

“If you are not free, it is good to know that there is a group of people who still love you, help you and fight for you.”

**F, an asylum seeker detained in Malta for almost 19 months, between 2004 and 2006**

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# PREFACE AND ACKNOWLEDGEMENTS

On 1 May, 2004, Malta, together with nine other States, became part of the European Union. In the run-up to accession, irregular immigration and border control, already contentious issues in the national context due to the sharp increase in the number of migrants arriving by boat that Malta was experiencing, became a major concern.

Then, as now, government efforts focused primarily on seeking to prevent further arrivals; those who made it to shore were placed in detention, which has long been used in Malta as a means of immigration control. They stayed there even if they applied for asylum, while they waited for their asylum claim to be determined.

While the state's preoccupation with border control is perfectly legitimate, our work in detention centres brings us in touch with the often ignored consequences of the ever-increasing institutionalisation of detention. Migrants in detention are extremely isolated, forced to live in very difficult conditions and, often, completely disempowered. As access to detention centres is usually restricted, public awareness of the conditions in which migrants are detained is often very limited.

In this context, the work of NGOs, who provide essential services to this population, raise awareness of their plight and lobby for improved treatment in line with human rights standards, assumes even greater importance. However, the work of NGOs is far from easy - we must struggle against huge odds to meet the often overwhelming needs of the people we serve and we often feel extremely isolated.

This project, which brings together NGO partners from all the states that acceded to the EU on 1 May, 2004, aims to strengthen civil society by creating a network of civil society actors concerned with administrative detention in these Member States.

The partners in this project conducted extensive research about the conditions in detention in their country and national law concerning detention – this report is the result of that research. In addition to highlighting the situation in detention, the report focuses on best practice.

We believe that this report is extremely valuable, because it sheds light on the often forgotten situation of asylum seekers and illegally staying third country nationals who are deprived of their liberty. But possibly more important is the fact that it has brought together NGOs from across the 10 new Member States and created a network that will hopefully last beyond the duration of this project and allow for common action in this area.

We hope that this report will increase awareness and encourage debate. However, the focus should not simply be on how conditions in detention can improve; we need to go beyond and question the scope of detention and the manner in which it is implemented. Human liberty is sacred; it is therefore fundamental that we work to ensure that no one is deprived of their liberty unnecessarily or for longer than strictly necessary.

On behalf of all the operational partners, JRS Malta would like to sincerely thank those public authorities who cooperated in this project; their support may be qualified as 'best practice' in comparison with those public authorities who did not cooperate at all or only in a limited way.

Further gratitude is owed to CIMADE/France and Jesuit Refugee Service (JRS) - Germany for their precious accompaniment. Particular gratitude is owed to Sr Cornelia Buehrle without whose expertise and extensive work this project would not have been possible, Carola Jimenez for her unfailing support and guidance and Renaud de Villaine who worked on the comparative legal analysis.

We are also very grateful to the EU Commission and to RENOVABIS, which gave generous financial support to the project.

**Paul Pace SJ**  
*National Director - JRS Malta*

Valletta, Malta, October 2007

# INTRODUCTION

*This is a dark place... detention is so hard. I don't recognise the person I have become.*

**An asylum seeker detained in Malta**

Across Europe, at any given moment, thousands of foreigners are detained while they await removal or a final decision on their asylum application. The 10 Member States that acceded to the EU on 1 May, 2004, most of whom are now responsible for policing a large part of the external borders of the Union, are no exception.

NGOs working in the area of immigration and asylum have often questioned the widespread use of detention primarily because of the human rights concerns it raises, but also because of its effects on the asylum procedures, the conditions in which detainees are held, the duration of detention, the lack of effective access to legal remedies to challenge detention and, not least, because of the great suffering it causes.

The aim of the project<sup>1</sup>, of which this report is an essential element, is to support civil society in the Member States, which acceded to the EU on 1 May 2004<sup>2</sup> by creating and strengthening a sustainable network of civil society actors concerning asylum seekers and illegally staying third-country nationals in administrative detention across those 10 new EU Member States<sup>3</sup>.

The project was implemented by 10 partners<sup>4</sup>, one from each of the 10 new Member States of the EU. All are NGOs active in the field of immigration and asylum in their own countries, most with particular expertise in the area of administrative detention.

Between February and July 2007, each partner conducted research in one Member State. The research focused exclusively on the situation of asylum seekers<sup>5</sup> and illegally staying third country nationals<sup>6</sup> deprived of their liberty for reasons other than conviction by a court for a violation of penal/criminal law in the 10 new Member States of the EU<sup>7</sup>.

The partners examined various areas relating to the administrative detention of these categories, particularly: national law regulating administrative detention of asylum seekers and illegally staying third country nationals; conditions in one or more detention centres in use; best practice in this area and civil society activities with and for detained migrants. This allowed for increased public awareness and active civil society citizenship at national level.

The information collected in the national reports is compiled and analysed in this Regional Report.

The research covers detention conditions in 30 detention premises/facilities spread across the 10 new Member States: two in Estonia, one in Latvia and one in Lithuania, on the North-Eastern border; six in Poland, two in Slovakia, four in Hungary and one in Slovenia, on the Eastern border; five in Cyprus on the South-Eastern border; three in Malta on the Southern border; and five in the Czech Republic.

The report is divided into four parts: the first contains the 10 national reports; the second outlines EU immigration and asylum law and policy, with particular reference to detention; the third part examines the use of detention in the 10 new Member States, summarising the main findings of the research conducted in each state and highlighting best practice; the last part focuses on civil society activity in the area of administrative detention in the 10 new Member States.

<sup>1</sup> If you wish to consult the project website, go to [http://www.detention-in-europe.org/index.php?option=com\\_content&task=view&id=75&Itemid=88](http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=75&Itemid=88)

<sup>2</sup> Cf. [http://ec.europa.eu/justice\\_home/funding/2004\\_2007/support\\_ngo/funding\\_support\\_en.htm](http://ec.europa.eu/justice_home/funding/2004_2007/support_ngo/funding_support_en.htm) (last visit on 28 July 2007)

<sup>3</sup> title of the project

<sup>4</sup> See annex B for a complete list of project partners and their profiles.

<sup>5</sup> For the purposes of this report the term "asylum seeker" refers to third country nationals or stateless persons who have made an application for asylum in respect of which a final decision has not been taken

<sup>6</sup> For the purposes of this report the term refers to third country nationals who have been refused admission into national territory or whose presence is regarded as "illegal stay" because it does not fulfil the conditions for residence or stay in that Member State.

<sup>7</sup> For the purposes of this report, the term "administrative detention" refers to a situation of deprivation of liberty which is an administrative measure and not a measure of the penal system.

It is our hope that this publication, which highlights the reality of detention in the new Member States, will increase public awareness and generate debate that goes beyond a mere focus on improving detention conditions to questioning use of detention and encouraging a real search for alternatives that are more respectful of human dignity.

# METHODOLOGICAL PRELIMINARY REMARKS

The research methodology was jointly developed by the project partners on the basis of a common glossary, which defines a number of basic notions. Among them are the terms: “asylum seeker”, “illegally staying third-country national”, “administrative detention”, “detention of asylum seekers” and “detention of illegally staying third-country nationals” – key notions defining and limiting the scope of the project. The definitions applied are those adopted by the European Union through legislation which has been adopted or is in the making. A complete glossary is attached in Annex A for ease of reference.

The project partners worked with common questionnaires in order to ensure a maximum of comparability and coherence.<sup>8</sup> The information obtained was first compiled into national reports and then processed at comparative levels, against the background of EU asylum and immigration policy, focusing on:

- Basic national legislation
- Detention conditions and best practice
- Civil society activities relating to administrative detention of asylum seekers and illegally staying third-country nationals

In order to conduct an analysis of existing best practice, partners conducted research into the situation on the ground, focusing on various aspects, selected/identified by the partners on the basis of their field experience. These include information about the physical conditions of detention, the daily regime, information and services provided to detainees, the detainee population, detainees’ contact with the outside world, provision for vulnerable persons, maintenance of discipline and complaints mechanisms and *de facto* duration of detention in each of the detention centres studied.

For the purposes of this report and the national studies, practice findings and best practice analysis focus on realities encountered during the research period, between February 2007 and July 2007. Situations, conditions and processes that evolved before February 2007 are not included, unless reference is inevitable for reasons of understanding.

The information collected was then analysed in the light of criteria and standards of best practice drawn from established international and European legal and other instruments, including:

- the Standards of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)<sup>9</sup>, which cover asylum seekers as well as illegally staying third-country nationals
- the 2003 EU COUNCIL DIRECTIVE laying down minimum standards for the reception of asylum seekers<sup>10</sup>, whose scope is limited to asylum seekers
- the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (UNHCR Guidelines)<sup>11</sup> whose scope comprises, as the wording indicates, exclusively asylum seekers
- the 2005 Council of Europe Committee of Ministers Twenty Guidelines on Forced Return, CM (2005) 40 final of 9 May 2005 (CoE Guidelines)<sup>12</sup> which apply only to illegally staying-third country nationals

Assessing “best practice” in this manner means using the instruments merely as orientation and guidance. It is not within the scope of this research to examine the transposition of the 2003 EU

<sup>8</sup> If you wish to consult the questionnaires, go to [http://www.detention-in-europe.org/index.php?option=com\\_content&task=view&id=79&Itemid=106](http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=79&Itemid=106)

<sup>9</sup> CPT Standards [CPT/Inf/E (2002) 1, Rev. 2006]: <http://www.cpt.coe.int/EN/docsstandards.htm> (last visit on 27 July)

<sup>10</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_031/l\\_03120030206en00180025.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_031/l_03120030206en00180025.pdf) (last visit on 27 July 2007)

<sup>11</sup> <http://www.unhcr.org/au/pdfs/detentionguidelines.pdf> (last visit on 27 July 2007)

<sup>12</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/foreigners\\_and\\_citizens/asylum\\_refugees\\_and\\_stateless\\_persons/texts\\_and\\_documents/2005/Twenty%20Guidelines%20on%20forced%20return%202005.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/foreigners_and_citizens/asylum_refugees_and_stateless_persons/texts_and_documents/2005/Twenty%20Guidelines%20on%20forced%20return%202005.pdf) (last visit on 27 July 2007)

COUNCIL DIRECTIVE laying down minimum standards for the reception of asylum seekers<sup>13</sup>, nor to assess, in a strictly legal sense, existing realities under those instruments.

Although the partners tried to be as accurate as possible and to ensure consistency of the information provided, in fact this comparative study does have a number of limitations. The first is that the area of research was very wide, encompassing national law, policy and practice on a large number of topics. While this helped to give a more complete picture of the reality on the ground in the different Member States, it also created problems because of the sheer amount of data collected.

In addition, even though the questionnaires were standardised to make comparison possible, in practice it was often difficult to compare and analyse the results across the board.

One reason for this is the fact that the situation on the ground in the Member States concerned is so different. All have their own laws, policies and national structures in place to deal with immigration and asylum. Moreover, the practical context in which these laws, policies and structures operate is very diverse; so, even where there are similar systems in place, their application in practice could, in fact, be very different. For example, the standard of care provided by a medical service, consisting of one doctor and nurse working daily for five hours, in a centre accommodating a maximum of 50 people is not the same as that which can be provided by an identical service operating in a centre for a maximum of 700 people. Unfortunately, it is not always possible to assess the practical impact of national laws, policies and structures, without an in depth knowledge of the practical context within the different states.

Another limitation is a result of the fact that at times the information required was not available. This could have been due to many factors, including lack of cooperation on the part of the authorities concerned or lack of publicly available information. At times, however, it was clearly because, in spite of the relatively structured nature of the questionnaires, the data included by national researchers under different headings was not always totally uniform, possibly because researchers understood the scope of the question slightly differently. Given the large amount of data collected and the relatively short time available, it was not possible to totally standardise the data and question the reasons for exclusion of information on particular points.

One final limitation, which could have distorted the results of the study, is the fact that not all the partners have regular access to all the centres they reported on. Moreover in some cases researchers did not have any access at all to one or more of the centres. This effectively means that the information provided in the report was obtained on the basis of interviews with other people who do have access, including the authorities concerned and detainees, pre-existing reports and/or on the basis of a single visit to the facility/premise concerned, which is all that was possible given the time-frame of this study. This means that it was not possible for the researcher to really assess the accuracy of information obtained through direct observation.

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<sup>13</sup> This is being assessed by the ODYSSEUS network: <http://www.ulb.ac.be/assoc/odysseus/index2.html> (last visit on 29 July 2007)



# 1 NATIONAL REPORTS

This section contains a national report on administrative detention of asylum seekers and illegally staying third country nationals in each of the 10 new Member States of the EU. Each report is the result of inquiries and research undertaken by the project partners between February and May 2007, according to a methodology previously agreed between the partners.

## CYPRUS

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### SYMFILIOSI

#### INTRODUCTION<sup>14</sup>

In the absence of apposite detention centres, undocumented third country nationals, including asylum seekers, are held in police stations and in the Central Prison. There are different categories of people detained on immigration-related ‘offences’: those detained for a few days until their removal is arranged; those whose removal presents various difficulties (e.g. non-disclosure of their country of origin, or their country of origin is unwilling to accept them); and third country nationals who had initially been declared ‘illegal’ and who subsequently applied for international protection. The majority belong to this last category. In Cyprus, as at 23 March 2007, there were 5 main facilities:

- Detention centre at Larnaca Police Station
- Larnaca International Airport Detention Centre
- Detention centre at Limassol Police Station
- Block 10, Central Prison, Nicosia
- Detention centre at Lakatamia Police Station, Nicosia

No NGO is guaranteed access inside the detention centres. Such access is granted only at the discretion of the police authorities and has never, to our knowledge been granted to NGOs. Access to centres is granted to the Ombudswoman, the Law Commissioner, specific priests who visit detainees for their confession and the European Committee for the Prevention of Torture (CPT). Information for the purpose of compiling this report was obtained from the reports of the Ombudswoman, from other international reports (ECRI, the Human Rights Commissioner of the Council of Europe), from ex-detainees, from the Law Commissioner, from an NGO Apanemi, which carried out a research project on detention conditions<sup>15</sup> and from a priest who regularly visits the central prison and a detention centre located within the area of the central prison (commonly referred to as “Block 10”).

SYMFILIOSI arranged for interviews with three ex-detainees Iraq, Syria, Turkey and with four people who have access to the centres, among them officers from the Ombudswoman’s Office; the President of ETHNOPAD (National Institution for Human Rights); the Law Commissioner, Leda Koursoumba; the president of Apanemi, Julia Kalimeri; Fr Christophoros of the Morphou Bishopric.

#### 1. ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004

Migration to Cyprus is a recent phenomenon and there is little tradition in asylum and in receiving large numbers of applications. Prior to 1990, immigration policy in Cyprus was restrictive and very few foreign workers were admitted. The number of resident foreigners is estimated to be approximately 110,000, representing about 15% of the population residing in the Greek-Cypriot south of the island.<sup>16</sup> It is estimated that there are between 10,000-60,000 undocumented foreign workers.

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<sup>14</sup> This report is owned by Symfiliosi. Reproduction and quoting are authorised, provided the source is acknowledged, save where otherwise stated.

<sup>15</sup> Apanemi was also denied access to the detention centres. Their information also derives from interviews with ex-detainees and persons who had access.

<sup>16</sup> According to the latest available demographic figures published at the end of 2003, the total population residing in the Greek-Cypriot controlled south of Cyprus is 730,400. The Government Statistical Service estimates that the north of the

In the run-up to EU accession, the number of asylum applications rose sharply, not so much as a direct result of accession but as a result of:

- (a) The fact that Cyprus did not have an asylum regime up until 2000; the asylum system started to work in 2002 and a large number of backload applications were received all at once.
- (b) The fact that the infrastructure was deficient in service provision to asylum seekers, particularly legal aid. A lack of proper advice led many foreigners already residing in Cyprus to submit asylum applications in order to prolong their stay. The sharp increase in applications caught the authorities unprepared and led to long delays.

The question of detention of foreigners and asylum seekers was raised by three ECRI<sup>17</sup> Reports on Cyprus (1999, 2001, 2005) and by local NGOs before accession. The first ECRI Report on Cyprus released in November 1999 noted “with concern reports that non-citizens being held under the Aliens and Immigration Law, are kept in police detention facilities, together with criminal suspects... non-citizens in these situations should be provided with clear information in a range of languages about their rights and be dealt with by appropriately-trained staff.” The Second ECRI Report on Cyprus, released in July 2001, noted “reports of use of excessive force by the police against aliens who enter or stay in Cyprus illegally and the detention of this category of persons for long periods of time pending deportation” and the fact that such people “do not even enjoy the legal safeguards applicable to detention generally.” Another concern was that the order to detain foreigners pending removal was issued not by the Court, but by the Chief Immigration Officer. The third ECRI Report, covering 2003-2005, voiced concern about the increased numbers of detainees and allegations that “that the Cypriot authorities have recently intensified deportations of immigrants in order to avoid having to grant them long-term residence and other rights”.

The Amnesty International Report on Cyprus for 2005<sup>18</sup> expressed concern over the following reports: racist comments by police staff to foreign detainees; foreign detainees beaten in a police station; foreign detainees in police stations ill-treated and forced to sign declarations withdrawing their requests for asylum. Some reports came from the Ombudswoman, who highlighted what appears to be a practice by Police of trying to make detainees sign a voluntary repatriation form and/or a document withdrawing their asylum application, by using physical force and/or psychological pressure. The Ombudswoman twice complained of very poor Police compliance with her decisions.<sup>19</sup> In 2006, the Asylum Service accepted the Ombudswoman’s recommendation that asylum applications be withdrawn only in the presence of the Service staff.

The 2005 report of the Ombudswoman criticised the detention of foreigners for reasons related to their unlawful entry and stay in Cyprus. The Ombudswoman said the authorities must de-criminalise unlawful entry and stay. The Ombudswoman criticised the practise of detaining foreigners for very long periods based on detention orders pending removal. She said conditions were inappropriate (as these centres are designed for only short stays), verging upon squalor and degradation and undermining detainees’ health and dignity.<sup>20</sup> The Interior Minister announced plans to construct a detention centre specifically for foreigners detained on immigration-related offences, but this has not materialised yet. It is hoped that this new centre will be more appropriate than the police facilities currently used, which are clearly unsuitable, a fact acknowledged by the state authorities themselves.<sup>21</sup>

The Report referred to several cases of ill treatment of asylum seekers by the authorities, particularly by the Police. In one case, the Police directed the lawyer of three asylum seekers to send his clients to the police station to submit their asylum application but upon arrival arrested and removed them immediately. The Ombudswoman said the Police gave inaccurate and misleading information during her inquiry.

Policies regarding the detention of foreigners did not really change with accession to the EU. What may have changed in recent years is awareness. The post-2004 period saw a proliferation of human rights NGOs as well as media coverage of immigration-related events, particularly the removal of foreigners with families. The Ombudswoman’s new mandate as a national specialised body, under Article 13 of the Race Directive, transposed into Cypriot law on 1<sup>st</sup> May 2004, has had contributed

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island is populated by 87,800 Turkish-Cypriots and 119,000 settlers from Turkey. In effect, the whole of the island has a citizen population of 818,200, including Turkish-Cypriots residing in the north.

<sup>17</sup> European Commission against Racism and Intolerance

<sup>18</sup> [web.amnesty.org/report2005/cyp-summary-eng](http://web.amnesty.org/report2005/cyp-summary-eng) - 29k

<sup>19</sup> Evaggelou, M. (2005) “Kleinei ta aftia stin Epitropo I Astynomia” in *Politis* (11.08.2005), p.3.

