

Summary
of Case Report AJB-366/2015 on
OPCAT Visit to the Debrecen Guarded Refugee Reception Center
(January 26-27, 2015)

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

From January 1, 2015, in Hungary, the Commissioner for Fundamental Rights operates as the national preventive mechanism (hereinafter “NPM”) who, while performing the tasks indicated above, regularly visits places of detention and inspects the treatment of persons deprived of their liberty even without the need for any infringement or irregularity in connection with any fundamental rights.¹ Having considered that half of Hungary’s asylum detention capacities can be found in the Debrecen Guarded Refugee Reception Center (hereinafter: “GRRC”), and that the detention of families with small children has also to be implemented in this facility, the Commissioner for Fundamental Rights selected the aforementioned institution as the site for the first visit of the National Preventive Mechanism.

There were 65 detainees staying in the GRRC with a capacity of 182 at the time of the visit. In the course of the two-day visit, the staff members of the National Preventive Mechanism met all foreigners detained in the GRRC. In the case of those who, due to their age, could not tell about their experiences regarding detention, the delegation examined the conditions of their placement. According to the detainees, the guards treated them with sympathy and humanity. No one complained of abuse, or insulting or impolite comments. It is unacceptable, however, when the clothing of detainees entering the GRRC’s premises is checked by an armed security guard of the opposite sex. It is also unacceptable that female detainees have to strip naked in front of a male security guard and adult detainees have to take off their clothes in front of their minor children of the opposite sex before the medical examination constituting a part of the reception process, and that they have to tolerate the presence of a security guard of the opposite sex during the examination. *Since all the ways of treatment listed above may induce a sense of shame in the person concerned, they constitute an impropriety related to degrading treatment, expressly prohibited in Article III, Paragraph (1) of the Fundamental Law.*

One of the reasons of this practice of ignoring the detainees’ human dignity is that the relevant regulations, unlike the Police Act, do not stipulate that the aforementioned measure should be taken exclusively by an armed security guard of the same sex. Another reason is that, while family members under asylum detention should be held together, the relevant legal regulations do not stipulate that the gender composition of the detainees should be taken into consideration during the selection of the members of the security service and when drawing up their duty roster. While almost half of the 65 detainees held on the GRRC’s premises were women, there were only eight women serving in the 179-strong guard, that is their number did not reach even five percent. In this situation, it is virtually impossible to draw up a duty roster which could ensure that the various measures and escort tasks affecting female detainees should be taken and carried out, respectively, by a security personnel of the same sex. In order to enforce this expectation, the proportion of women in the security personnel should be increased at least to thirty percent.

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

At the time of the visit, foreigners detained in the GRRC could be segregated only on health grounds², or because of disorderly conduct.³ The fundamental rights relevance of the segregation of foreigners within the institution is that such an action would further reduce their already restricted rights. There is no prevailing legal provision stipulating within how many days upon their arrival the GRRC shall accommodate foreigners held in asylum detention; therefore, the GRRC is not accountable for the duration of the restriction of rights resulting from their segregation on health grounds. Since foreigners segregated because of their disorderly conduct may not come into contact with the other detainees, this measure will result in custody conditions similar to solitary confinement. Despite the severe restriction of rights, there is no legal provision stipulating whether the segregation of a person in asylum detention for disorderly conduct may be imposed on any detainees or only above a certain age limit. There is no legal provision, either, on who shall be authorized to order the segregation of trouble-makers, who shall be entitled to decide on the length of the segregation's "necessary duration" and how such decisions shall be documented. It cannot be known what conditions the GRRC has to provide to the trouble-makers during their segregation, e.g., how to set up the isolation unit, how big the room should be, how to furnish and equip it, and what to do if the person in segregation is hungry, thirsty, cold, has to go to the rest room, or does not feel well. At the time of the visit, the isolation unit of the GRRC was unfit for human residence, which may not be reasonably explained by the fact that it had not been in use for months. *The lack of legal regulations to be implemented in connection with the segregation of foreign trouble-makers in asylum detention may compromise the enforcement of the ban on torture, inhuman or degrading treatment or punishment, referred to in Article III, Paragraph (1) of the Fundamental Law.*

At the time of the visit, there were **26 minors** among the detainees, including a one and a half year old with Down Syndrome, so the NPM paid special attention to examining the care they were provided and the circumstances of their inclusion in various activities. *The investigation did not find any fundamental rights-related improprieties in connection with the nutrition and access to public education of school-age children.*

