribed by legislation of the detained foreign national to maintain cleanliness in the areas used by him or her, it cannot be expected that detainees – without a word of protest – clean their cell with their bare hands with a single filthy, threadbare rag, nor that they pick up all the cigarette butts of the floor of their cell using only their hands and without a broom and dustpan. The practice of the Detention Facility in this respect results in an infringement of the prohibition on degrading treatment.

One of the special features of detention by immigration authorities is that the friends and family of detainees generally live very far away, often on another continent, and thus are not able to visit their detained family member. Because of the absence of personal contact, the importance of other forms of communication, such as via telephone or the Internet, increase significantly. The method of telephone use seen during the inspection, which precludes foreign nationals who are unable to purchase telephone cards from any telephone calls whatsoever, even if people call them (which does not cost the institution anything), jeopardizes the fulfilment the prohibition of inhumane treatment.

The total quality and quantity of the drugs used by the Detention Facility as well as the reports of the foreign nationals interviewed in the course of the on-site inspection confirm the information gathered by the UNHCR's Regional Representation for Central Europe that a high degree of insecurity and anxiety can be experienced among the foreign nationals held at the Detention Facility, and it is also common to find detainees suffering from post-traumatic stress disorder symptoms of varying severity.<sup>35</sup> In order to endure detention, these foreign nationals need sedatives and sleeping pills on a regular basis.

Considering the psychological state of the detainees, as well as the quantity and quality of anxiolytics and sedatives consumed by them, it would be justified for there to be a psychiatrist to hold office hours at the institution at least once a week, and who would not only treat the detainees but also supervise psychological therapy.

With one or two exceptions, the foreign nationals interviewed either complained of having suffered violent treatment by the guards or that one of their co-detainees had sustained such treatment, or that they had witnessed such incidents. Given the lack of procedural safeguards, there is no guarantee that the launch of an investigation will lead to the identification of perpetrators and not to the intimidation of the victim and witnesses, which jeopardizes the effective implementation of the right to file a complaint.

Internal reviews of abuse of detainees by the guards were closed without results because the perpetrators were not identified. By failing to forward to the competent prosecutor's office complaints of abuse by the guards, and by instead dealing with detainees' complaints on their own, the management of the institution breaches its obligation prescribed under section 171(2) of the Code of Criminal Procedure regarding the prosecution of criminal offences of which it becomes aware and poses a threat to the fulfilment of the prohibition of inhumane and degrading treatment.

Under section 22(1) of Act CLXIII of 2011 on the Office of the Public Prosecutor, the public prosecutor shall supervise the legality of the treatment of detainees and the fulfilment of provisions relating to the protection of rights in the course of the implementation of detention. As handling complaints from detainees housed at the Detention Facility and reviewing the legality of any means of restraint that were used also fall under the category of treatment of detainees, any detailed subsequent investigations fall under the sphere of competence of the prosecutor's office.

Foreign nationals who reported abuse indicated the ID numbers of several guards. This information could be used to identify offenders who were heretofore unknown. As I do not have the authority to act in this matter, I have forwarded these data to the prosecutor's office for further measures.

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<sup>35</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. Available at:<http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html>

## Measures

Pursuant to Section 31(1) of Act CXI of 31 on the Parliamentary Commissioner for Fundamental Rights, I hereby request the National Commander of the Police to take measures in order to ensure that, at the Detention Facility, the following measures are implemented:

- the guards must call detainees by their names;
- six medical assistants must be employed in order to ensure 24-hour healthcare monitoring of the detainees;
- ensure that detainees are provided with the services of an interpreter as required for their medical care;
- ensuring that a psychiatrist can be employed to provide services at least once a week;
- have the walls of the medical sector painted, which the management of the institution must carry out in the future, as a priority;
- changing and replacing worn-out mattresses;
- providing detainees with the necessary amounts of soap, shampoo and toilet paper required for their hygiene;
- providing each cell with one broom, one dustpan, one mop bucket with basket-type wringer, one mop (with handle), and one toilet brush;
- ensuring that the detainees have unrestricted access to toilets;
- in the event money is wired to one of the detainees, the guards must escort the detainee to the bank or agent paying out the transfer within no more than 8 days;
- one refrigerator should be installed in each sector of the buildings; cessation of routine searches of detainees' oral cavities and clothing after mealtimes;
- ensuring that Muslim detainees are able to perform ritual cleansing prior to evening prayer;
- lifting the prohibition on opening cell windows;
- developing and introducing measures to be implemented in the event of level red heat alerts in order to enable detainees to better cope with extreme weather;
- allowing for at least the most basic physical contact in the area for receiving visitors;
- obtaining telephones that can be used by detainees at any time and ensuring the conditions for the use of Internet-based<sup>36</sup> telephone calls;
- installing security cameras in the computer room;
- the management of the institution must register and keep all reports and records regarding the use of force or the imposition of disciplinary measures by guards;
- the management must promptly forward to the prosecutor's office all complaints alleging abuse by the guards;
- the guards must cease their practice of placing detainees in the "security" isolation area.

Pursuant to Section 37 of Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights, I recommend that the Home Secretary take measures to amend:

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<sup>36</sup> Such as Skype.

- section 129(1) 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 to ensure that the detention can only be implemented in buildings or building sections which allow detainees access to toilets at any time of day without the collaboration of the guards.
- the amendment of section 17(2) 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 detention facility, in order to ensure cooperation by the detainees in maintaining the cleanliness of the areas used by them, must provide each cell with a broom, a dustpan, a mop bucket with a wringer, a mop with a handle, and a toilet brush;
- the text of section 15(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 should be made more precise with regards to what objects detainees are permitted to have in their possession.

Pursuant to Section 33(1) of Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights, I have requested the Prosecutor General to take measures to ensure that the prosecutor having jurisdiction in the matter examine the complaints of the foreign national detainees of the Detention Facility, and to verify in all cases the registration, safeguarding and lawful review of any instances in which restraint measures are applied.

Budapest, September 2012

Prof. Dr. Máté Szabó

Translation: Afford Fordító- és Tolmácsiroda Kft.

(Courtesy by UNHCR Hungary Unit)

(No professional proofreading has been conducted!)