<sup>20</sup> Annual Report 2005, Ombudswoman, p. 27.

<sup>21</sup> A statement to that effect was reported in the daily newspaper “Phileleftheros” on 05.01.2005, following the escape from the Lamaca police detention centre of 13 foreigners.

positively to raising awareness and to policy developments, to some extent. For example, the newly appointed Interior Minister started disciplinary proceedings against the Chief Immigration Officer for repeatedly issuing removal orders against foreigners who should not have been removed, either because they were entitled to the status of a long term migrant<sup>22</sup> or because they were unaccompanied minors or for other reasons. The Chief Immigration Officer had been criticised both by the media as well as by the Ombudswoman.

## **2 SUMMARY OF NATIONAL LAW**

Cypriot asylum law endeavours to restrict the period and the reasons for which asylum seekers may be detained,<sup>23</sup> however the practice is very different: asylum seekers are often detained for entering or residing in Cyprus illegally prior to submitting their asylum application and they could remain in custody until the determination of their asylum application. In vain the Ombudswoman has repeatedly condemned this practice as an outright violation of the law.

### **2.1 Legal grounds for detention**

Cypriot Refugee Law (6(I)/2000) prohibits the detention of an asylum seeker for the sole reason of being an asylum seeker; however this same section allows for automatic detention, in two cases, that is:

- (a) for the purposes of the establishment of his/her identity or nationality or if s/he has no nationality from the country he had previously habitually resided, and in cases where s/he destroyed or got rid of his/her travel documents or personal papers or s/he used false documents during arrival in the Republic of Cyprus with the aim of defrauding the Cypriot authorities, providing that s/he does not reveal these actions and his/her real identity during the submission of the application and
- (b) for the purposes of investigation of new facts that the applicant is willing to submit in support of his/her application, where the application has been rejected at first instance and on appeal and a deportation order has been issued.

When an asylum seeker enters the country illegally, s/he is detained for the duration of his/her asylum procedure. However, persons who enter legally are not detained.

Removal of “prohibited migrants” is dealt with by Article 13(1) of the Aliens and Migration Law, Cap. 105 of Cypriot Law, which empowers the Immigration officer to order him/her to leave in the ship or the aircraft s/he arrived in or to order him/her to leave within a specified period by a specified route. Article 13(2) goes on to allow the “detention in custody” or “other confined places” of such migrants pending removal. Article 14(1) of this same law authorises the Chief Immigration Officer to deport any overstayer. The term of this detention is limited to eight days unless the court authorizes a longer time period.

In practice, the above provisions are not always respected by the authorities, as shown by the numerous cases of asylum seekers detained for lengthy periods for the sole reason of having entered the country illegally. This point was highlighted in the Ombudswoman’s Annual Report of 2006 and the Ombudswoman’s Report into the conditions of detention of foreigners in central prison and in police stations of 2 February 2005.

### **2.2 Legal grounds for the detention order**

Any immigration related offences that contravene the general rubric of immigration under the ‘Aliens’ and Migration Law, Cap. 105 provide the legal basis of a detention order. In terms of Cypriot Refugee Law 6(I)/2000, article 7(4)(b) the detention of an applicant is only allowed by a Court Order and only in the forthcoming cases:

- (i). For establishing his identity or nationality, and in case he has no nationality the country of his previous habitual residence, in case he destroyed or disposed of his travel or identity documents or used forged documents on his arrival in the Republic in order to mislead the competent authorities, provided that he did not reveal these actions and his real identity at the time of submission of the application;

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<sup>22</sup> In accordance with Council Directive 2003/109/EC of 25 November 2003, transposed into the Cypriot legal order in 2007, by law 8(I)2007.

<sup>23</sup> Detention is legally approved only to ascertain identity, the facts upon which an application is based and/or to protect public security and order. Detention may not exceed eight days, following which a detention order must be secured from the Court for subsequent periods of eight days, not to exceed 32 days

(ii). For the examination of new elements which the applicant wishes to submit in order to prove his claim relating to his asylum application, in case his application has been rejected on first as well as on second instance and a deportation order has been issued against him.

As stated in the self-initiated investigation of the Ombudswoman in February 2005, there are 3 categories of foreigners detained:

1. those against whom a removal order has been issued and who are about to be removed in a matter of days.
2. those against whom a removal order has been issued but whose removal presents various complications (e.g. lack of documents or their country of origin will not accept them). History has shown that these persons may be detained for years.
3. those who entered the country illegally or who entered legally but subsequently remained in the country illegally and then submitted an asylum application. The majority of detainees are held on this ground. In these cases, the removal order is suspended pending determination of the asylum application. The Ombudswoman and several other international reports consider this practice to be an outright violation of both national and international refugee law.

In all the above cases, the detention order (and in fact also the removal order) is issued by the Chief Immigration Officer without any involvement of the Courts. This is a rather controversial procedure that has been criticised by ECRI, the Ombudswoman, and various other NGOs.

### **2.3 Legal grounds for right of appeal against the detention order/for right to challenge detention**

The right to appeal from a decision of the Chief Immigration Officer is provided for under Article 146 of the Cypriot Constitution, by virtue of which, the Supreme Court of Cyprus has exclusive jurisdiction to review judicially every administrative act, decision or omission.

### **2.5 Legal grounds for duration of detention**

Various national laws dictate the maximum length of detention. Amongst these we find:

- (a) Cypriot Refugee Law (6(I)/2000) which in article 7(6) states that an applicant's detention under subsection (4) may not exceed eight days. This time period may, after such order is given by the competent court, be extended for further eight-days. The total detention period under this law can in no case exceed thirty-two days.
- (b) The Prison Law (N.62(I)/96), which prohibits arrest of people in detention centres for a period longer than fifteen days.

In practice however these time periods set out by law are not respected.

### **2.6 Legal grounds for contact with the outside world**

Law number 163(I)/2005 provides for the rights of persons arrested or who are being kept in detention.

Article 3(1) states that a person arrested is entitled, to make a phone call to a lawyer of his choice and to another person, straight after his arrest. Moreover, under article 5(1), if the detainee is a foreigner, s/he has the right to contact the counsel or diplomatic mission in the Republic in the presence of a member of the police.

Under article 15(1) every detainee has the right to send and receive letters, in the manner dictated by the said law. Correspondence with a lawyer is always allowed and is privileged as it can never be opened or read by any member of the police or the prison personnel. The same principle applies to all correspondence to and from the European Court of Human Rights, the Attorney General of the Republic, the Ombudswoman and any international or national committee, organisation or authority for human rights with competence to examine and decide on allegations of violations of human rights. Correspondence with relatives, friends or other persons is also allowed, however the detention centre retains the right to check the content of the said correspondence in the presence of the detainee. Should any illegal text or objects be found in this correspondence, this is confiscated and will not be sent.

### **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Law number 163(I)/2005 provides for the rights of persons arrested or who are being kept in detention, including access to health care.

Article 23(1) provides that every detainee has the right to a medical examination, medical treatment or any other form of medical attention from a doctor of his choice, at his expense. Should the detainee not wish to appoint a doctor of his choice, he has the right to be seen by a doctor, engaged by the

Government, free of charge. Arrangements are to be made by the person in charge of the detention centre.

Under article 24(1) upon arrival, the detainee is to be provided with a document, explaining, in a language of his/her understanding their rights regarding their healthcare.

### **2.8 Legal grounds for the protection of particularly vulnerable people**

Cypriot Refugee Law 6(I)/2000, in article 7(4)(c) forbids the detention of minors.

Moreover, law number 163(I)/2005 provides for the rights of particularly vulnerable persons arrested or who are being kept in detention.

Article 5(2) states that in the case of a foreign detainee, who is suffering from a mental condition which prevents him/her from understanding his/her rights, a counsellor is to be contacted by the detention centre staff.

Article 6(a) states that when a person under 18 years of age is arrested, the parents or guardian are to be informed in a language they understand, immediately after the arrest.

Article 20, places the responsibility for the accommodation of vulnerable people in the hands of the person in charge of the detention centre who is to ensure that any detainee who has not reached 18, is kept separately of the rest of the detainees, and that detainees are divided according to their sex, and placed in separate cells accordingly.

Article 21 protects women detainees from direct or indirect sexual harassment or insult to her moral dignity. Women's personal hygiene is catered for under Article 22 which states that every woman must be provided with the necessary means to maintain her hygiene. As regards women who are pregnant or who have recently given birth, article 22 provides that arrangements must be made to ensure that if the woman is breastfeeding, she is to be given her privacy, and allocated a private space, for the duration of her detention. Should she then wish to remain in the cell together with her child, this can be arranged at her own expense.

### **3.9 Legal grounds providing for release**

Article 7(1) of the Refugee Law 6(I)/2000 provides that an applicant who enters or has entered the Republic illegally shall not be subjected to punishment by reason only of his illegal entry or residence, provided that he appears without any undue delay before the authorities and gives reasons for his illegal entry or residence.

## **3. OVERVIEW OF CONDITIONS IN DETENTION**

### **3.1 Description of characteristics common to all centres currently in use**

#### ***Staff***

The police force, which falls under the Ministry of Justice and Public Order, is responsible for and staffs the detention centres. All persons interviewed agreed that the guards had undergone no training either before or after EU accession. Reports by the Ombudsman, CPT, and NGOs, as well as interviews conducted, indicate the apparent absence of clearly stated and diligently practiced rules for staff behaviour. Staff members seem to operate with an excessive margin of discretion. Detainees interviewed agreed that the guards did not have a specific code of behaviour, so that "most were either too strict or too soft". Discretionary rule leads to arbitrary practice and many times to racial discrimination.

In the majority of centres, it is not known whether there is a complaints mechanism for allegations made against the staff, but it seems there is none,<sup>24</sup> and it is not known whether there are sanctions for breaking the rules. In all the centres save one (Central Prison), it seems that there are no isolation cells for detainees who break regulations. The budget of the centres is not known, except in one case (Central Prison) and detainees do not have to pay for their stay.

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<sup>24</sup> Strictly speaking, detainees are entitled to submit a complaint to the Ombudsman against any member of the staff if they can find a way to send the letter. Same applies in respect of another extra-judicial procedure, that before a committee investigating complaints against the police. It is doubtful however that many detainees would be aware of the existence of either of these two procedures.

### ***Accommodation***

Accommodation is a problem with many detention centres being overcrowded, and detainees having no access to open air. Conditions vary from centre to centre: the worst conditions appear to be Larnaca airport – the inadequate infrastructure and catering facilities are noteworthy – and Lakatamia and Limassol Police Stations. Lakatamia, where female detainees are held, is in very poor condition.

Block 10, Limassol Police Station and Larnaca detention premise were recently renovated but there were no investigative visits since to assess their compatibility with the recommendations of Ombudswoman, the Human rights Commissioner of the Council of Europe and the CPT.

### ***Contact with the outside world***

The system of contact and visits seems to be irregular, with different detention centres having different regimes. Detainees may contact NGOs by telephone or via a friend, and NGOs do not have access to detainees. Sometimes NGOs are allowed to bring lawyers and translators to record the complaints of detainees.

In its latest, not yet published report covering December 2004, the CPT said (as quoted in the Ombudsman's report of February 2005) that in one police detention centre which they did not name, they found written instructions in the personal files of nine foreign detainees, that they should not be allowed contact with any lawyer, lest they apply for asylum. In her report, the Ombudswoman said access to lawyers continued to be problematic in all detention centres despite assurances to the contrary by the police authorities.

### ***Activities & services for detainees***

In general, recreational activities for detainees are extremely limited: the main ones are playing cards or backgammon, and watching television. Where they have access to open air, detainees reported playing football at times, although this outdoor sport depends on whether the guards on duty like it or not.

There are no services for detainees either, except for a weekly counselling service in Central Prison and the services of an Orthodox pastor in Central Prison and the facility at Lakatamia Police Station.

### ***Health care***

If a detainee falls ill, the centre normally arranges for a doctor to visit. However, this may take some time, between one week and three months, in some cases. Medical care is free but the detainee has to pay for any medication prescribed (unless it is available from the state hospital, in which case it is free of charge).

There seems to be a general suspicion towards those detainees who claim to be ill. All detainees interviewed claim that they were forced to wait for a week to see a doctor. Detainees believe that the lack of proper treatment is primarily due to lack of interest, to their status as law-breaking non-EU citizens and to racism.

### ***Protection of particularly vulnerable people***

There is no clear stated policy. The treatment of vulnerable detainees depends largely on the discretion of officers on duty.

### ***Information for detainees***

Detainees are informed about their status upon arrest. While detained, they receive no information. According to the Police, an information leaflet entitled "Notice to Persons in Custody" has been printed in English, Arabic, Russian, Chinese and Turkish, to be given to all persons placed under arrest in the centres, detailing the detainees' right to inform a relative, and to have access to a lawyer and access to a doctor. However, no detainee seemed to be aware of the existence of such a leaflet, except in Central Prison. It may be concluded that the information for detainees is generally poor across the centres.

### ***Reports***

On 2 February 2005 the Ombudswoman issued a report about the conditions of immigration detention, which covered the detention centres of Nicosia (Block 10), Limassol and Larnaca, which accommodate the largest number of detainees. In 2007, a booklet was issued by the Regional Coalition 2006, a consortium made up of NGOs in four new EU member states, entitled "Survey on Detention of Asylum Seekers in EU Member States". The NGO researching the centres in Cyprus is called Apanemi. The booklet includes a chapter on Cyprus which covers the centre at Limassol Police Station; Block 10 in the Central Prison; the centre at Lakatamia Police Station.

The CPT issued a Report to the Government of Cyprus after a visit to Cyprus carried out by its delegation from 22 to 30 May 2000. The CPT made another visit to Cyprus from 8 to 17 December 2004, which covered Larnaca International Airport. At the time of writing, this report had been only made available to the Ombudswoman.

### ***Comparing the centres***

When reading the centre reports, a distinction is to be drawn between Block 10 and the other centres: Block 10 is part of a prison and this may well influence the behaviour of detainees and relations between them, which are fraught with tension. However we were unable to ascertain whether the number of reported incidents of fights, fires and vandalism in Block 10 was higher than in other centres due to more attention from monitoring groups and the media and NGOs and to the prison's location in central Nicosia.

## **3.2 Description of specific conditions in each centre**

### **DETENTION CENTRE AT LARNACA POLICE STATION**

*Staffing, health care and general services, and information for detainees, have been covered in the overview.*

#### ***Type, description and administration of the facility***

This is a detention premise situated within a closed space in the Police Station of Larnaca, the third largest city in Cyprus, approximately 60km from the capital (Nicosia) and only a stone's throw from the coast. It is supposed to cater for 50 persons but the space is very small for such a number. There are rules governing the daily timetable of meals and lights out at night. An ex-detainee said detainees may use the phone every 2-3 days for 15 minutes and have visits lasting a quarter of an hour. Detainees are not allowed to leave the premise but they have access to a TV which they can watch from a distance. It is not known if there are sanctions for detainees who violate the rules. Women are not accommodated with men but it is not certain what practice is followed in the cases of minors. Detainees may ask to be accommodated with persons of their country of origin, religion or language and their request is usually granted if space allows.

#### ***Detainee population***

Detainees are mainly undocumented third country nationals and asylum seekers. The size of the population varies. When the Ombudswoman's officer visited on 3 December 2004, there were 50 detainees, all foreigners. Nationalities vary but include in large numbers: Iraqis, Syrians, Chinese, Greek Pontians, Egyptians, Lebanese, Sri Lankans and others. There are no details available as their age or other demographic data.

#### ***Accommodation***

There are only two toilets and one shower for all the detainees (up to 50). There are 25 couchette-type of beds to sleep 50 people but spaces are too small for the number of beds and it seems that detainees can hardly move between the beds. The centre is divided into four sections: two rooms for 14 persons each, one room for 10 persons and another space divided into three cells for four persons each. A few windows look onto the courtyard of the police station. Detainees often cram behind the windows, hoping to catch a glance at the outside world. At the time of the Ombudswoman's visit, the cell doors were open and detainees could move freely within the centre. The police officer in charge explained that the doors are always open so that detainees can use the common toilets and showers. There are no facilities for washing one's clothes and no cleaning service; detainees are expected to clean the space themselves. They are not allowed out of the building at all and are thus deprived of the possibility to move about and to access the open air. The building is heated in winter and there is sufficient ventilation. The detainees are offered three meals a day, including at least one hot meal.

#### ***Contact with the outside world***

Detainees are allowed visits from their lawyers, family and friends and are also entitled to make a phone call once a week.<sup>25</sup> The officer in charge may permit the use of the telephone frequently. There is no radio or newspapers.

#### ***De-facto duration of detention and release***

Although it appears that records are kept specifying the duration of detention of each person, these were not made available. The only available information derives from the Ombudswoman's report of

<sup>25</sup> According to a detainee, they were entitled to make a phone call every 2-3 days. This presumably indicates flexibility of the rule which falls within the discretion of the police officer in charge.

February 2005, following a self-initiated investigation, which are as follows: When the Ombudswoman's official visited on 3 December 2004, in this premise, two people had been detained since July-August 2004; 10 since September 2004; 19 since October 2004, and 19 since November 2004.

The number of removals is not publicly available. A lawyer who works for a national NGO under a UNHCR funded programme for the provision of free legal advice to asylum seekers and refugees, said a few detainees are released on humanitarian grounds, an even smaller number is granted international protection (become recognised refugees) and the vast majority is removed.<sup>26</sup>

### **LARNACA INTERNATIONAL AIRPORT DETENTION CENTRE<sup>27</sup>**

*Staffing, health care and general services, and information for detainees, have also been covered in the overview.*

#### ***Type, description and administration of the facility***

This premise is situated within the Larnaca International Airport. The airport is located on the suburbs of Larnaca district, which is on the coast. Its capacity is for 16 persons. It is likely that this premise is not properly run, because many detainees have complained about the lack of arrangements for their meals, and the Ombudswoman's report of February 2005 recommends that detainees be given at least one full meal per day. Quoting the CPT<sup>28</sup>, the report also recommended that mattresses and blankets be given to people detained overnight. The airport authorities said the responsibility for people who have been banned from entering the country, lies with the airline that transported them, while the airport Police is responsible for foreigners under a removal order who are transferred to the centre.

#### ***Detainee population***

The centre accommodates mainly foreigners who tried to enter the country but who were refused entry, until arrangements are made for their removal, which can take several days. Foreigners awaiting removal are also transferred to this premise. The number of people accommodated in the centre must vary greatly from day to day, since many are detained for less than 24 hours.

#### ***Accommodation***

The premise is made up of two rooms with capacity for 14 and two people respectively. The rooms do not have natural light or ventilation. The conditions of hygiene and cleanliness were described in the Ombudswoman's report as "not satisfactory" but no further details were given. Quoting the CPT, the Ombudswoman recommended that detainees staying over 24 hours be allowed out daily for exercise, which means that detainees are confined inside.

#### ***Protection of particularly vulnerable people***

Given that there are only two rooms, arrangements to accommodate minors or women separately are de facto limited.

#### ***De-facto duration of detention and release***

According to the Ombudswoman, detainees stay for just a few days or a few hours. In a report written for a Survey on Detention of Asylum Seekers in the Member States,<sup>29</sup> a national NGO, Apanemi, said this premise is not suitable for use of longer than a couple of hours. Apanemi reported allegations that persons were denied the right to submit an asylum application and were returned to their country of origin with the next flight. The Police said no asylum claims were ever made at the airport.