Although there were some infants detained in the institution at the time of the visit, the GRRC did not have any cribs, high chairs, or toilets with a height appropriate for minors or even chamber-pots; the three panty diapers per day, allocated to children under 2, were not sufficient, either. *The lack of equipment necessary for catering to the "age-appropriate needs"⁴ of minors in detention creates an impropriety relative to the rights of the child guaranteed in Article XVI, Paragraph (1) of the Fundamental Law.*

According to the GRRC's daily schedule, detainees are entitled to avail themselves of the educational and leisure opportunities provided by the institution and organized by the social workers between 6 am and 11 pm.⁵ There were seven teachers, two kindergarten teachers, two cultural managers, seven social workers and one special needs teacher among the 18 social workers of the GRRC: both their number and qualifications were adequate to the needs of taking professional care of 65 detainees. By contrast, the relevant legislation does not provide how often, for how long and what kind of activities social workers have to provide for adult detainees. At the time of the visit, male detainees spent most of their time chatting, playing cards and smoking, while female detainees stayed in their rooms cleaning, washing or

² See Section 3, Subsection (2) of the Minister of Interior Decree 29/2013 (June 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

³ See Section 7, Subsection (3) of the Minister of Interior Decree 29/2013 (June 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

⁴ In connection with the circumstances of families with small children in detention, see Paragraph 93 of ECtHR Decision *Popov vs. France*.

⁵ See Section 19, Paragraph c) of the Minister of Interior Decree 29/2013 (June 28) on the Rules of Implementing Asylum Detention and Asylum Bail.

taking care of their children. Many of them complained that, in the absence of organized programs, as a result of day-long inactivity, detention was rather wearing not only physically, but also mentally. In spite of the fact that, according to the GRRC's daily schedule, children could attend various programs twice a day, from 9:30 to 11:30 am and from 2 pm to 4 pm, the social workers could not present any documentation showing what kind of programs were planned for the week and which one of them was responsible for their organizing and managing.

The visiting delegation examined the detainees' mental condition involving seven women and seven men. The main sources of the questionnaire compiled in advance were the DSM's⁶ definition of post-traumatic stress syndrome⁷, and I. A. Kira's cumulative trauma disorder scale⁸ (hereinafter the "CTD"). The average age of those participating in the psychological assessment was 28.7 years in the case of the women, and 33 years in the case of the men. The average age of all participants was 30.9 years. According to the examination data, participants had suffered a series of traumas even before their arrival at the GRRC. Despite the fact that even the longest period spent in the GRRC by one of its current residents was less than two weeks, this period had also left some psychological marks. The CTD values of women were higher than those of the men, which may indicate that women tolerate less their current psychological state, and their coping strategies are also weaker. The CTD values of both the women and the men were high, which indicates that they were suffering even at the time of the visit. The majority of the subjects bit their nails, some of them had bloody nail matrixes as well. In spite of the fact that these symptoms clearly suggest the strengthening of pre-traumatic factors, there is no psychologist working in the institution. In order to temporarily ease the tension accumulated in the foreigners, in particular in the children, and to make the psychological burden of detention tolerable, the social workers should pay more attention, compared to that experienced at the time of the visit, to the organization and conduct of activities for the detainees as stipulated by the law.

In order to improve the treatment of detainees, the Commissioner for Fundamental Rights initiated the amendment and the supplementing of Act CLIX of 1997 on armed security guards, environmental protection and field rangers, Government Decree No. 301/2007 (XI.9.) On the Implementation of the Act on Asylum, and Minister of Interior Decree 29/2013 (VI. 28.) on Rules Implementing Asylum Detention and Asylum Bail; he also requested the Chief of the National Police Headquarters and the Director General of the Office of Immigration and Nationality to take the appropriate measures.

⁶ Diagnostic and Statistical Manual of Mental Disorders (DSM).

⁷ American Psychiatric Association (1994). Diagnostic and Statistical Manual of Mental Disorders: DSM-IV. Washington, DC: American Psychiatric Association. Based on the article in Wikipedia: available at: http://en.wikipedia.org/wiki/Posttraumatic_stress_disorder (as of February 04, 2015)

⁸ KIRA, Ibrahim Aref (2002): Torture Assessment treatment: The Wraparound Approach, *Traumatology*, 8, 2, 54