### **DETENTION CENTRE AT LIMASSOL POLICE STATION**

*Staffing, health care and general services, and information for detainees, have been covered in the overview.*

#### ***Type, description and administration of the facility***

This premise is situated within a closed space in the Police Station of Limassol, the second largest city in Cyprus, approximately 80km from Nicosia, on the coast. The capacity of this premise is 42 men and 11 women. Cells may hold one, two or four persons, accommodated in single beds. There is a special

<sup>26</sup> Telephone conversation with Corina Drousiotou of NGO "Future Worlds"

<sup>27</sup> Information about this premise is drawn exclusively from the Ombudswoman's report of 02/02/2005.

<sup>28</sup> The recommendations follow the visit of the CPT in Cyprus of 8-17 December 2004, the report for which is due to be published shortly. At the time of writing, this report was only made available to the Ombudswoman.

<sup>29</sup> Aujeska S., (ed.) *Survey on Detention of Asylum Seekers in EU Member States*, The regional coalition 2006, [www.alternatives-to-detention.org](http://www.alternatives-to-detention.org).



wing for men and another for women. Meals, the same every day, consist 'dried' food: of half a litre of cold milk for breakfast, and bread with canned meat, olives, two eggs or cheese, and one fruit for lunch. Dinner is not provided.

### ***Detainee population***

Persons detained here include undocumented third country nationals, asylum seekers as well as Cypriots awaiting trial. When the Ombudswoman's officer visited the premise on 3 December 2004, there were 35 detainees, including 31 foreigners of whom six were women. Removal orders had been issued against all 31. Nationalities varied but included persons from neighbouring Middle Eastern countries, from the ex-Soviet Union, Greek Pontians and others.

### ***Accommodation***

The mattresses were in very poor condition. There is a cleaner for the premise but no in-house laundry service. At the time of the visit of the Ombudswoman's officer, a detainee was locked up in his cell, because he had washed his clothes and did not have any spare to wear to go out into the courtyard with the rest.

All the cells for men have small windows with a view outside the centre. On the external elevation of the building, a metal grid on the windows prevents contact with the outside world, allowing only a bit of light and air into the cells. There was no ventilation and a foul smell. When the Ombudswoman's officer visited, the police officer in charge said efforts were under way to install a ventilation system. More recently,<sup>30</sup> the Interior Minister said the centre had since been renovated, that the metal grids had been removed and a central air-conditioning and ventilation system installed. There has been no visit by any NGOs or the Ombudswoman since the said renovations took place.

In its report<sup>31</sup>, Apanemi said the cells in the women's wing were so small that their beds could barely fit, there were no chairs and no windows, and fluorescent light was used, since there was no substantial natural light. It also reported that detainees did not have access to open air and were allowed to walk and/or smoke in the corridor once daily. However, according to the Ombudsman's report of February 2005, detainees *are* allowed to walk outside once a day, in a small courtyard which the buildings surround. Men and women are not allowed to mix: when the men were allowed out, the women were locked in and vice versa. This yard is covered with a wire ceiling so that there is no view of the sky and artificial lighting is used at all times.

### ***Contact with the outside world***

The practice regarding visits, phone calls and access to the media is unclear and not specifically covered by available research. Apanemi reports that women at least are sometimes denied the right to receive visits from relatives and most food and other items left by visitors are withheld from them. Symfiliosi also heard similar claims from detainees. The picture drawn from various interviews is that the officer in charge may have the discretion to take an ad hoc decision as to whether to allow visits or phone calls. A report by the Ombudswoman pursuant to a complaint submitted to her confirms that a foreigner arrested and detained for 20 hours was denied the right to make a phone call.<sup>32</sup>

### ***Activities & services for detainees***

The only activity permitted is to walk around the internal courtyard of the centre once a day. Other than that, detainees are confined within the walls of their cells.

### ***Health care***

It is not certain whether referrals to the hospital are made or whether doctors visit this premise. Apanemi reports<sup>33</sup> that there were cases of serious mental health problems with suicidal tendencies or attempts but no referrals to a psychiatrist or a psychologist were made.

### ***Protection of particularly vulnerable people***

Apanemi reports<sup>34</sup> that amongst the detainee population there were potentially trafficked women who were not identified or catered for in any way.

<sup>30</sup> Speech delivered by the Director of the Interior Ministry on behalf of the Interior Minister on 28/03/2007 at the presentation of the Survey on Detention of Asylum Seekers in EU Member States in Nicosia.

<sup>31</sup> Aujeska S., (ed.) *Survey on Detention of Asylum Seekers in EU Member States*, The regional coalition 2006, [www.alternatives-to-detention.org](http://www.alternatives-to-detention.org)

<sup>32</sup> Ombudswoman report dated 31/03/2003, File No. 1358/2002.

<sup>33</sup> Aujeska S., (ed.) *Survey on Detention of Asylum Seekers in EU Member States*, The regional coalition 2006, [www.alternatives-to-detention.org](http://www.alternatives-to-detention.org), page 20.

<sup>34</sup> Aujeska S., (ed.) *Survey on Detention of Asylum Seekers in EU Member States*, The regional coalition 2006, [www.alternatives-to-detention.org](http://www.alternatives-to-detention.org), page 20.

### ***Information for detainees***

Apanemi reported that lack of information made detainees agonise over their situation and very often the process forced them to sign voluntary repatriation statements. Several detained asylum seekers referred to Symfiliosi said no information was made available to them regarding their status or their rights.

### ***De-facto duration of detention and release***

On the day of the visit of the Ombudswoman's official on 3 December 2004, one person had been detained since July-August 2004; three since September 2004; two since October 2004; 16 since November 2004 and nine since December 2004.

### ***Incidents***

Pursuant to a complaint submitted by an NGO, the Ombudswoman found that Police in this centre were guilty of using physical violence to force an asylum seeker to withdraw his asylum application.<sup>35</sup> She said such incidents were not rare.

On 19 April 2007, six detainees (one Somali, three Lebanese, one Palestinian and one Iraqi) set fire in the corridor of the centre by lighting up blankets, linen and their personal clothes with a cigarette, to protest against the inhumane and degrading conditions of the centre.<sup>36</sup>

### ***Reports***

The CPT issued a Report to the Government of Cyprus on a visit to Cyprus carried out by its delegation from 22 to 30 May 2000 which covers this detention centre. Apart from covering the centre in her February 2005 report, the Ombudswoman followed up complaints from this centre.

## **BLOCK 10, CENTRAL PRISON, NICOSIA**

*Staffing, health care and general services, and information for detainees, have also been covered in the overview.*

### ***Type, description and administration of the facility***

The premise is situated within the enclosed area of the Central Prison in Nicosia in a special ward known as "Block 10". Block 10 is a two-storey building with a capacity for 76 persons, with a surrounding three-metre-high wall and a small yard around the building, some 2-3 metres on each side. One novelty following recent renovations is a basketball court, which has not been used yet. Fr Christophoros said detainees are doing construction work to complete it. Detainees are kept on the first floor, which has only one large window on the front. The side elevations of the building, where the cells are, have no windows. Detainees can ask to be put in the same cell with persons of their nationality, language or religion and if space allows, their request is granted. The ground floor accommodates offices, a kitchenette for staff and a small meeting room for personal appointments.

A typical day at Block 10 starts at 7am with breakfast; lunch is provided at noon, and at 7pm dinner. At 9am, the main lights are turned off and rooms are locked. From the comments of detainees and of Fr Christophoros, who visits Block 10 regularly, it appears that there are no particular rules, except that detainees must be "co-operative", follow the daily schedule without complaint, and so on. The only concrete rule known to detainees is that they are not allowed to smoke in their cells. Those who "behave" are allowed access to fresh air a few times a week; they get to see their visitors and to make a phone call once a week. Fr Christophoros said that although "well-behaved" detainees have access to the phone once week, it is a known fact that their conversations are tapped.

Conversely, those seen as "not behaving" are denied visits, phone calls and access to fresh air. A detainee is considered to misbehave when he shouts regularly, gets into fights with other detainees, conspires with others not to eat, and sets fire to his blankets. It appears that there is a wide margin of discretion vested in the police officer in charge, to decide who is behaving and who is not. Interviewees said there was tension amongst detainees who often fought with each other. Fr Christophoros put this down to friction between Christians and Muslims, while the detainees attributed it to their poor psychological condition and anger at being detained for so long with so little to do.

Detainees displaying "bad behaviour" may also be locked up in a small isolated room for as long as the guards see fit, without cigarettes or contact with anyone. One detainee said some who refused to "cooperate" were locked up in the isolation cell and they later told their cellmates that they had been beaten by the guards. None of those interviewed actually saw the isolation cell. One interviewee said

<sup>35</sup> Ombudswoman report dated 27/04/2005, File No. A/P 1585/2004.

<sup>36</sup> Iasonos, I. (2007) "*Mpourloto sta kratitiria Lemesou*" in Phileltheros (20/04/2007).

guards would often try to frighten undisciplined detainees by threatening them with removal, a threat taken seriously because it often materialised. Guards often search the cells for banned items.

Detainees are free to move around the facility but there seem to be no hard and fast rule governing access to fresh air. One interviewee said that during his seven months of detention in Block 10, he had access to open air only in the first three months, for around 1½ hours, 2-3 times a week, depending on the guards on shift. Another detainee said he never exercised because the guards never let them outside in the yard.

There is no official complaints mechanism in Block 10. Fr Christophoros said dissatisfied detainees can and do ask to speak to the police officer in charge to complain, but detainees said the guards paid no attention and just laughed at them. No-one seemed to be aware of the existence of a complaints box similar to the one operating in the Central Prison.<sup>37</sup>

Not far from Block 10, within the prison complex, there is a canteen but detainees said prices are more expensive than in the outside world. Fr Christophoros said detainees in Block 10 keep money, which they use to buy cigarettes and other items from the canteen, as opposed to detainees in the central prison who are not allowed to keep money on them.

The daily cost for each detainee, including food, salaries of guards, utility bills etc, is CYP55 (approximate Euro equivalent: 32).<sup>38</sup> This means that, for an average of 50 detainees every day, the annual budget of Block 10 is just over one million Cyprus pounds (approximate Euro equivalent: 1,724,138).

### ***Staff***

Apanemi reports that there are no female guards. The detainees interviewed report that the staff did not seem to follow any particular code of conduct; some would be very soft and others would be very rough, hitting them, shouting at them for no reason and ignoring their complaints. Regarding the number of staff on duty at any given time, Apanemi reports that there are 10-12 people during daytime. Detainees said that at nights the guard/detainee ratio was approximately 1 to 10 and on some nights 1 to 15.

### ***Detainee population***

The detainee population of Block 10 is exclusively men of different ethnic origin and of different religions. No Cypriots are detained here. According to Fr Christophoros, records of the detainee population are kept very diligently. The staff does carry out detailed counting and recording every day, although records are not publicly available. Fr Christophoros<sup>39</sup> said that on average there are 50-60 persons, mostly Muslims from the Middle East, especially Iranians, and Chinese, Armenians from Lebanon, Egyptians and Greek Pontians. Detainees interviewed said most came from the Middle East (Syrians, Kurds, Persians), some from Africa and some from Pakistan and Bangladesh.

### ***Accommodation***

At the time of the visit of the Ombudswoman's officer (24/11/2004) Block 10 was under renovation and was not inspected. Information as to the capacity of each cell is conflicting. According to the detainees interviewed, each cell has two beds. According to Apanemi, detainees slept in large cells which hold a large number of persons, with little space between the beds. There are just 2-3 toilets with showers in the common areas which the detainees are responsible for cleaning. One detainee spoke of 10 toilets and showers shared between 65 persons. Another said that during his detention in 2006 there was no hot water and the officers in charge promised to fix it but never did. The building has air-conditioning units<sup>40</sup> which are not always in working order. The wing of the building where the cells are has no windows at all. There are no in-house laundry facilities. Detainees are expected to buy their own soap, washing powders etc. There does not appear to be a serious problem with food, which is prepared in the Central Prison and was admitted by many to be of relatively good quality, especially when compared to other centres.

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<sup>37</sup> A complaints box was installed at Central Prison in order for detainees to place their complaints which are then examined by the Ombudsman. The practice met with controversy when it was discovered that the detainees' letters were taken to the Prison Governor.

<sup>38</sup> Information supplied by Fr Christophoros, who obtained it unofficially from a police officer working there.

<sup>39</sup> Fr Christophoros is in a unique position to know the average numbers and usual ethnic-national origin of detainees, as he is the only one of the persons interviewed who visits Block 10 regularly.

<sup>40</sup> Although this may sound like a luxury, in Cyprus' hot temperatures it is more of a necessity than heating.

### ***Contact with the outside world***

For those who visit Block 10 regularly, such as Fr Christophoros and NGOs offering legal advice, there are no formalities for visits. It is very likely that this applies only to visits for “well-behaved” detainees, because there are reports that some detainees are not even allowed visits from close family relatives.<sup>41</sup> Detainees interviewed have stated that they were visited daily by friends and family and weekly by their lawyer or NGO representative but the visits lasted only for a few minutes and most of the time the guards would treat the detainees in a very degrading manner in front of their visitors, shouting at them to return to their cells.

In 2004 the Ombudswoman issued a report pursuant to a complaint submitted by a detainee, who alleged that the police deprived him of access to a lawyer and forced him to sign a statement of voluntary repatriation. The Ombudswoman was highly critical of these practices<sup>42</sup>.

### ***Activities & services for detainees***

In-between, detainees can watch TV, play cards or backgammon and, if allowed, take a walk outside. Fighting among inmates also appears to be a regular pastime. Other than allowing Fr Christophoros<sup>43</sup> to visit and to hear the detainees’ confession and offer support, no services are available.

### ***Health care***

Fr Christophoros reported a case where the sick detainee had to wait for four months to be seen, and another of a detainee who suffered from severe psoriasis and was examined by a dermatologist only after a month had passed. In one case, a diabetic detainee remained without medication for several months because he could not afford it. The authorities agreed to provide his medication only after he submitted a complaint to the Ombudswoman, who ruled in his favour.

Apanemi said ill detainees get just Panadol (a common painkiller). This is in line with the claims of interviewees, who said the guards did not believe them when they said they were ill. Fr Christophoros said a psychologist visits Block 10 weekly.

### ***Protection of particularly vulnerable people***

Sick people may be treated more tolerantly, again depending on the officer on duty. An interviewee said only fellow detainees tried to help people with physical or mental disabilities. Another interviewee, a victim of torture, said the authorities in Block 10 refused to acknowledge his status or to offer him treatment for post-traumatic syndrome. Apanemi reported cases of people who were recovering after an operation but no special care was provided. There are no minors in Block 10.<sup>44</sup>

### ***Information for detainees***

Two detainees referred to a notice setting out their rights under detention. This notice is probably the information leaflet titled “Notice to Persons in Custody” which the police printed in English, Arabic, Russian, Chinese and Turkish; we have no reports of the leaflet being seen in any other centres. One interviewee said there was an announcement on a wall, saying that he could call a lawyer and have his family visit him. However, he was not sure of the language used as he cannot read English (someone else explained the contents to him). A Kurd from Turkey said he was given a leaflet in Turkish detailing his rights.

### ***De-facto duration of detention and release***

Fr Christophoros reports that the duration of detention ranges from a couple of days minimum to a maximum of 30 months in one case.

### ***Incidents***

Detainees said there was once a three-day hunger strike by all detainees in Block 10 to protest against their conditions but no interest was shown by the authorities. Sometimes detainees go on hunger strike for 6-7 days, in vain. The English language daily *Cyprus Mail* reported on 2 June 006 that 28 detainees in Block 10 planned to go on hunger strike to protest the incarceration of some detainees for more than 20 months without charge. It is not known if the action went ahead.

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<sup>41</sup> Apanemi reports of case where a detainee’s wife was denied visiting rights: Aujeska S., (ed.) *Survey on Detention of Asylum Seekers in EU Member States*, The regional coalition 2006, [www.alternatives-to-detention.org](http://www.alternatives-to-detention.org), page 19.

<sup>42</sup> Report dated 23/03/2004, File No. A/P/ 1725/03

<sup>43</sup> Although Fr Christophoros said he is willing to hear the confession and offer his support to detainees of all faiths, non-Christian Orthodox detainees may be reluctant to turn to him.

<sup>44</sup> There is a special wing for minors in the Central Prison although there have been cases where minors were detained together with adults, instead of this special wing.

Fr Christophoros said there were frequent incidents such as setting fabrics on fire, suicide attempts and the vandalising of air-conditioners. On 4 May 2006, a group of detainees set fire to the contents of their cells, to protest against their prolonged detention. Five detainees and two police officers were hospitalised as a result.<sup>45</sup> On 23 August 2006, another incident took place, whereby dozens of detainees shouted and banged on the doors of their cell. Some set their clothes and linen alight. They were protesting because the air-conditioners were not working and it was really hot, and because they had been locked in their cells all day following the escape of three detainees. The incident followed a series of sudden searches with dogs in the detainees' cells to find items that may help them escape.<sup>46</sup>

#### **DETENTION CENTRE AT LAKATAMIA POLICE STATION, NICOSIA**

*Staffing, health care and general services, and information for detainees, have also been covered in the overview.*

##### ***Type, description and administration of the facility***<sup>47</sup>

This premise is situated in Nicosia (Lakatamia) in the north-eastern suburbs of the capital. It can take a maximum of 10 people. Although the building was constructed relatively recently, the infrastructure is much worse than that of Block 10 (and possibly of other detention centres too).<sup>48</sup>

Rules govern what time detainees have their meals and wake up and go to bed. After breakfast, detainees may leave their cells and go to another room – where they are locked in – to socialise. The room has one small window and the women usually spend their days here, playing cards or reading a book. They have to call the guards to let them out to go to the toilet. Often there are no guards around and when there are, they tend to be suspicious of such requests and refuse them. Detainees are not allowed out of the building. Detainees who have a husband in another centre may occasionally be taken to visit their spouse, provided they are on “good behaviour”. This is down to the discretion of the police officer on duty. Fr Christophoros said conditions in the women’s ward in the Central Prison, where women are imprisoned for non-immigration-related offences, are much better.

##### ***Staff***

Police staffing this centre include men and women. There are 10 police working in this premise but their task is not exclusively to guard the detainees, as the premise is also a police station. There is always at least one woman on duty to escort detainees to the toilet.

##### ***Detainee population***

It appears *prima facie* that this premise is used only for detaining foreign women, although Apanemi was critical of the fact that occasionally men were detained there too. The detainees are usually undocumented third country nationals and asylum seekers but sometimes women detained on non-immigration related offences are also held there. In April 2007, six women were detained. In May 2007 there were four, all asylum seekers or undocumented third country nationals.

##### ***Accommodation***

There are 3-4 very small cells with 1-2 beds in each. There is at least one cell with a small window a few centimetres in diameter. Ventilation and natural light is poor and fluorescent lights are used throughout the premise. Fr Christophoros said there are toilets in the cells but Apanemi said the toilets are outside, connected to the cells through a corridor. Food is brought to the centre twice a day, and was reported to be satisfactory.

##### ***Contact with the outside world***

Detainees are allowed visits (always in the presence of police officers) but guards make it extremely difficult for single women to be visited by men. Detainees are entitled to make one phone call a week but said this was not enough, as it did not enable them to keep track of their asylum application and at the same time make contact with their families. There is no radio or newspapers, although women are allowed to keep their own radio in their cells, if they have one.

<sup>45</sup> Christou J. (2006) “Illegal Immigrant Torch their Cell” in *Simerini* (05/05/2006).

<sup>46</sup> Savva, C (2006) “Ifestio I pteryga 10” in *Simerini* (25/08/2006).

<sup>47</sup> There is very little information about this premise, as it was not covered by any major report. Information in this section is drawn from a short paragraph in the survey conducted under the project “Detention of Asylum Seekers in EU Member States” ([www.altrnatives-to-detention.org](http://www.altrnatives-to-detention.org)) which draws on random interviews and from the interview with Fr Christophoros conducted for the purpose of this report.

<sup>48</sup> This is the conclusion drawn by Fr Christophoros, who regularly visits both Block 10 as well as this premise.

***Protection of particularly vulnerable people***

There are no special arrangements for vulnerable persons. Fr Christophoros said guards were more tolerant and compassionate towards pregnant women, although it was not reported that they received special treatment.

***De-facto duration of detention and release***

Although it appears that records are kept at each detention centre specifying the duration of detention of each detainee, these were not made available to us. The only available information came from Fr Christophoros who said some women were detained for a few weeks and others for as long as three months.

**4 EXISTING CIVIL SOCIETY ACTIVITIES**

There is no network as such, since NGOs are not allowed access to detention centres. Some NGOs visit the detention centres in order to offer legal advice to asylum seekers but they are only allowed to meet detainees in a special room and do not get to walk freely around the premise and inspect facilities or the cells. Although efforts were made in the past by UNHCR to build up a team of NGOs working in the field of asylum, these efforts did not materialise and even UNHCR's right to visit the detention centres is restricted as it is for NGOs. In fact, one of the incidents in Block 10 where detainees set fire to their blankets in protest took place right after the visit of a UNHCR officer who they alleged had just visited Block 10 and refused to see them. Overall, it may be said that various efforts to build up NGO coalitions and networks in Cyprus have so far failed, to the effect that only individual NGOs carry out research into the detention conditions, based mainly on desktop sources and interviews with ex-detainees.

# **CZECH REPUBLIC**

## **COUNSELLING CENTRE FOR REFUGEES**

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### **INTRODUCTION<sup>49</sup>**

This report describes the situation on the ground in five detention centres currently being used for immigration detention purposes<sup>50</sup>. It also includes national law, policy and practice relating to the detention of illegally staying third country nationals.

The findings in the report were elicited through direct observation and interviews with 16 detainees (Iraq, Georgia, Moldavia, Ukraine, Nigeria, Pakistan, India, Chechnya, Ukraine, Vietnam) and five NGO representatives who have access to the centres: Martin Krahulik, lawyer, OPU; Tomas Kysely, lawyer, SOZE; Markéta Neumannová, lawyer, OPU; Jan Rumjan, teacher, CCR; Jaroslav Vetrovsky, lawyer, OPU. Altogether a total number of 21 interviews were conducted and evaluated. State representatives declined to cooperate in this study.

In the Czech Republic, the Counselling Centre for Refugees (CCR) is not the only NGO which has access to detention centres. The Organization for Aid to Refugees (OPU), Association of Citizens interested in Migrants (SOZE), and Caritas have access too.

As of 30 of April 2007, there were a total number of six detention centres:

- Bela-Jezova centre, central Bohemia, 20 km from Mlada Boleslav
- Frydek-Místek centre, northern Moravia, 20 km from Ostrava, near the Slovakian border
- Postorna centre, southern Moravia region, 50 km from Brno, close to the border with Austria
- Velke Prilepy centre, 20 km from Prague
- International Airport Ruzyně Reception centre, Prague
- Vysni Lhoty Reception centre, northern Moravia, 30 km from Ostrava

### **1. ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004**

The detention of asylum seekers and illegally staying third country nationals was introduced in the Czech Republic in 1992 by the Act on the Residence of Foreigners. The act provided for the detention of foreigners who had been issued with an administrative removal order in order to facilitate their removal from national territory; the maximum period of detention was 30 days.

In 1999, due to changes in the migration scenario in the Czech Republic, which led to an increase in the number of illegally staying third country nationals, Act no. 326/1999 on the Residence of Foreigners in the Territory of the Czech Republic, came into force. This act introduced the legal framework for detention as is currently practised; the maximum period is 180 days.

In January 2003, the government of the Czech Republic adopted several principles to govern its migration policy. In this document, the government stated that illegal migration was a security risk. Furthermore, principle no. 3 states that the state migration policy is focused on the elimination of all forms of illegal migration and that the State should adopt measures to speed up the repatriation of illegal migrants. This document is still valid. There were no substantial changes in migration policy before and after 1 May 2004. The Czech Republic is not a EU border state and therefore, the security requirements posed by the EU have not been so strict. Further, the use of detention for the elimination of illegal migration was already in place.

In 2005, the Czech Republic amended the Asylum Act “Dublin II detention”, introducing the stipulation that an asylum seeker may be detained for the purpose of removal back to the country held responsible under Dublin II. However, this measure goes beyond the Dublin II requirements and has been criticized by NGOs.

In an effort to improve living conditions in administrative detention centres and to strengthen detainees’ legal safeguards, the amendment of the Act on the Residence of Foreigners in the Territory of the Czech Republic transferred the operations of all administrative detention centres in the Czech

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<sup>49</sup> This report is owned by COUNSELLING CENTRE FOR REFUGEES (CCR). It is publicly available at [www.uprchlici.cz](http://www.uprchlici.cz). Reproduction and quoting are authorized, provided the source is acknowledged, save where otherwise stated

<sup>50</sup> All the information used in this report is valid as of 30 May 2007.

Republic from the Police to the Ministry of the Interior, represented by the Administration of Refugee Facilities (ARF), as of 1 January 2006. The Police now serve only outside the facilities for security purposes. The changes in the administration of detention centres have been substantial and living conditions and safeguards have improved considerably.

In view of joining the Schengen zone in January 2008, the Czech Republic is currently in the process of amending its legislation to be fully prepared for accession. The government has prepared amendments to the Asylum Act and the Act on the Residence of Foreigners in the Territory of the Czech Republic. These amendments will, if approved by Parliament, introduce an even more restrictive approach towards foreigners and asylum seekers. The amendment to the Asylum Acts proposes the detention of asylum seekers until their removal if, for example, they illegally enter the territory or if their identity is not proved. Furthermore, the amendment to the Act on the Residence of Foreigners in the Territory of the Czech Republic proposes to introduce a new type of detention, the so-called “pre-removal detention” of illegally staying foreigners or foreigners who were issued with an administrative removal order, to be used when a person issued with an administrative expulsion order and departure visa does not leave the territory. When the person is intercepted by the police, s/he will be placed in detention and removed/deported from the territory. This amendment is currently pending in parliament.

Since 2003, the migration policy of the Czech Republic has become more and more restrictive, with new types of detention created and more foreigners detained for longer periods of time. There have been positive changes too with regard to the conditions in the detention centres following the transfer from the Police to the ARF in 2006.

## **2 SUMMARY OF NATIONAL LAW**

In the Czech Republic there are four types of legal grounds for ordering detention. It is necessary to distinguish the legal framework by which each type of detention is governed. Dublin II detention, detention of asylum seekers for medical screening and identity checks, detention of asylum seekers in the transit zone of the international airport are governed by the Asylum Act. Detention of illegally staying third country nationals (including asylum seekers who applied in the detention centre or at the police station after being intercepted) is governed by the Act on the Residence of Foreigners in the Territory of the Czech Republic.

Each section below contains information on the different types of detention.

### **2.1 Legal grounds for ordering detention**

Three types of detention are governed by the Asylum Act; they are Dublin II detention, Detention in the Reception Centre at the international airport, detention of asylum seekers for medical screening and identity checks.

Section 46 clause 3 of the Asylum Act provides for the Dublin II detention of a foreigner till s/he is transported to the Member State responsible for examining his/her application for international protection.

Section 73 clause 3 of the Asylum Act states that foreigners applying for international protection at the international airport shall be detained at the reception centre in the transit zone.

Section 46 clause 1 of the Asylum Act provides for the detention of asylum seekers for medical screening and identity checks in the reception centre.

Administrative detention of foreigners is governed by the Section 124 clause 1 of the Act on the Residence of Foreigners. According to the law the Police can detain a foreigner older than 15 if procedures for removal have started and there is a risk that the foreigner might endanger state security, significantly disturb public order, or obstruct or hinder the execution of the removal decision, or if the foreigner is an undesirable person registered in the Schengen Information System.

### **2.2 Legal grounds for the detention order**

The Asylum Act governing Dublin II detention and detention in reception centres does not provide for a detention order per se.

Section 124 clause 2 of the Act on the Residence of Foreigners regulating administrative detention provides that the Police have to issue a written decision on detention specifying the legal grounds of the



detention. The decision becomes legally enforceable upon its delivery or the foreigner's refusal to accept it.

### **2.3 Legal grounds for right of appeal against the detention order/for right to challenge detention**

Dublin II detention and detention of asylum seekers in reception centres are not subject to judicial or any other review, however detainees can use the general provisions of the Code of Administrative Justice that provide protection from unlawful interference by an administrative authority into rights of a person<sup>51</sup>.

There are two possibilities for appealing an administrative detention order. The grounds for the right of appeal are stipulated in Section 4 of the Code of Administrative Justice, which is a general clause stipulating that the courts of administrative justice decide on appeals from decisions made in the sphere of public administration by an executive authority.

Section 124 of the Act on the Residence of Foreigners and section 200 of the Civil Procedure Code regulate appeals from administrative detention orders. In terms of these laws, the civil court has the authority to decide on the duration of detention or to order the foreigner's release if the legal reasons for continuing the detention have ceased to exist.

### **2.4 Legal grounds for instructions on right of appeal/instruction on right to challenge detention**

Legal grounds for instructions on the right of appeal or on the right to challenge detention are provided only for administrative detention. Section 126 of the Act on the Residence of Foreigners stipulates that the Police must review the existence of the reasons for detention and inform the detainee, in a language s/he understands, of the possibility of judicial review of the legality of the detention. If any such language cannot be identified and the information cannot be provided in any other manner, the Police will provide the foreigner with the information on the possibility of judicial review of legality of detention in writing, in Czech, English, French, German, Chinese, Russian, Arabic, and Spanish. The Police will make a written record of the fact that a written document containing the information was provided.

### **2.5 Legal grounds for legal maximum duration**

Article 20 of the Dublin II Regulation sets a 6 month time limit for the transfer of a foreigner. The 6 months' period is considered by the Asylum Act as the maximum duration for Dublin II detention<sup>52</sup>

Section 73 of the Asylum Act sets two maximum time limits on the detention of asylum seekers in the Reception Centre at the international airport. Where a decision on the applicant's asylum claim for international protection is not issued within 5 days, a foreigner has to be transported to an open asylum facility. Where the initial decision on the detainee's asylum application is appealed before the court, and the court fails to take a decision within 45 days from the date the action was filed, the detainee should be released. However, CCR believes that these sections are currently not respected by the Ministry of Interior and several petitions are pending in courts.

Section 46 of the Asylum Act stipulates that the Ministry shall conduct the required identity checks and medical screening without any unnecessary delay. Therefore, there is no maximum length of detention of asylum seekers in the Reception Centre specifically stated.

Section 125 of the Act on the Residence of Foreigners states that administrative detention cannot exceed 180 days, which start to run from the moment personal liberty is restricted. In the case of a foreigner younger than 18 years of age, the detention period cannot exceed 90 days.

### **2.6 Legal grounds for contact with the outside world**

Legal grounds for contact with outside world are the same for Dublin II detention, detention in the Reception Centre at the international airport and detention of asylum seekers for medical screening and identity checks. Section 21 clause 1 of the Asylum Act provides for the right to legal assistance free of charge and for right to contact with the person providing legal assistance. The Asylum Act also provides for the right to receive visitors, mail and packages, and to use the public phone.

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<sup>51</sup> Article 82 of the Code of Administrative Justice

<sup>52</sup> Refer paragraph 2.1 of this report

In the case of administrative detention, section 144 of the Act on the Residence of Foreigners provides that detainees may receive up to 4 concurrent visitors once a week. The length of the visit cannot exceed one hour. There is no restriction on contact with persons providing legal assistance. Where a detainee is subject to strict regime<sup>53</sup>, visits must take place in the presence of the Police.

### **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Legal grounds for health care are the same for Dublin II detention, detention in the Reception Centre at the international airport and detention of asylum seekers for medical screening and identity checks. Section 88 of the Asylum Act provides that an applicant for international protection and his/her child born on national territory is provided with free health care. Such care must be within the scope of care paid from the health insurance, as specified by a special legal regulation, and also health care in connection with an imposed quarantine or any other measure taken in connection with protection of public health. This shall not apply if health care is provided in accordance with another legal regulation.

With respect to administrative detention, section 134 of the Act on the Residence of Foreigners stipulates that the operator (Ministry of Interior) will ensure that detainees receive a medical examination, including any required diagnostic and laboratory tests, vaccinations, and other protective measures established by public health protection authorities.

### **2.8 Legal grounds for the protection of particularly vulnerable people**

Legal grounds for the protection of particularly vulnerable people are the same for Dublin II detention, detention in Reception Centre at the international airport, and detention of asylum seekers for medical screening and identity checks.

Section 81 of the Asylum Act provides that the operator of a reception or accommodation centre shall take into account the specific needs of the applicants for international protection, including unaccompanied minors, persons aged below 18, pregnant women, handicapped persons, people who were tortured, raped, or exposed to any other serious forms of mental, physical or sexual violence, and also other cases requiring special consideration. Unaccompanied minors shall be placed in a specialized school facility.

In the case of foreigners subject to administrative detention, section 141 of the Act on the Residence of Foreigners imposes a duty on the operator to take into consideration, as far as possible, any special religious, ethnic, or national characteristics, as well as any kinship and marriage relationships, age, and condition of health.

Unaccompanied minors are placed separately from adult foreigners and men are separated from women as a rule; however an exception can be made in the case of close family members. Detainees younger than 18 years of age or persons who have been declared incompetent for the purpose of performing legal acts are placed with a close family member or with the person into whose care they have been entrusted.

### **2.9 Legal grounds providing for release**

In case of the Dublin II detention, detainees are released if the transfer to the state responsible for examining their asylum application does not take place within the six months' time limit.

The situation concerning detention in the Reception Centre at the international airport is now very problematic. The Asylum Act provides only for maximum duration as specified in section 2.5 above. However, if a first instance decision is issued within 5 days and the court decides the appeal within 45 days and both decisions are negative, then the person is detained till removal and there is no provision for release or maximum duration of detention. There are currently some petitions pending.

There is no specific legislation concerning release from detention of asylum seekers held for medical screening and identity checks except as stated above<sup>54</sup>. However, the law is followed and asylum seekers are not subjected to long detention, except for Dublin II cases.

Section 127 of the Act on the Residence of Foreigners provides that administrative detention must be terminated without undue delay:

- a) if the reasons for detention cease to exist;
- b) if a court orders release

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<sup>53</sup> See section 3.1 below

<sup>54</sup> See paragraph 2.5

d) if the foreigner is granted a long-term residence permit for the purpose of receiving protection in the Territory.

### **2.10 Legal grounds for any other rights**

Legal grounds for other rights (i.e. food, receiving and sending mail) are the same for Dublin II detention, detention in Reception Centre at the international airport, and detention of asylum seekers for medical screening and identity checks.

Section 81 of the Asylum Act provides that foreigners accommodated in a reception or accommodation centre shall be entitled to:

- a) provision of basic hygienic standards free of charge,
- b) provision of food, free of charge, corresponding to the principles of a healthy diet and the state of health of the alien, three times a day, and in the case of children below the age of 15, five times a day,
- c) receive a bed and a locker for his/her personal belongings,
- d) receive visitors,
- e) receive parcels and money,
- f) receive and send, at his/her own costs, written communications,
- g) have a continuous eight-hour period for sleep,
- h) leave the accommodation centre under the conditions set out in article 82.

Section 134 of the Act on the Residence of Foreigners provides administrative detainees have the right to be provided with a bed, chair, cabinet for personal belongings, food, and basic hygiene products. Detainees are also allowed to accept and send written messages without any limitations; to order books, daily newspapers and magazines, including foreign ones under the condition that they are distributed in the Czech Republic; to submit a request, complaint, or message of another nature to the state authorities of the Czech Republic or to international organizations for the purpose of exercising his/her rights and will send any such messages without delay; to sleep for eight continuous hours during night time hours; to move about freely within the moderate regime area and to have contact with the other foreigners in this area

## **3 OVERVIEW OF CONDITIONS IN DETENTION**

This section covers the situation in five of the six detention centres currently being used. These are:

- Bela-Jezova centre, central Bohemia, 20 km from Mlada Boleslav
- Postorna centre, southern Moravia region, 50 km from Brno, close to the border with Austria
- Velke Prilepy centre, 20 km from Prague
- International Airport Ruzyně Reception centre, Prague
- Vysni Lhoty Reception centre, northern Moravia, 30 km from Ostrava

It starts by outlining the characteristics common to all of the centres. It then goes on to describe that which is particular to each of the centres currently in use.

### **3.1 Description of characteristics common to all centres currently in use**

#### ***Administration and staffing of the premises***

Three state agencies (ARF, Police, and the Department of Asylum and Migration Policy - DAMP) as well as a private security company work in the detention premises. ARF employees include a manager, assistant manager, social workers, accountant, accommodation manager, medical practitioner and nurse. The staff consists of males and females. More specific information about numbers, training or education was not provided.

The role of police consists of ensuring security outside. Police decide about the placement of foreigners in detention and about the length of detention (180 days maximum). Policemen conduct personal searches of detainees at the time of reception and later as needed, as well as searches of the premise. DAMP employees are responsible for the asylum procedure of those who apply. The private security company (PSC) is responsible for inside security and mainly escorts detainees within the premise when they go to areas which are not open to them. Employees of PSC seem to be only men.

#### ***The detainee population***

Detainees in administrative detention centres are illegally staying third country nationals or asylum seekers who applied after being intercepted by the police. Detainees in reception centres are exclusively asylum seekers. Whenever possible, they are placed according to language groups or nationality.

### ***'Strict regime'***

In each centre except for Vysni Lhoty and International Airport Ruzyne reception centre that caters exclusively for asylum seekers, there is a place reserved for 'strict regime' where police may put detainees for a maximum of 30 days. Police may decide to put a detainee under 'strict regime' following a request from the staff of the centre, when the said detainee seriously or repeatedly violates the rules of the facility. There is no official complaint mechanism, however detainees may address social workers about any problems and they said during interviews that they considered this procedure to be effective and sufficient.

### ***Information for detainees***

#### ***House rules***

Each premise has house rules that are explained to the detainees when they arrive, either translated in to their native language or in a common language like English, if they understand it. The house rules are available as well on the walls of the corridors in major languages spoken by detainees (Russian, Czech, English, French) in Postorna, Velke Prilepy detention centres and in the reception centres at the Ruzyne International Airport and at Vysni Lhoty.

Detainees are informed that they must cover the cost of their stay, which is 112 CZK for meals per day and 130 CZK per day for accommodation costs, except in reception centres for asylum seekers (Vysni Lhoty and International Airport Ruzyne). This information is usually communicated to them verbally and they sign a document in Czech proving that they have been informed. Information about the budget of the premise was not provided. The premise keeps records about detainees (statistics) however, these were not provided.

#### ***Information on legal status***

Detainees are also provided with information about their status, reason for detention, the possibility to apply for asylum and legal possibilities to challenge detention by the police in writing in Czech. There has to be a translator available and information is verbally translated into the native or agreed language of the foreigner in question. Information about rights and duties in detention, about the house rules of the detention centre, and about the cost of detention are provided by ARF social workers during reception to the facility. Detainees are usually informed again about the possibility to apply for asylum within the first seven days of detention. This information is provided usually in writing and orally. One of the detainees considered information from police as inadequate because the interpreter did not translate all documents in detail. Information concerning asylum procedure when the asylum application is lodged is provided in writing in a native language.

#### ***Contact with the outside world***

In general, the law allows visits from friends or family once a week, however according to the 2006 Ombudsman Report, more frequent visits are allowed if requested. For contact with the outside world, detainees get one prepaid phone card worth 200 CZK per 60 days. Cell phones may not be used and detainees are allowed to make one phone call from his/her cell phone and to copy contacts. Detainees have no access to Internet/email but they can post mail through social workers. Detainees can receive mail and packages that are checked beforehand by police.

#### ***General services for detainees***

Social workers are available for detainees every day and all detainees, and NGO workers appreciate their work and attitude, and consider their work very valuable. The ARF invites and covers the cost of translators when needed. There is cooperation with a psychologist and detainees can ask for this service.

#### ***Health care***

Each premise has a medical unit where nurses and a general practitioner are available during working days. In Velke Prilepy Detention Centre, the general practitioner visits three or four times per week. In the reception centre at Ruzyne International Airport, there is a nurse available at the facility and a medical practitioner visits the facility once a week. If there is need for a specialist, detainees are escorted by police to a contracted hospital, and it is up to the policemen if they travel handcuffed or not. In Postorna centre, all interviewed detainees reported that they were handcuffed when escorted. In case of an emergency, an ambulance is called by the guards or social workers. There were no serious complaints concerning health care and access to the same.

#### ***Protection of particularly vulnerable people***

Vysni Lhoty Reception Centre for asylum seekers has a protection zone for vulnerable groups and Bela-Jezova Detention Centre serves as a detention centre for particularly vulnerable people. Since

Bela-Jezova serves as a facility for particularly vulnerable people, they are not accommodated in other centres.

#### ***De-facto duration of detention and release***

There are no official data available, however based on information from lawyers, most detainees are held for a maximum of 180 days, unaccompanied minors 90 days in administrative detention centres. Asylum seekers at Vysni Lhoty Reception Centre are usually released within three to four weeks. In the reception centre at the Ruzyně International Airport the de facto duration of detention varies (see section 2.5 of this report).

#### ***Reports***

A public defender of rights, the Ombudsman is an independent office, which is mandated to monitor the situation of all people whose freedom is limited by the decision of the state body. The Ombudsman is nominated by the President of the Czech Republic and elected by the Senate. The Ombudsman's authority over detention centres was introduced in January 2006 and from April until June, the first monitoring visits were conducted in the centres of Bela-Jezova, Postorna, and Velke Prilepy, and reports followed, which addressed problems that need to be improved. The centres of Ruzyně International Airport and Vysni Lhoty have not been visited yet, however according to the office of Ombudsman, these visits were scheduled for 2007. The OPU issued a situation report about asylum seekers in EU member states (Czech Republic). The monitoring period was from January until June 2006, and covered Bela-Jezova, Postorna, and Velke Prilepy.

### **3.2 Description of specific conditions in each centre**

#### **BELA-JEZOVA DETENTION CENTRE**

*The management and staffing and certain aspects of general services for detainees, health care and information provided at Bela-Jezova centre, have been described above in the Overview, as well as contact allowed with the outside world, and de facto duration of detention and release.*

#### ***Type, description and administration of the premise***

The Bela-Jezova Detention Centre is located in central Bohemia, about 30 km north-west from Mlada Boleslav (one hour's drive from Prague). It is a premise with several buildings. Detainees are accommodated in three buildings and one building is used for the ARF offices and cafeteria, plus a room for visitors and another for lawyers. The detention premise is fenced and the gate is guarded by a private security company, Dora, contracted by the ARF. Outside security is provided by the police. Single men and women, families and unaccompanied minors are placed in separate buildings. Each building is surrounded by a fence; detainees can freely access the fenced area (a lawn with benches) attached to their building.

Until 31 December 2005, the premise was used as an open facility for asylum seekers and only a small building in the area of premise was used as a detention facility for families with children. Following the change in administration of the centres on 1 January 2006, the ARF closed the Balkova detention centre (due to terrible conditions) and transferred the facility for asylum seekers to the Bela-Jezova detention centre. After reconstruction, the centre was fully opened in the third quarter of 2006. The maximum capacity of the detention premise is 340 people.

#### ***Protection of particularly vulnerable people***

Detainees are illegally staying third country nationals or asylum seekers who applied after being intercepted by the police.

Bela-Jezova serves as a detention centre for particularly vulnerable people. It is the only centre where families with children are placed, as well as unaccompanied minors (UAM). The accommodation is equipped to respect the rights and needs of particularly vulnerable people. Elderly people, families, sick persons, and UAMs get special attention from social workers. A psychologist can be invited when needed. There are no specific measures applied however, social workers were considered by detainees and NGO workers as very attentive and always ready to help and listen.

#### ***Accommodation***

Detainees are accommodated in rooms for one to four people. In buildings for single men, there are toilets and showers available for every three rooms. Families share a room with adjoining bathroom (shower and toilet). Washing machines are available in all buildings. There were no complaints about accommodation conditions from detainees. Buildings were renovated and are in good shape. Detainees can freely move inside the building and can go out to the fenced area around the building from morning

until evening (we do not know the exact times, official information was not provided and information from detainees differs). Each building has a room with satellite TV in several languages (including Chinese and Arabic). When they leave the building and fenced area, detainees are escorted by PSC – this entails going for meals, to visit medical center, for asylum interviews and to the sports ground.

Different categories of people are accommodated separately – single men and women, families – single parent families, both parents’ families, and unaccompanied minors. Whenever possible, there is a tendency to accommodate detainees according to language group or nationality.

#### ***Contact with the outside world***

Visits are conducted in a visiting room, to which detainees are escorted by PSC. Contact takes place by phone and visitors are separated from detainees by glass walls. Visits by lawyers are allowed upon request during working days, and two lawyers from the OPU visit the premise once per week. NGO lawyers used to visit detainees in buildings where they were accommodated however, for “security reasons” they are now provided with a very small room where only one lawyer and one detainee may be present. A NGO lawyer expressed concern that the new practice was not working well, since all detainees had to be escorted to him/her. He used to be first asked to make a list of people he wanted to see, which considerably limited access of new detainees to legal help. After discussion and filing a complaint with the manager, a new practice was introduced whereby detainees have to ask for a lawyer beforehand.

There are no regular visits by pastoral workers and detainees have not requested any, however it could be arranged upon request. One detainee complained that a worker of Muslim centre visited them and they could communicate only through phones in the visiting room.

#### ***Activities for detainees***

Detainees can watch TV with programmes in different languages. There is a library available and cards, chess and other similar games are provided. Once or twice per week, there is a possibility to play volleyball and football outside. Table tennis is available inside. Once every two weeks they can watch a movie. Until recently, sewing courses were available however it was closed for security reasons. There are some recreational activities organised by social workers. The OPU had a summer project with volunteers organising leisure time activities during weekends.

### **POSTORNA DETENTION CENTRE**

*The management and staffing and certain aspects of general services for detainees, health care and information provided at Postorna centre, have been described above in the Overview, as well as contact allowed with the outside world, and de facto duration of detention and release.*

#### ***Type, description and administration of the premise***

Postorna Detention Centre is located 50 km south of Brno. It is a facility consisting of one large building. The building is divided into two main parts. One part accommodates detainees and the other part houses the ARF offices as well as the offices of the Police and DAMP. The facility is separated from its surroundings by a wall topped with barbed wire. The building is flanked by a fenced area where detainees can access fresh air. Detainees are accommodated on three floors; each floor is separated by bars. On the ground floor, single women are accommodated, and the two upper floors are used for single men. Each floor has its own fenced outdoors area, which detainees may use freely. Detainees play volleyball, football, basketball or softball in the sports ground. The maximum capacity of the detention facility is 164 people.

#### ***Detainee population***

On 29 May, there were 36 detainees. Detainees are illegally staying third country nationals or asylum seekers who applied after being intercepted by Police. As of 29 May 2007, there were 36 people: five women, 31 men. Ten came from Ukraine, six from Georgia, four from Vietnam, two from India, two from Pakistan, two from the Democratic Republic of the Congo, three from Mongolia, one from Angola, one from Nigeria, one from Algeria, one from Russia, one from China, one from Moldavia, one stateless.

#### ***Accommodation***

Detainees are accommodated in rooms for four to eight people. On each floor, there are common bathrooms and toilets and washing machines are available for. There are beds, chairs, small tables and wardrobes in each room. The facility is well maintained and all the furniture is adequate. There were no complaints about accommodation from detainees. The building was renovated and is in good shape. Detainees can freely move inside each floor and can go outdoors to the fenced area around building

from morning until evening (we do not know exact time, official information was not provided and information from detainees differs). There are rooms with TV and VCR on each floor, which also has its own cafeteria, where meals are served three times a day - breakfast at 8am, lunch 12 noon, and dinner 5pm.

#### ***Contact with the outside world***

Visits are conducted in the visiting room, to which detainees are escorted by PSC. Visitors and detainees have immediate contact; there are no phones and glass as in Bela-Jezova. Visits by lawyers are allowed upon request during working days; one lawyer from SOZE comes twice per week. NGO lawyers have a specific room to which detainees are escorted by guards upon their request or at the request of the lawyer. A pastor from the Greek Catholic church visits regularly. No other pastoral workers visit the facility however this could be arranged upon request. Detainees did not consider this lack to be a problem.

#### ***Activities for detainees***

Detainees can watch TV (only Czech channels, during our visit, the satellite was out of order), and there is a VCR available. Detainees complained that watching TV was limited to 11pm, when most movies started. There is a library and cards, chess and similar games are provided. Detainees may practice sports outside (see above) and social workers organize tournaments between detainees and staff. Table tennis is available inside. There is a two-hour arts workshop everyday and recreational activities are organised by social workers. There are very good relations between detainees and social workers.

#### ***Information for detainees***

Most detainees did not know they had to cover for the cost of their stay; they assumed that the EU was paying. Detainees differed in their accounts about how information was handed over to them and in what form. It is difficult to assess whether state authorities followed the law and if the information was clear enough. Detainees get plenty of important information when they are admitted, which might explain why they are not fully aware of their rights or their situation.

### **VELKE PRILEPY DETENTION CENTRE**

*The management and staffing and certain aspects of general services for detainees, health care and information provided at Velke Prilepy centre, have been described above in the Overview, as well as contact allowed with the outside world, and de facto duration of detention and release.*

#### **Type, description and administration of the premise**

Velke Prilepy detention centre is located 20 km from Prague in central Bohemia. The premise consists of a central building and a technical building. The premise is fenced and the gate is guarded by Dora. Part of the building serves for ARF and Police offices, and for storage. Adjoining the building there is a fenced, relatively small yard of roughly about ten by six metres, with a concrete ground and around four benches to sit on. There are no grounds for outdoor sports. Detainees are accommodated on two floors that are separated from each other, they can access the fenced yard without any restriction from morning to evening. Only single men are accommodated in this detention facility.

#### ***Detainee population***

Before 9 August 2006, this facility served as a detention centre for illegally staying third country nationals. After this date, the facility was, following a DAMP decision, changed into the outsourced reception centre of Ruzyne International Airport with a capacity of 115 places. The change became necessary when the reception centre at Ruzyne reached its maximum capacity, at a time when Czech Republic was facing a migration wave from Egypt. The facility underwent reconstruction and after the majority of detained Egyptians applied for voluntary return on 1 May 2007, the facility was reverted back to being a detention centre. Therefore, from 9 August 2007 until 1 May 2007, only asylum seekers were placed in the facility. On 28 May, 30 detainees were present.

#### ***Accommodation***

Detainees are accommodated in rooms for six to ten people. There are adjoining bathrooms and toilets on each floor as well as washing machines. Detainees can move freely on their floor and go outside to the yard. When leaving the floor to go to the police or the doctor, they are escorted by the PSC. Meals are served at cafeteria which is located on the ground floor behind bars. During mealtimes, the barred gate is opened and detainees are escorted to the cafeteria. On each floor, there is a club room where detainees can watch TV, play table tennis, and use the library.

### ***Contact with the outside world***

A lawyer from OPU and another from Caritas visit the facility once a week. NGO lawyers use a room outside the barred area to which detainees are escorted. According to the OPU lawyer, there was no problem to access detainees. There are no regular visits by pastoral workers and detainees have not requested any, however this could be arranged upon request by Caritas or social workers.

### ***Activities for detainees***

The staff includes four social workers, including one responsible for recreational activities. Detainees can watch programmes in different languages on TV. There is a library available and cards, chess and other similar games and table tennis are provided. Recreational activities are organised by a specific social worker; this practice was just starting so was difficult to assess. Caritas workers do shopping for detainees upon request.

## **INTERNATIONAL AIRPORT RUZYNE RECEPTION CENTRE, PRAGUE**

*The management, staffing, and health care provided at the Ruzyně International Airport reception centre, have been described above in the Overview.*

### ***Type, description and administration of the premise***

The reception centre at Ruzyně International Airport in Prague is located in the transit zone on the ground floor of the airport. Entrance to the facility is guarded by Police and can be reached only with special permission. The facility was set up in 1991 by the Administration of Czech Airports when a separate area of the transit zone started to be used to accommodate people who did not meet the legal conditions to enter the Czech Republic. On 1 February 2002, the reception centre of Ruzyně International Airport was opened by the ARF. On 16 January 2006, a new modern reception centre was officially opened.

Detainees are asylum seekers who applied for asylum at Ruzyně International Airport. On 30 May, 25 people were detained in the centre. The centre has a maximum capacity of 45 people. Detainees can move freely in the barred corridor along which their rooms are located. There is a small yard about three by four metres surrounded by a wall which is 2.5 metres high and covered by a barred roof (detainees can see through). This is the only access they have to fresh air; the yard serves as a smoking area. The accommodation area can be divided, so that women and families are separated from single men.

### ***Accommodation***

Detainees are accommodated in rooms for four people. There are shared bathrooms and toilets for women and others for men. Only a few rooms have windows and access to daylight. There is a table, chair, beds and wardrobes in the rooms; all furniture is new and in good shape. Washing machines are available. Detainees can move freely in the area where they are accommodated and can access the yard from morning until evening. The yard is a very small area surrounded by walls with windows filled with green glass; the roof of the yard consists of lamellas. Therefore access to fresh air is very limited. There is a common room with a TV, table tennis and a coffee machine.

### ***Contact with the outside world***

Detainees may receive visits of friends and families, according to the law, however this does not happen because they usually have not established any contacts yet. The lawyer who was interviewed has never been asked to arrange such a visit and does not know how it would be arranged. Visits by commercial lawyers are possible and are arranged upon request. NGO lawyers from OPU and Caritas Prague visit the facility once a week. Cell phones are not allowed, a phone for prepaid cards is available. Detainees may receive mail and packages that are checked beforehand by police. The facility is visited by Caritas Prague workers who do shopping for detainees, bring newspapers and organise recreational activities.

### ***Activities for detainees***

Detainees can watch TV in several languages, some books are available and one may play table tennis.

### ***General services for detainees***

The social workers are available for detainees every day, providing for their hygienic needs (soap, toilet paper etc.). They are approached for solving everyday problems. Social work is not very intense in the facility. Detainees get pocket money of 16 CZK per day.

There is a group of detainees who have been in the facility for over seven months and whose legal status is unique. They applied for asylum, their application was denied, an appeal to the Court was



denied too and a cassation complaint (appeal to the Highest Administrative Court) was filed to the Highest Administrative Court. By law, their stay on the territory is no longer regulated by Asylum Act but by the Act on the Residence of Foreigners. The ARF therefore does not provide them with money or other items that asylum seekers receive. They are completely dependent on NGOs.

#### ***Protection of particularly vulnerable people***

Particularly vulnerable people should not be placed to the reception centre at the airport. However, the NGO lawyer reported that families with children were sometimes placed there and in several cases, spent 45 days there. Unaccompanied minors are not placed in the facility. An individual approach is followed with regard to other categories. Families with children are placed separately from single men.

#### ***Information for detainees***

As in other detention centres, the detainees are informed about their status, about the asylum procedure, about rights and duties in detention, and about the house rules of the detention centre. However, they are not informed about the possibility of challenging their detention.

#### ***De-facto duration of detention and release***

There was no official data available, based on the information from lawyer most of the detainees are detained for about 62-70 days. However, there were seven people who have been detained for eight months.

### **VYSNI LHOTY RECEPTION CENTRE**

*The management and staffing and aspects of the general services for detainees and health care provided at Vysni Lhoty reception centre, have been described above in the Overview.*

#### ***Type, description and administration of the premise***

The Vysni Lhoty Reception centre is located in northern Moravia, 30 km from Ostrava. This premise caters for people who apply for international protection within the territory of the Czech Republic. The premise is fenced in and it comprises some 10 buildings, five of which are for detainees' accommodation and the rest for staff, Police, and DAMP. The reception centre is divided into a 'normal' zone and another for particularly vulnerable people. People from the normal zone do not have access to the protected zone, however people from both groups may meet outside and at mealtimes. There are sports grounds for football and volleyball. Unaccompanied minors, single women, handicapped or elderly people are accommodated in the protected zone. Social workers focus on and monitor these groups more intensely, and special attention is paid to families with children. Asylum seekers can freely move within the premise but they are not to go too close to the fence surrounding the premise.

The premise was opened in October 1994 as an open facility for asylum seekers. In 1998 it was converted into a reception centre and since January 1996 it has been run by the ARF. The maximum capacity of the premise is 580 people; if necessary it can be enlarged for 760 people. Asylum seekers are taken to the facility for identification and medical checks and the initial steps of the asylum procedure. After these procedures are completed, they are either placed in an open facility for asylum seekers or else they may get their own private accommodation in the Czech Republic.

#### ***Detainee population***

Only asylum seekers are detained in this premise. They are detained for a limited time period and when the necessary procedures have been completed, they are transferred without delay to open facilities. In April 2007, 77 people applied for international protection in Vysni Lhoty, 12 from Mongolia, 19 from Ukraine, and six from Iraq. No other information and data was provided.

#### ***Accommodation***

The quality of accommodation and number of people per room varies. There are rooms for one, two, four, and eight people and even large rooms for 15. There are currently about 80 people accommodated in smaller rooms for an average of five people. Families and partners are accommodated together. The conditions of bathrooms and toilets differs too. In some buildings, toilets and bathrooms are shared by the entire floor or a group of rooms. Families are usually accommodated in the rooms with an adjoining bathroom or toilet. Washing machines are available in all buildings and kitchens have facilities to prepare tea, coffee and other simple cooking. There are club rooms with TV in different languages. Asylum seekers can move freely within the premise.

### ***Contact with the outside world***

The law does not restrict visits from friends or family. Visits are conducted in the visiting room. Cell phones are allowed and there are phones for prepaid cards too. Detainees have no access to Internet and email, but they can post mail through social workers. They may receive mail and packages. Lawyers may visit upon request during working days. A lawyer from SOZE visits the premise twice a week. There is a lawyer from Caritas too, who comes more often. A Catholic priest visits too. Other than that, there are no regular visits of pastoral workers but this may be arranged upon request.

### ***Activities for detainees***

Detainees may watch TV with programmes in different languages. There is a library available and cards, chess and other similar games are provided. There is a cultural centre where concerts or theatre plays are organised. Workshops of ceramic, carving and other activities are organized in the facility. There are sport grounds for football and volleyball that are freely accessible. Table tennis is available inside. There are everyday classes of Czech language provided by the Counselling Centre for Refugees.

### ***General services for detainees***

Asylum seekers get pocket money in an amount of 16 CZK per day and they do not have to pay for their stay.

### ***Health care***

As of 1 September 2006 asylum seekers receive public health insurance. The insurance does not fully cover the costs of medicine and SOZE covers the extra medical bills of asylum seekers.

### ***Information for detainees***

Asylum seekers are provided with information about their status, and written information concerning asylum procedure in their native language or language they can understand. There is no possibility to appeal detention.

### ***De-facto duration of detention and release***

There are no official data available, however based on the information from lawyers, we concluded that most asylum seekers are detained for three to four weeks. ARF tends not to prolong their stay in the reception centre and to transfer them as soon as possible to open facilities for asylum seekers.

## **4 EXISTING CIVIL SOCIETY ACTIVITIES**

There are four non-governmental organizations that are active in detention centres and reception centres: Counselling Centre for Refugees, Organization for Aid to Refugees, Association of citizens interested in migrants, Caritas. All of the organizations provide legal counselling in all facilities. Caritas and OPU participate in organizing leisure time activities in detention centres and reception centres. Counselling Centre for Refugees provides Czech courses in Vysni Lhoty.

#### **INTRODUCTION<sup>55</sup>**

In Estonia, asylum seekers are not to be detained solely for the reason that they apply for asylum. The new law, the Act Granting International Protection for Aliens (AGIPA) introduced in 2006, allows the placement of asylum seekers in a so-called “initial reception centre” in certain cases. This is a closed centre where asylum seekers will effectively be detained. At the moment in practice there is no initial reception centre so asylum seekers cannot be placed there. .

Also, where asylum applications are submitted at the border – asylum applications have been submitted at Estonia’s four border points – asylum seekers may be detained for up to 48 hours. Thereafter, asylum seekers stay in the Illuka Reception Centre, an open facility, until their application is processed (the ERC visited this centre at the end of March 2007).

However, there are a number of instances where asylum seekers may be detained for a longer period of time. If asylum seekers commit a crime or administrative offence, such as use of falsified documents, illegal border crossing, or illegal stay in the country, they may be detained in police cells or prisons. In practice, a person caught staying illegally who has already applied for asylum, may be released and sent to Illuka Reception Centre, however if custody is ordered by the Court, the person is released only after paying the penalty. In the case of illegal border crossing, a fine can be imposed as it is considered to be an administrative offence. Using false documents could also lead to detention.

Moreover, in terms of the AGIPA, if an asylum seeker submits an asylum application after being placed in the pre-removal detention centre or in prison, or in the course of the execution of his/her expulsion procedure, s/he must remain in the said centre or prison until the termination of the asylum proceedings.

Illegally staying third country nationals (who may or may not be asylum seekers) are detained in police cells, prison or the pre-removal detention centre (also known as the expulsion centre). The latter is also used to detain failed asylum seekers. In certain circumstances asylum seekers too may be detained there.

To access places of detention, special permission must be obtained from the Ministry of the Interior. The Justice Ministry claimed that asylum seekers and illegal staying persons are not detained in Estonian prisons and therefore these institutions should not be included in this report. In fact, some have been detained in Tallinn Prison (data received from the Citizenship and Migration Board (CMB)).

The ERC visited four places where illegally staying persons or asylum seekers can potentially be detained. For the purposes of this study the conditions in a facility known as the Police Cell and those in the pre-removal detention centre were assessed. Since we were informed that there were no detained asylum seekers in Estonia when the ERC conducted its research, it was not possible to conduct any interviews with detained asylum seekers. ERC therefore arranged interviews with six people who have access to detention centres, among them NGO representatives, centre staff and lawyers. NGOs gave active feedback but most have not been in contact with asylum seekers or detainees. There is no UNHCR office or representative in Estonia.

#### **1. ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004**

There is a marginal number of asylum seekers in Estonia, with around 10-20 new applications submitted per year. The total number of asylum applications since 1997 is little more than 100. This trend dates back to 1997, when the Refugee Act was introduced and Estonia ratified the 1951 Refugee Convention. Before that, asylum seekers were imprisoned and treated as illegal migrants.

After the migration control system was introduced, the number of illegally staying persons increased by 81%, while cases of illegal employment increased from 32 in 2004 to 428 in 2005. In 2005 117 precepts to leave were issued. Twenty-two people were expelled and 31 placed in the expulsion centre, where security measures were stepped up after two escapes. Return is often a problematic process due

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to re-admission agreements with some countries. New legislation obliges 'aliens' or the persons who invited them, to meet bills covering the costs of expulsion if they are apprehended in Estonia after their visa has expired.

In 2006 Estonia issued a new law AGIPA which says that an asylum seeker, who submitted his /her application while staying in the pre-removal detention centre or in prison, or in the course of the execution of his/her expulsion procedure, must remain in the said centre or in prison until the termination of the asylum proceedings.

## 2. SUMMARY OF NATIONAL LAW

In Estonia the following laws relate to detention:

- Act on Granting International Protection to Aliens, RT I 2006, 2, 3, enforced 01.07.2006,
- State Border Act, RT I 1994, 54, 902, enforced 31. 07. 1994
- Aliens Act, RT I 1993, 44, 637 enforced 12.07.1993
- Imprisonment Act, (RT I 2000, 58, 376), enforced 1.12.2000
- Penalty code, (RT I 2001, 61, 364), enforced 1.09.2002
- 

### 2.1 Legal grounds for ordering detention

Persons can be detained because of illegal stay. First the person gets prescription to leave and is given a chance to leave within 7 days. In the case of a person who had residence permit before, but the permit expired s/he can be given 30 days to leave the country. After that they will get an expulsion order and can be placed (detained) in the Expulsion Centre which is a closed facility.

According to Article 32 (1) of the Act on Granting International Protection to Aliens , an applicant who submits an application for protection during his/her stay in the country is required to stay in the initial reception centre for not longer than forty-eight hours. With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre after the expiry of the term specified by law in the following cases:

- 1) where the identity of the applicant has not been ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;
- 2) to establish the circumstances relevant to the asylum proceedings if the applicant does not co-operate in establishment of the circumstances or hinders the establishment thereof;
- 3) where there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;
- 4) where the applicant has repeatedly or seriously violated the internal rules of the reception centre;
- 5) where the applicant fails to comply with the surveillance measures applied with respect to him/her, or the applicant fails to perform other duties provided by this Act;
- 6) where the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

An applicant who is required to stay at the initial reception centre is permitted to leave the centre with the written permission of the Citizenship and Migration Board, or in order to receive emergency medical care.

### 2.2 Legal grounds for the detention order

*Illegally staying third country nationals - Aliens Act:*

Article 62 (6) of the Aliens Act states that, with the permission of an administrative court judge, an applicant for a residence permit may be required to stay at the initial reception centre referred to in article 12 of this Act in the following cases:

- 1) the applicant for residence permit has repeatedly or seriously violated the internal procedure rules of the reception centre or the Ministry of Social Affairs;
- 2) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

The Obligation to Leave and Prohibition to Enter Act (OLPA) regulates cases of expulsion and detention in such cases.

In terms of article 4.1 of OLPA a precept to leave is an administrative act which imposes on an alien staying illegally in Estonia an obligation to leave Estonia or to legalise his/her stay in Estonia in the cases and pursuant to the procedure provided for in the OLPA. Article 5 says that expulsion is the enforcement of an obligation to leave.

If the person does not fill the requirement to leave an expulsion order can be issued and the person can be detained in order to be able to carry out the expulsion. Article 23 of OLPA regulates the placement in detention (pre-expulsion centre), providing that if it is not possible to carry out the expulsion within the limited timeframe specified by law (48 hours), the person will be placed in the pre-expulsion centre, upon the request of the institution that required the expulsion (CMB) or the institution responsible for the enforcement of expulsion, with the consent of the Administrative Court judge. A person in the expulsion procedure cannot be detained for longer than 2 months. In practice this two months can be prolonged endlessly by the Administrative Court upon the request of the above mentioned institutions (CMB, Police).

Article 23 section 1 1 says that a person subject to expulsion procedures can be detained in the police cell for up to 30 days, instead of at the pre-expulsion centre. In such cases the provisions of the Imprisonment Act will be applied.

#### *Asylum seekers:*

Section 32(1) of the Act on Granting International Protection to Aliens (outlined in section 2.1 above) provides for initial detention of asylum seekers for up to 48 hours which may be prolonged in specified cases by order of an administrative court judge.

### **2.3 Legal grounds for right of appeal against the detention order/for right to challenge detention**

As the detention order is an administrative act or a court order it can be appealed in the Administrative Court of Estonia and the general rules of court procedure apply.

In the case of asylum seekers, detention must be ordered by the court so there is a court review before the person can be detained in the initial reception centre. The individual concerned has a right to appeal the decision before the court of second instance. However, in practice there is no initial detention centre in Estonia so, in practice, asylum seekers are not detained.

In the case of an expulsion order issued by Citizenship and Migration Board, which is an administrative act, the person has a right to appeal the decision to Administrative Court.

### **2.4 Legal grounds for instructions on right of appeal/instruction on right to challenge detention**

As the decision is an administrative act or a court decision the written decision always contains instructions on how to appeal, to whom the appeal must be made and time period within which an appeal must be made. Article 57 of the Administrative Procedure Act requires that: The Administrative Act must contain information about the appeal. The information should be about the possibilities of an appeal, the deadline for placing an appeal and the procedure.

Article 6 of the Administrative Court Procedure Act states that the procedure starts when the Administrative Court receives the complaint or application.

### **2.5 Legal grounds for legal maximum duration**

There are no specific rules laying down the maximum duration of detention; this decision rests with the court. Detention is reviewed in every 2 months in cases where the police or CMB need to detain the person for a longer period.

Articles 23 and 25 of OLPA regulate the placement in detention (pre-expulsion centre) and the extension of such detention where it is not possible to carry out the expulsion within the limited timeframe specified by law (48 hours). In such cases the court may order the continued detention of the person concerned upon the request of the institution that required the expulsion (CMB or Police) or the institution responsible of the enforcement of expulsion (CMB). A person in the expulsion procedure cannot be detained for longer than 2 months. In practice, however, this two month period can be prolonged endlessly by the Administrative Court upon the request of the above mentioned institutions (CMB, Police) until there is a reason to release the person concerned from detention. Basically it can be an endless process.

### **2.6 Legal grounds for contact with the outside world**

The legal grounds to have a contact with outside world have to be regulated by the rules of the initial reception centre. As Estonia does not have initial reception centre there are no such rules in place. The

legal ground for contact with outside world the Police cell and in the Pre-expulsion Centre are regulated in the rules of the centre and are specified in the report.

#### *Police cell*

Article 32 and 34 of the Police Cell Internal Order Regulation (PCIOR) regulate correspondence by mail and exchange of letters. Article 32 stipulates that when sending a letter, the detainee has to forward an open letter to the official in charge of the police cell who checks the content of the envelope. Then the envelope will be closed in the presence of the writer. Letters addressed to the legal representative (lawyer) can be closed and the official of the police cell cannot open it. Article 34 of PCIOR contains the norms that have to be followed when detainees receive mail. It states that the letters from the Chancellor of Justice (who also acts as Ombudsman in Estonia) should be forwarded immediately and must not be opened. Article 35 of the PCIOR says that detainees may use the communication channels in police cells at their own expense, if there are any in the premises of the detention facility.

### **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Asylum seekers:

Article 12(1) of the Act on Granting International Protection to Aliens states that the initial reception centre shall, as necessary, arrange for the following assistance to be provided to asylum applicants during asylum proceedings and, in cases specified in clause 6 of article 62 of this Act, to applicants for a residence permit on the basis of temporary protection during temporary protection proceedings:

- 1) temporary accommodation;
- 2) food, essential clothing and other necessities and toiletries;
- 3) emergency care and medical examinations;
- 4) essential translation services;
- 5) information regarding their rights and duties;
- 6) transportation needed for the performance of acts prescribed by law;
- 7) provision of other essential services

Illegally staying third country nationals:

In the police cell and the pre-expulsion centre health care is provided.

Article 49 of the Imprisonment Act regulates provision of health care in the prison, which is provided as part of state health system and funded from state budget.

### **2.8 Legal grounds for the protection of particularly vulnerable people**

There are no special provisions for the protection of vulnerable people, with the exception of unaccompanied minors who apply for asylum, who cannot be detained in terms of law.

Article 35 of the Act on Granting International Protection to Aliens says that an applicant who is an unaccompanied minor shall be placed in the reception centre or a social welfare institution for the duration of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. An applicant who is an unaccompanied minor may be placed with an adult relative or a social care family, if the host is appropriate for taking care of a minor.

In placing an applicant who is an unaccompanied minor in the reception centre or social welfare institution, or with an adult relative or a social care family, the rights and interests of the minor shall be the main consideration. Unaccompanied minor sisters and brothers shall not be separated, if possible. The applicant who is an unaccompanied minor may be placed in the initial reception centre until the necessary procedures are conducted.

### **2.9 Legal grounds providing for release**

If the reasons for detention cease to exist, the person will be released. There are no specific rules regulating when an individual should be released from detention. This decision rests with the administrative court.

Article 24 of OLPA regulates the release of the person from the pre-expulsion centre. This article provides that the individual concerned will be released when the expulsion is possible, when s/he gets permission to stay or when his/her precept to leave is declared void.

### 3 OVERVIEW OF CONDITIONS IN DETENTION

Due to the different functions of the two facilities researched, conditions differ. Asylum seekers or illegally staying persons could end up in both. It should be noted that the activities for the detainees depend on the regime of the centre: the stricter the regime, the less activities are possible.

One thing in common is health care as this is part of the national health care system. Medical care is available 24 hours a day, funded by the State budget through the Ministry of Justice.

#### PRE-REMOVAL DETENTION CENTRE

*KODAKONDSUS-JA MIGRATSIOONIAMETI VÄLJASAATMISKESKUS*

##### *Type and description of centre*

Members of the ERC in March 2007 visited the premise in March 2007. Situated around 15 km outside Tallinn in Harku County Aia 5, near Harku Prison, the pre-removal detention centre (also known as “expulsion centre”) falls within the CMB structure and its internal code of conduct was adopted by the Ministry of Interior on 27 July 2004, under Regulation no. 49<sup>56</sup>. It is an administrative detention facility for rejected asylum seekers and illegally staying third country nationals, consisting of one building and an outdoor area, part of which is closed to the detainees. The premise was renovated in 2003 and in 2004 and is in good condition.

There are 21 rooms catering for a maximum of 42 people, including children. The rooms are designed as twin rooms although they now contain bunk beds so a total of four people can be placed in one room. They are clean and decorated in light colours, with sufficient daylight. There are separate toilets and shower rooms for men and women, who are accommodated on different floors. Detainees have the use of a washing machine and drier. The dining-living room is well lit and has a TV set. The area outside the building has separate parts for women and men, who cannot meet.

Article 26 of the Obligation to Leave and Prohibition on Entry Act regulates security measures that may be introduced in the centre. Security measures are imposed on detainees awaiting removal, who violate the obligations provided for in the Act or the internal rules of the expulsion centre; fail to take care of their personal hygiene to such an extent that they endanger their health or that of others; wilfully damage their own health or the property of the centre; are likely to attempt suicide or to escape; act violently towards others.

The following security measures are permitted:

1. Restriction of the freedom of movement and communication of the person to be expelled;
2. Prohibition of the use of personal assets;
3. Confinement in an isolated locked room;
4. Using means of restraint as stipulated by Article 26: a person may be tied, handcuffed or put in a strait-jacket. Such means of restraint may be used outside the centre too, while a person is being escorted, to avoid escape. Means of restraint cannot be applied for longer than 12 consecutive hours.

The use of security measures, ordered by the head of the Centre or, in cases of emergency, a higher official of the centre, is terminated when they are deemed to be no longer necessary. Upon imposition of security measures, a person to be expelled shall be allowed, at his or her request, to be allowed outdoors for at least one hour daily. A defence plan approved by the CMB Director-General and the Ministry of Internal Affairs will be developed in the centre to prevent mass unrest, external attacks and to apprehend escapees.

Since the centre is part of the CMB, it does not have a separate budget. Expenses are covered by the CMB general budget.

##### *Staff*

Men and women are aged between 23 and 47 years work at the centre. Staff members are officials or private company security personnel who are responsible for maintaining security and keeping guard. The number of personnel depends on how many detainees there are.

After Estonia joined the EU, the staff of the pre-expulsion centre received obligatory training on the following topics:

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<sup>56</sup> Available at <https://riigiteataja.ee/ert/act.jsp?id=12748040>

- Cultural differences and communication
- Avoiding contagious diseases
- Usage of special equipment
- Communication with people in psychological tension
- First Aid

Officials have also received training about the following:

- Interviewing techniques
- Control mechanisms
- Treatment bearing in mind detainees' special conditions
- Migration law (law on population)
- Identity assessment
- Personal data protection
- Mutual thinking and teamwork
- Illegal immigration
- Basic medical treatment

The staff in the police cells have not received relevant training after EU accession.

### ***Detainee population***

Detainees in the centre are asylum seekers and illegally staying persons. When the ERC visited, there were 10 officials, five security personnel and 10 returnees. There were no women and no minors. Five detainees were aged between 19 and 40 and five were older. Five were citizens of the Russian Federation, one came from Azerbaijan, another from Sierra Leone, and the citizenship of the remaining three was undetermined.

The centre registers statistics about the detainee population, including their gender, nationality, time of detention, release and incidents.

### ***Accommodation***

Rooms must and do meet stipulated lighting, health and hygiene requirements. Article 26 stipulates that if possible, family members – couples, parents with children – should be accommodated together, and minors accommodated separately from adults. However, an order by the Head of the Centre stipulates that a person to be expelled may be accommodated separately from family members. When deciding accommodation, age, ethnicity, special needs, as well as languages spoken, are taken into account. Unmarried/unaccompanied women are accommodated in separate rooms.

Detainees may stay outside every day from 10am to 1pm; 2 to 6pm; 7 to 9.30pm. During the day, detainees can move around the centre, barring the areas occupied by officials. Men are not allowed to go to the area where women are detained.

### ***Contact with the outside world***

Detainees have a right to meet a lawyer during working days, and to call or to write to him/her, and to meet NGO and Church representatives, family members and friends twice weekly on Tuesday and Thursday. During the day, no limits are placed on communication with the above by phone or by mail. The public telephone can be used during the daytime without limits, at the cost of the detainees and according to house rules.

Persons to be expelled receive visits as regulated by the rules and as permitted by the head of the centre. They may receive short-term supervised visits, unless these impede enforcement of the expulsion. Visits cannot exceed three hours and take place in the presence of a centre official, who however cannot overhear meetings with legal or pastoral agents. Consular officials of the detainees' country of origin may visit persons to be expelled. Officials of the centre have the right to search visitors and his/her personal effects, but reviewing written material brought along by legal defence counsel is banned.

Article 26 of the rules of the pre-expulsion centre regulates the correspondence and use of means of communication by people to be expelled, who have the right to correspond and to use the telephone and other communication channels, if such exist in the centre. However this right is subject to whether the detainee can afford it, to the rules of the centre and to the head of the centre, who may choose to restrict correspondence. However, correspondence with Estonian state agencies, one's lawyer, pastoral agents and consular officials cannot be restricted and costs of stationery and postal charges are covered



by the state if the detainee cannot meet them. An official opens letters in the presence of the detainee and confiscates banned items.

The rules in the police cell are different as they are regulated by the internal rules of the facility. Letters sent out must be opened except letters sent to the lawyer. Parcels received will be opened and the contents checked.

The centre operations are controlled by the Chancellor of Justice (who also acts as an Ombudsman) and reports on the centre and police cells are submitted regularly to him. The Ministry of Interior supervises the CMB, including the pre-expulsion centre. The detainees have the right to complain about the condition in the Centre and in the cells to the Chancellor of Justice, who visits to the centre and the cells at least once a year.

#### ***Activities for detainees***

Detainees may listen to the radio, watch TV, and read books in the library. During the day, they may do sports outdoors. The centre has also board games and it is possible to do artwork. They may also gather to celebrate special events.

#### ***General services for detainees***

Oral translation is available daily as long as there are centre officials who know the language required. Psychological consultancy is provided as needed. Detainees may contact the social worker or the head of the centre daily.

#### ***Health***

Medical checks and care are provided twice a week, when a doctor comes to visit the detainees, and more frequently as needed. Before the person is placed in the centre, s/he will be checked for certain diseases (tuberculosis, hepatitis, HIV, syphilis). Detainees are sent to a specialist or to hospital as needed. Dental care can be provided too. Medical costs are covered from the state budget.

#### ***Protection of particularly vulnerable people***

There are special conditions for persons with special needs. Elderly people may get their own room. Persons with mental disabilities get their own room and special equipment (wheelchair, crutch) if they need. Pregnant women, single mothers with children, unaccompanied minors and sick people get their own room and a change of diet if required. Those who are traumatised may get their own room and counselling.

#### ***Information provided for the detainee***

The detainee is informed about his/her status, rights and the reasons for his/her detention, as well as the process of his/her application (in the case of asylum seekers) or return procedure (in the case of illegally staying third country nationals). S/He is also informed about possibilities to appeal his/her detention order and rules of conduct and procedures of the centre. This information is imparted in writing and the detainee may also read the relevant acts of law in a language s/he understands. Where necessary, this information is provided verbally too.

#### ***De - facto duration of detention***

The average time in detention is three months for rejected asylum seekers and for illegally staying nationals. In 2006, 12 people were released from detention (not including those who were deported). Eight people were not released.

#### ***Incidents***

Two persons escaped from the Pre-Removal Centre in 2006.

#### ***Reports***

The Pre-Removal Centre submits reports and explanations to the Chancellor of Justice, whose representatives have visited the centre. Reports are also submitted to the Ministry of Social Affairs. Statistical data is forwarded to the CMB.

### **NORTH PREFECT POLICE STATION**

#### ***Type and description of the centre***

ERC members were not allowed to interview detainees although they were permitted to take photographs of the cells. The Police Cell is a facility consisting of part of the first floor of a four-storey building in Tallinn, namely the North Police Department office. There is a small courtyard – a small room with an open ceiling – where detainees are sometimes allowed to walk. The facility consists of closed rooms where people are placed when they are sentenced to less than three months' detention for

administrative offences. They are detained in the region of the Court where the decision was made, or in the region where the convicted person resides. Also detained in the cells are those suspected of crimes or offences; people taken into custody; or people obliged to appear before the Court.

The facility was built in 1999 and 2000 and plans are afoot to renovate the building. The Tallinn North Police Department is responsible for the cells.

Detainees may submit allegations against personnel, which are reviewed by the Director of the Jail (Cell), who in turn forwards relevant claims to the Head of the Police Department or starts disciplinary procedures to investigate allegations made. Detainees have the right and possibility to send their allegations directly to a lawyer, to the Director of the Department, to the Ministry of Internal Affairs, to the Chancellor of Justice or to the Court in a closed envelope, which cannot be checked by the jail authorities, and which should be forwarded within three days to the relevant addressee.

The facility has a budget for food amounting to €75,000 and a budget for drugs of €7,500 per annum. Other expenses, such as renting the rooms, electricity, water, and so on, fall within the main budget of the North Tallinn Police Department. Detainees do not pay for anything.

The jail keeps track of the number of detainees, the time-span of detention, release and incidents. There is no data collected about the sex, nationality or age of detainees.

### ***Staff***

The facility is staffed by men and women, who are police officers, public servants or contracted persons. When the ERC visited the premise, there were 90 detainees and 39 employees. Most employees are between 40 and 65 years of age. In general, they have not had any training since joining the EU although some employees underwent random training. The prison management received training about the Schengen visa system and Estonian Refugee flow management.

### ***Detainee population***

The detainees in the cells are prisoners and illegally staying third country nationals. A daily average of some 80 people is detained in the facility. When the ERC visit took place, there was one minor detained; 63 people aged between 19 and 40, including six women; 12 persons aged over 40.

### ***Accommodation***

There are dormitories with 90 places. The planning of the facility is not perfect, the scratched floors need to be renovated and walls painted. There is not much daylight. The shower room too needs to be renovated.

Sanitary conditions depend on how many people are being detained, and are not very good. Each cell takes between one to four people. There is a living room on the first floor, with chairs, a table, a refrigerator, a microwave oven and a sink. This is next to the room of the officer on duty. There is no isolation cell. Detainees are not allowed to leave their cell, except at stipulated times, such as for washing time or when it is time for exercise. Freedom of movement within the centre is largely dependent on the regime of the detention centre.

Different categories of detainees are accommodated separately from each other. No couples have ever been detained in this facility. Single parents with children are placed together in the same cell. Minors are placed separately from adult detainees. Whenever possible, language and cultural background are considered when it comes to accommodation.

### ***Contact with the outside world***

Detainees may contact their lawyer and meet him/her. NGOs can be contacted via telephone or in writing. Family members may visit once a week, at stipulated times, and must wait in the queue. The chaplain visits three times a week. Family, friends and others may be contacted by phone or in writing. There is no internet connection.

### ***Activities for detainees***

Detainees are not allowed outdoors every day and can only leave their cell at certain times (see above). During the day, they listen to the radio, read books and play board games. They cannot come together to celebrate special events. According to the Imprisonment Act (Article 90 section 3), detainees are to be kept in locked cells the whole day.

### ***General services for detainees***

Translation services are provided by employees of the department as needed. Three times a week, a chaplain comes to visit the detainees. For social services, the person has to ask the director of the prison. Psychological help is provided if a person submits an application.

### ***Health***

A nurse is available. All detainees undergo a health check and where necessary, blood tests are taken to test for HIV. First aid is guaranteed and detainees get medication if it is prescribed by a doctor. If necessary, detainees are taken to be examined by a specialist.

### ***Protection of particularly vulnerable people***

Vulnerable people, like the elderly, may get their own room. Persons with mental or physical disabilities are immediately sent to special institutions. Pregnant women, single mothers with children, unaccompanied minors and sick people have their own separate cell. Sick people may be sent to the prison hospital.

### ***Information for detainees***

Information on the status of 'aliens' is provided in English, Russian or Estonian by the police cell management. The rights of the detainee are presented to him/her by the official taking him/her to the cell, as well as information about the asylum or return procedure, as the case may be, and the possibility to appeal against one's detention order. The reasons for his/her detention are explained by the officer on duty in English, Russian or Estonian. Information about the facility's disciplinary rules and procedures is presented by the officer on duty.

### ***De - facto duration of detention***

At the time of the visit there were no asylum seekers in the facility. Illegally staying persons are kept in the police cells from 48 hours to seven days in the case of administrative arrest, before being transferred to the border for expulsion.

### ***Reports***

The Police Cell forward information and submit reports to the Chancellor of Justice, who also acts as Ombudsman in Estonia.

### INTRODUCTION<sup>57</sup>

In Hungary, as of 31 May 2007, there were seven detention centres:

- Ferihegy Border Guard Directorate (alien policing jail)
- Ferihegy International Airport (transit zone detention facility for persons to be returned)
- Nyírbátor Border Guard Directorate (alien policing jail)
- Szombathely Border Guard Directorate (alien policing jail), which is to be closed on 1 January 2008
- Győr Border Guard Directorate (alien policing jail)
- Kiskunhalas Border Guard Directorate (alien policing jail)
- Orosháza Border Guard Directorate (alien policing jail), which is to be closed on 1 January 2008

In Hungary, the Hungarian Helsinki Committee (HHC) is the main NGO that has regular access to detention centres, which are maintained by the Border Guard. Access is based on a bilateral agreement of cooperation between the HHC and the National Border Guard Headquarters, signed in 2002, which allows the HHC to provide legal assistance to detained migrants and to monitor conditions of detention in so-called alien policing jails. Other NGOs also pay visits to border guard detention centres on an irregular basis, such as the Mahatma Gandhi Human Rights Organisation, or religious/church groups. A further tripartite agreement was also signed in December 2006 between the National Border Guard Headquarters, the Regional Representation of the UNHCR and the Hungarian Helsinki Committee, which allows access to short term detention facilities and transit zones operated by the Border Guards.

HHC arranged for interviews with 15 detainees from Iraq, Pakistan, Serbia, Morocco, Syria, Nigeria, and China, and with eight people who go to the centres, among them representatives of governmental entities and NGOs, staff in detention centres and lawyers. Altogether 23 interviews were conducted and evaluated.

### 1 ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004

The Hungarian legal framework regulating the detention of asylum seekers and illegally staying third country nationals was substantially modified from 1 July 2007 with the introduction of the following legal instruments:

- Act II of 2007 on the entry and stay of third country nationals (hereinafter referred to as “Act II of 2007”) replacing Act XXXIX of 2001 on the entry and stay of foreigners<sup>58</sup>
- The executive Government Decree no. 114/2007 (V. 24.) on the implementation of Act II of 2007, replacing Government Decree no. 170/2001 on the implementation of Act XXXIX of 2001 (Government Decree 114/2007)

These legal instruments significantly changed the system of detention in Hungary. In fact, contrary to the previous regulation of the Aliens Act of 2001, which disposed of three types of detention, the relevant provisions of Act II of 2007 in effect established two different types of detention measures: (i) detention in preparation of expulsion and (ii) alien policing detention. Both are aimed at foreigners apprehended or arrested by the Alien Policing Authority (or Border Guard, the police acting in such a capacity). The concept of alien policing detention was already present in the Hungarian legal framework prior to 2001, however, Act XXXIX of 2001 introduced two further forms of detention of foreigners. The system of alien policing measures involving deprivation of liberty has been fundamentally modified once more from July 2007 under the Act II of 2007, which abolished detention for refusal.

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<sup>57</sup> This report is owned by the HUNGARIAN HELSINKI COMMITTEE (HHC). It is publicly available at [www.helsinki.hu](http://www.helsinki.hu) Reproduction and quoting are authorised, provided the source is acknowledged, save where otherwise stated.

<sup>58</sup> Act II of 2007 and its executive Government Decree No. 114/2007 both entered into force July 1st 2007.

## 2 SUMMARY OF NATIONAL LAW

Due to the latest modifications of the Hungarian legal framework, the following Hungarian domestic rules apply to the detention of migrants since July 1<sup>st</sup> 2007:

- Act II of 2007 on the entry and stay of third country nationals (hereinafter referred to as “Act II of 2007”) replacing Act XXXIX of 2001 on the entry and stay of foreigners<sup>59</sup>
- The executive Government Decree no. 114/2007 (V. 24.) on the implementation of Act II of 2007, replacing Government Decree no. 170/2001 on the implementation of Act XXXIX of 2001 (Government Decree 114/2007)

### 2.1 Legal grounds for ordering detention

In the Hungarian legal framework there are various alien policing measures constituting deprivation of liberty.

#### 1. Detention for refusal

Although the measure of refusal and the related detention measure were abolished by Act II of 2007, it is important to review the legislative improvement concerning this type of detention.

Under the Section 36 (1) of the old Aliens Act of 2001, the Border Guards were entitled to refuse entry to the foreigner who crossed, or who had attempted to cross, the state border illegally (measure of refusal) if he or she was intercepted within thirty days from crossing the border and there was an applicable readmission agreement (on account of his or her illegal entry). In order to ensure the implementation of the measure of refusal, the detention of the foreigner could be ordered (Section 47 (1), Aliens Act of 2001) if the implementation of the refusal was likely to take place within thirty days of the date of arrest (**detention for refusal**). In fact, detention for refusal was most likely to be attached to the measure of refusal, except in the case of unaccompanied minors who could not be subject to detention under the Government Decree implementing the Aliens Act of 2001 (Section 52 (4), GD 170/2001). In practice, if an asylum-seeker submitted his or her application during the detention for refusal, it was more likely that he or she would be released and transferred to a reception centre.

Act II of 2007 abolished the measure of refusal and related detention measure, thus the cases covered formerly by Section 36 (1) of the Aliens Act of 2001 now fall under the rules on expulsion according to the provisions of Act II of 2007; this implies the applicability of important additional safeguards.

#### 2. Detention prior to expulsion

The competent immigration authority may order the detention of the third-country national prior to expulsion in order to secure the conclusion of the immigration proceedings pending, if his/her identity or the legal grounds of his/her residence is not conclusively established (**detention prior to expulsion**, Section 55, Act II of 2007). In practice, the submission of an asylum application during detention in preparation for expulsion so far has not lead to the release of the applicant. The detention prior to expulsion can be ordered for a maximum duration of seventy-two hours and can be extended by the competent court of jurisdiction by reference to the place of detention until the third-country national’s identity or the legal grounds of his or her residence are conclusively established, or for maximum thirty days.

#### 3. Alien Policing Detention

Furthermore, if the foreigner violated or attempted to violate the rules of entry or exit, he may be subject to alien policing expulsion under Section 43 (2) of the Act II of 2007. Alien policing expulsion is ordered by the Alien Policing Department of the Office of Immigration and Nationality (OIN, central and regional Alien Policing Authority). To order alien policing expulsion, a number of conditions are to be fulfilled:

- a) The Alien Policing Authority ordering the alien policing expulsion shall verify that the expulsion of the foreigner will not breach the principle of *non-refoulement*. This would presuppose an individual assessment of the specific circumstances of the case (Section 51, Section 52 (1) of the Act II of 2007). Nevertheless, it is doubtful whether the Alien Policing Authority possesses the appropriate expertise and resources required for carrying out such a thorough analysis.

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<sup>59</sup> Act II of 2007 and its executive Government Decree No. 114/2007 both entered into force July 1st 2007.

- b) Moreover, unaccompanied minors are also exempted from expulsion if family reunification or appropriate state or other institutional care is not guaranteed in the country of origin or another admitting state (Section 45 (5) Act II of 2007).
- c) Section 45 (1) of the Act II of 2007 lists a number of additional criteria (age, family background, possible consequences of the expulsion on family members) which shall be taken into consideration before the decision on expulsion is made. Thus, a more individualised assessment of the case of the third country national concerned will be required preceding the ordering of expulsion. Although these norms principally introduce the requirements established by the case law of the European Court of Human Rights to protect family life in expulsion cases, the provisions might also have a beneficial effect in promoting the due evaluation of the personal circumstances of foreigners, including those of asylum-seekers in the expulsion procedure.

In order to secure the preparation and implementation of the alien policing expulsion, the Alien Policing Authority of the OIN may order the **alien policing detention** of the person concerned. The substance and legitimating aim of ‘alien policing detention’ is to ensure the implementation of the expulsion order. The Aliens Act of 2001 contained an exhaustive list of all compulsory and optional cases of alien policing detention. The ‘compulsory cases’ of alien policing detention related to alien policing expulsion ordered on the account of serious or/and organised forms of crimes committed intentionally by the foreigner, thus these cases were – in general – not applicable to asylum-seekers. It is important to note that the compulsory cases of alien policing detention were abolished by the new Act II of 2007, since the new act aims to apply alternative solutions in order to avoid alien policing detention.

The optional, more relevant cases of alien policing detention are applicable if the foreigner:

- a) is hiding from the authorities or is obstructing the enforcement of the expulsion in some other way;
- b) has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion;
- c) has seriously or repeatedly violated the code of conduct of the place of compulsory confinement;
- d) has failed to report as ordered, by means of which to forestall conclusion of the pending immigration proceeding;
- e) is released from imprisonment as sentenced for a deliberate crime. (Section 54 (1) Act II of 2007)

The abolishment of detention for refusal by Act II of 2007 certainly simplifies the procedure and makes it more transparent, thereby contributing to the prevention of arbitrariness. However, the new law does not fundamentally change the rules of the remaining optional cases of alien policing detention.

## **2.2 Legal grounds for the detention order**

The initial decision on ordering detention is taken by the alien policing authority (alien policing detention or detention for preparation of expulsion)

Judicial review of the detention order is carried out by local courts, and the appeal is considered by county level courts.

## **2.3 Legal grounds for right of appeal against the detention order/for right to challenge detention**

Besides ensuring the right of access to court, Hungary established a system of a built-in review guaranteeing the legality of ordering, and the lawfulness of maintaining, the alien policing measure involving deprivation of liberty.

### *i. Access to court*

Although the foreigner is not entitled to demand the suspension of the alien policing measures involving deprivation of liberty or to submit an administrative appeal against the decision imposing detention, it is possible to file an application to the court within 72 hours requesting the review of the legality of the alien policing measure entailing deprivation of liberty (contrary to a longer delay of five days to demand court review of the legality of the detention according to the provisions of the old Aliens Act of 2001). Act II of 2007 prescribes that the third-country national may present an objection within 72 hours of ordering the alien policing detention (Section 57, Act II of 2007). The relevant, applicable international norms require the respect of the right of access to court, thus these provisions are in compliance with the international requirements.

### *ii. In-built review and prolongation*

The in-built review differs depending on the alien policing measure restricting the personal liberty of the applicant:

#### 1. Detention in preparation of expulsion:

The competent Alien Policing Authority may order these types of detention for 72 hours. Concerning the detention in preparation of expulsion, the intervention of the local court is prescribed by Act II of 2007 after 72 hours as of the ordering of the detention measure (Section 55, Act II of 2007).

#### 2. Alien policing detention:

a) The review of the lawfulness of the alien policing detention

The intervention of the local court of jurisdiction is prescribed by Act II of 2007 after 72 hours as of the ordering of the alien policing detention upon the motivated motion of the Alien Policing Authority which shall be submitted to the court within 24 hours of ordering the alien policing detention (Section 54 (3), Section 58 (1), Act II of 2007).

b) The review of the justification of the prolongation of the alien policing detention

Act II of 2007 applies a stricter system of review than the old Aliens Act of 2001: the prolongation of the alien policing detention measure shall be reviewed every 30 days upon the reasoned motion of the Alien Policing Authority submitted eight days prior to the expiration of the detention measure.

### *iii. The scope of judicial review*

In principle, the court shall assess the legality of the detention. The Aliens Act of 2001 did not specify whether the term 'legality' meant lawfulness in the strict sense or the review of the justification of the imposition or continuation of the detention measure as well. The fact that, with respect to alien policing detention, the Aliens Act of 2001 distinctively regulated the review of the justification of the prolongation of the detention measure might imply the former approach, which was not in compliance with the relevant international norms. Act II of 2007 introduced a new built-in legal safeguard by prescribing that alien policing detention shall be terminated immediately when the legal grounds thereof no longer exist. (Section 56 (2) Act II of 2007)

In practice, however, it seems that courts often render their decisions almost automatically, based on the motion of the alien policing authority and without duly assessing all the relevant circumstances of the case or the possible applicability of the principle of *non-refoulement*. Moreover, penal judges of local or county courts, who often do not have the necessary expertise to make a meaningful assessment of asylum cases and treat alien policing cases as a 'branch' of penal cases, are in most cases assigned to review the prolongation of alien policing detention measures. This is highly inappropriate, considering the non-penal character of alien policing cases and especially those of asylum-seekers.

## **2.4 Legal grounds for instructions on right of appeal/instruction on right to challenge detention**

See 2.3

## **2.5 Legal grounds for legal maximum duration**

Both under the old Aliens Act of 2001 and under the new Act II of 2007, any alien policing measure involving deprivation of liberty shall be terminated immediately whenever 'it becomes obvious that the expulsion cannot be implemented' (Section 46(8), Aliens Act of 2001; Section 54(4), Act II of 2007).

At present, the combined period of the different alien policing measures involving deprivation of liberty cannot exceed six months (Sections 54 (4) c) of Act II of 2007)), According to the Act II of 2007, after the expiration of the 6-month mandatory deadline (e.g. the expulsion could not be implemented), if the grounds of expulsion are still pertinent, the foreigner is not fully released but transferred to a so-called 'community shelter' or the alien policing authority ordering the detention designates a compulsory place of stay for the third-country national in question. Nevertheless, violating the rules of the community shelter or committing another minor offence (e.g. attempting to cross the border illegally) gives rise to the imposition of alien policing detention for another six months.

Regarding the improvement of the Hungarian alien policing regulation in the last decade we can state that the 12-month limit, introduced by the Act XXXIX of 2001, was a considerable development compared to previous years. Between 1993 and 1999, foreigners could be detained indefinitely, while between 1999 and 2002, the maximum duration of detention was 18 months. Nevertheless even the one-year maximum period of detention of foreigners proved to be excessive, especially in the case of asylum-seekers.

Act II of 2007 further reduces the maximum length of detention to six months (Section 54(4)), which is a significant and welcome step in the right direction. Under the Act II of 2007, after the expiration of six months alternative solutions shall be applied: a compulsory place of residence can be designated, which could be either a reception centre, a community shelter, or another appropriate place of accommodation (Section 62(2), Act II of 2007).

## **2.6 Legal grounds for contact with the outside world**

Section 61 (3) of the Act II of 2007 provides that the detained foreigner shall be entitled:

- (b) to consult their legal representative or a member of the consular representation of their host country without any supervision, and to be visited by relatives under supervision ;*
- (c) send and receive packages and letters as specified in specific other legislation, and to receive visitors”*

## **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Section 138-140 of the Government Decree 114/2007 implementing Act II of 2007 provides that foreigners detained in an alien police jail are entitled to all necessary medical care free of charge if needed.

### **Section 138**

- (1) In the event that the foreigner in detention or placed in a community shelter is not covered by social security insurance, he/she shall be entitled to benefit in case of illness from the following health care services for free of charge according to the provisions of the Act CLIV on health care :
  - a. examinations and treatment included in basic medical care;*
  - b. examination, treatment received as a part of emergency out-patient specialized treatment – including emergency dental care – as well as medications and bandages used during treatment;*
  - c. epidemic vaccination, examinations and health care ;*
  - d. following care specified in (b)-(c), following out-patient specialized treatment or in-patient treatment received in a health care institution, until his/her recovery or stabilization of condition
    - da) necessary examinations and medical treatment,*
    - db) medication not substitutable by other type of medication, not included in (f) and the therapeutic equipment needed for the administration of the medication;**
  - e. care during pregnancy and childbirth, including proper information on healthy lifestyle and preparation for appropriate nursing care ;*
  - f. in case of urgent need other health care services shall be provided to the foreigner in accordance with separate legal regulation on health care; ;*
  - g. in case of treatment specified in (b)-(e), transportation if the foreigner’s transportation cannot be arranged otherwise on account of his/her medical condition.**
- (2) The accommodated foreigner is entitled to benefit from mandatory vaccination in accordance with separate legal regulation.*

### **Section 139**

- (1) The general medical care and treatment of foreigners shall be provided in the alien policing jail or community shelter.*
- (2) Specialized medical care may be received from the health care provider obliged to provide care in the area.*
- (3) Health care services specified in Article 138 (1) shall be free of charge if they are ordered by the doctor performing basic medical care or the specialized doctor of the out-patient services or in-patient health care institution.*

### **Section 140**

- (1) The Border Guard or the Office shall reimburse to the health care provider the fee of health care services, and the costs of services, excluding basic medical care as prescribed in Section 138 if the Republic of Hungary has not undertaken the payment thereof in an international treaty.*
- (2) Foreigners can benefit from medical care services being in the possession of a medical care certificate, concerning reimbursement the rules of Government Decree 25/1998 shall be applied.*



## **2.8 Legal grounds for the protection of particularly vulnerable people**

Act II of 2007 prohibits the detention of minor third country nationals (Section 56 (1)) but makes possible the designation of a compulsory place of residence to minors against whom an alien policing measure involving deprivation of liberty would be applicable (Section 62 (1)).

The detention of women is not precluded as such, but Act II of 2007 prescribes that women shall be detained separately from men (Section 61 (2) of Act II of 2007).

As regards the detention of families, Act II of 2007 provides that by way of a temporary measure, the authority ordering detention shall take immediate action concerning the care of the family member of the detained foreigner remaining without supervision or who is dependant on the foreigner furthermore the alien policing authority shall take necessary measures to secure his/her valuables without surveillance (Section 60 (3)).

As regards the detention of families the new provisions introduced by Section 62(1) of Act II of 2007 allowing for (but not requiring) the designation of a compulsory place of residence in similar cases is a significant step forward to eliminate the possibility of detention of families with children, though families will still not be exempted *per se* from the application of alien policing measures involving deprivation of liberty.

No specific norms govern the health care of seriously ill or mentally disturbed foreigners detained in alien policing jails. Remand prisoners or convicts are transported to the Central Prison Hospital in Tököl, or to the Forensic Observation and Psychiatric Institution (IMEI) in Budapest, but this option is excluded in the case of foreigners (including asylum-seekers). In their case, the local hospital is available, which might not offer sufficient psychiatric treatment and increase the burden of the Border Guards as they need 4 or 5 officers to guard one detainee.

Many asylum-seekers suffered trauma or torture, which renders their mental health precarious. Still, victims of torture or violence are not exempted from the implementation of alien policing detention.

## **2.9 Legal grounds providing for release**

In terms of Act II of 2007, alien policing detention shall be immediately terminated when the grounds thereof no longer exist (Section 56(2)). The alien policing detention may last until the conditions of implementing the expulsion order are put in place but at most for six months. Detention shall be terminated when the conditions of expulsion are assured or when it becomes obvious that the expulsion cannot be implemented (Section 54 (4) of Act II of 2007).

Government Decree no. 114/2007 (V.24.) executing Act II of 2007 provides further rules concerning the termination of detention. The authority ordering detention shall strive to keep the duration of detention as short as possible. The authority shall promptly take measures for providing the conditions needed for the enforcement of expulsion or refusal of entry, or in case of ordering detention in preparation for expulsion, for the establishment of the foreigner's personal identity or lawfulness if his/her stay (Section 126 (5) of GD 114/2007). If it is likely that the expulsion cannot be carried out even after six months of detention - especially if the conditions of the departure cannot be secured or if, due to his/her physical state the foreigner is in need of longer hospitalization – Section 54 (4) of Act II of 2007 (regulating the cases when detention has to be terminated) shall be applied.

Detention in preparation for expulsion shall be terminated if the proceeding authority has established the foreigner's personal identity or that he/she has been staying lawfully in the country, or if the foreigner's expulsion cannot be ordered due to the existence of the prohibition contained in Article 51 (1) of Act II of 2007 (*non-refoulement*). In the latter case the alien policing authority recognises the foreigner in question a person authorized to stay (PAS) and declares the prohibition of expulsion in a formal resolution (GD Section 124 (5)).

## **3. OVERVIEW OF CONDITIONS IN DETENTION**

### **3.1 Description of characteristics common to all centers currently in use**

#### ***Accommodation***

Men and women are accommodated separately. Detainees receive an invoice upon release from detention stating the costs of their detention. This should be paid upon departure from the detention facility or upon their next entry into Hungary. In practice, detainees are unable to pay.

### ***Staff***

The facilities are staffed by border guards, men and women. The Border Guard is a military organisation and is scheduled to be merged with the Police from January 2008. The border guards received in-house trainings on various topics. UNHCR and the HHC provide regular training about refugee law, intercultural communications, and whatever other requests they get. Rules of conduct for border guards are laid down in Decree no. 40/2001 (XII. 23.) of the Minister of Interior, detailing the Service Regulations of the Border Guards.

### ***Health care***

Foreigners are entitled to emergency and basic health care. Medical costs are carried by the state. All foreigners received into the short-term detention facilities undergo a medical examination to establish whether they are fit for detention, or they are contagiously ill and to record any external injuries. Each premise has a doctor on call, who refers patients to the local hospital in case of need.

There are no specific rules for severe or long lasting somatic illnesses or psychiatric problems of detainees in an alien policing jail. Remand prisoners or convicts are transported to the Central Prison Hospital in Tököl, or to the Forensic Observation and Psychiatric Institution (IMEI) in Budapest. Those in alien police jails cannot be transported to these institutions, because they are not suspects, defendants or convicts.

In practice they are transported to the local hospital and permanently guarded by officers. This is an additional burden for the Border Guards, because they have to use four or five officers to guard one foreigner and it is a burden for the hospital management, which is not keen to have officers with guns on their wards. In case of mental problems, after some days of medication, the hospital sends the patients back to the facility, where they usually refuse to take their medicine, and their mental disturbance starts again. The only solution would be to interrupt detention in cases of serious illness, and to place the foreigners either in a civilian hospital or in a reception centre for asylum seekers, depending on the severity of their health condition.

### ***Protection of particularly vulnerable people***

The law allows the detention of minors, however Act II of 2007 on the entry and stay of third-country nationals, bans the detention of all minors since it came into force on 1 July 2007. In practice, asylum seeker families are usually accommodated in open reception centres – those with children are transferred either to the community shelter (a small open facility run by the Office of Immigration and Nationality in another building) or to a refugee reception centre. Unaccompanied minors are never placed in detention and are accommodated in a special centre for unaccompanied minor migrants in Nagykanizsa run by the Hungarian Red Cross.

No specific norms govern the health care of seriously ill, traumatized persons or victims of violence detained in alien policing jails. Many asylum-seekers suffered trauma or torture, which renders their mental health precarious. Still, victims of torture or violence are not exempted from the implementation of the lengthy alien policing detention. Unfortunately the health care for seriously ill or mentally disturbed foreigners in alien policing jails (including asylum-seekers in detention) is not reassuringly solved in the Hungarian system (see section 2.8 above).

### ***Information for detainees***

The dissemination of information is a general problem at alien policing jails in Hungary, although detainees are said to receive information about the alien policing procedure and about their rights and obligations in written form, in leaflets in several languages. Information sheets by UNHCR, HHC and the voluntary return programme of the IOM are also posted on the walls in many facilities. Information about house rules is usually posted on the walls in several languages.

### ***De facto duration of detention and release***

Detention in an alien policing jail could last up to 12 months according to legislation in effect until 30 June 2007 (Act XXXIX of 2001 on the entry and stay of foreigners, Aliens Act of 2001). From 1 July 2007, the maximum period has been reduced to six months as per Act II of 2007 on the entry and stay of third-country nationals. The maximum permissible detention period applies to all third-country nationals, including asylum seekers. If, upon apprehension by the border guard, the foreigner states his/her intention to seek asylum, the border guard will notify the asylum authority and the foreigner will be sent to an open reception centre. If they submit the asylum application after their detention has been ordered, they usually stay in the detention facility for the maximum period or until a final decision is taken on their application. In case of non-asylum seekers, the de-facto duration of detention depends on how fast the border guards contact the state authorities of the detainees, how fast they respond and how fast they can secure travel documents and arrange transport.

### 3. OVERVIEW OF CONDITIONS IN DETENTION

#### 3.1 Description of characteristics common to all centers currently in use

##### **FERIHEGY INTERNATIONAL AIRPORT**

*The issues of staff, health care, protection of vulnerable people and de facto duration and release, have also been covered in the overview.*

##### ***Type, description and administration of the facility***

Short-term detention facilities are located in the transit zones of the Ferihegy International Airport Terminal 1 and Terminal 2A and 2B. All three are maintained by the Budapest Border Guard Directorate in premises owned by the company that manages the Budapest Airport (BA Zrt). The facility located in Terminal 2B of the Ferihegy Airport forms the basis of this section; conditions in the other two are nearly identical. The facility consists of two small rooms (about 14 square metres) with bunk beds for maximum of four persons in each room, and there is a room in between for guards on duty. There is no open-air space. There are no punishment cells or similar facilities and no formal procedure for keeping discipline. Foreigners may complain to the border guards on duty.

The facilities were opened in December 1998, following concerns expressed by NGOs and the UNHCR on account of the lack of accommodation facilities for persons under return procedures at the airport, which led to degrading treatment in the transit zone. The maximum length of time of stay in the short-term facility is eight days; however the Hungarian law does not consider this form of deprivation of liberty as detention since persons under the return procedure at Ferihegy Airport are obliged to stay at the designated premises.<sup>60</sup> They cannot submit any application for court review, whilst foreigners in alien policing jails are entitled to demand judicial review upon the legality of their detention. Detained foreigners, if they have money, have to pay for the costs of their meals.

##### ***Staff***

There is always one guard in the facility if foreigners are accommodated there. The average age of staff members is 27 years and they have a rather limited knowledge of foreign languages.

##### ***Detainee population***

The transit zone detention facilities accommodate third country nationals who were denied entry into Hungary and are being returned by air, and asylum applicants pending transfer to an open reception centre. Records are kept on the number of detainees, their nationality, duration of detention and release, as well as incidents, if any. In 2006 about 100 people were held in the transit zone facility, usually for one or two nights. Men, women and children may be held there. The most frequent countries of citizenship of detainees are China, Iraq, Syria, Pakistan, and Bangladesh.

##### ***Accommodation***

There is one bathroom per room, quite new and clean, equipped with sink, toilet and shower. Natural light comes, more or less, through windows that open onto an inner corridor, but the panes are not completely transparent. There is no natural ventilation as windows cannot be opened. There is no recreation space and no opportunity to go out. Border guards explained that open-air exercise is impossible as the airport is a high-security area and the apposite police security service is charged with maintaining safety and security. Detained foreigners may only leave the room where they are held to make a telephone call or to purchase food or other items from shops in the transit zone. In such cases, border guard staff escorts them. The border guards provide food only if the foreigner lacks funds; provision of meals complies with religious dietary norms.

Families are detained together, but people of different sexes are otherwise placed separately.

All foreigners are detained together regardless of their status. The only exception is persons under official transfer (i.e. where Hungarian border guards provide logistical services in the framework of readmission agreements to returning a foreigner whose return had been ordered by another country's authorities) who do not need to spend a night at Ferihegy airport.

##### ***Contact with the outside world***

Detainees have limited contact with the outside world, mostly due to the short time they generally spend in the facilities. They have the right to contact a lawyer, NGOs that provide free legal counselling on asylum, UNHCR or IOM. Detainees may receive visitors between 8am and 4pm. They may write and receive letters, and use public payphones or their own mobile telephone at their own cost. Their first phone call is free-of-charge. In practice it is difficult for detainees to exercise these rights due to communication difficulties, lack of knowledge about services and lack of money (e.g. for

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<sup>60</sup> Section 41 (1)(b) of Act II of 2007

use of the telephone). Since January 2007, based on a tripartite cooperation agreement between the National Border Guards Headquarters, UNHCR and HHC, the latter has access to the facilities to advise detainees about their rights and obligations. UNHCR also has access.

#### ***Activities for detainees***

There are no activities whatsoever, apart from a few newspapers (mostly in Hungarian).

#### ***General services for detainees***

For persons under return procedure, the laws and regulations do not require an official interpreter to be present. Most border guards do not speak foreign languages well enough to conduct the procedure in a foreign language. Hence it is very difficult for most foreigners to comprehend what is happening to them. Sometimes airline staff members are called in to translate. There is no pastoral service, social work or psychological counselling available.

#### ***Health care***

At night and over the weekends, the airport medical service is available. In case of illness or some other condition requiring urgent medical intervention, the border guards transfer the foreigner to a general hospital in Budapest.

#### ***Protection of particularly vulnerable people***

Families are detained together. There is baby food or solutions available. Pregnant women and nursing mothers are entitled to 0.5 litres of milk (or the nutritional equivalent) per day in addition to the three meals.

#### ***Information for detainees***

Persons detained in the short-term detention facilities in the transit zone also receive written information about their rights and rules of conduct in the facilities. This is available in Hungarian, Chinese and German. This information sheet makes no reference to asylum. There is an information table on the wall, produced by UNHCR, which contains information provided by UNHCR and NGOs. IOM has a poster on the wall about the voluntary return programme.

#### ***De-facto duration of detention and release***

If someone is to be returned on the same day, they are not detained in the short-term facility but are instead placed in a waiting room (also closed). If someone must wait overnight prior to return, or if the procedure takes days, they will be placed in the facility. The maximum length of time of detention in this facility is eight days.

#### ***Reports***

A June 2006 report by the Ombudsman<sup>61</sup> into conditions of treatment at Ferihegy International Airport transit zone facility made several recommendations regarding both the legal framework on accommodation of foreigners in the transit zone as well as the material conditions of detention.

### **BUDAPEST BORDER GUARD DIRECTORATE**

*The issues of staff, health care, protection of vulnerable people and de facto duration and release, have also been covered in the overview.*

#### ***Type, description and administration of the premise***

This premise is an alien policing jail located in the Budapest Border Guard Directorate, near the Ferihegy International Airport, on the outskirts of Budapest. The facility was refurbished in February 2000 and has been a jail since 2002. The premise is located on the second floor of one of the main administrative buildings, taking up about one-half. It includes a short-term arrest room, a medical room, a common room with TV, a kitchen for warming food and cells for accommodating a maximum of 24 persons.

There are house rules that govern the daily regime in the detention premise:

7:00	wake-up
7:00-8:00	cleaning and personal hygiene
8:00-9:00	breakfast
8:00-16:00	visitors
9:00-11:00	medical check-up (24-hour medical duty available)
12:00-13:30	lunch

<sup>61</sup> Report by the Parliamentary Commission for Civil Rights in case no. OBH 4172/2005., June 2006 <http://appserver.obh.hu/ugyek/letolt?id=1151916897154.119504> (in Hungarian)

18:00-19:00	dinner
22:00-23:00	cleaning and personal hygiene
23:00	lights out
23:00-7:00	sleeping

The jail commander responds to complaints. Border guard jail commanders often complain that they have no real means or powers to impose discipline or to apply sanctions against detainees who are violent and aggressive or who destroy jail furniture.

### ***Staff***

Relatively few guards are needed in the jail as there is a closed circuit television network for surveillance of detainees.

### ***Detainee population***

The premise is used for the detention of foreigners whose alien policing detention has been ordered, or for those whose deportation is to be carried out by air. In practice, however, few are detained in this premise as most foreigners spending a longer time in detention are placed in, or are transferred to, other alien policing jails in Hungary. In 2006, there was 0.21 person detained on an average day, which shows how rarely the premise was used. The average length of detention in this premise is about three or four days. In 2005, 208 people spent a total of 588 days in the jail, while in 2006, 121 persons were detained for a total of 448 days. Women are rarely detained in this facility and are accommodated in a separate room for women or families. It is expected that the number of foreigners held in this facility will increase in 2008.

### ***Accommodation***

Sanitary facilities are sufficient for the number of detainees. People sleep in small dormitories. There are five rooms with four beds in each. The furniture consists of beds, a table and chairs, as well as a locker for each detainee.

Detainees are free to leave their cells during the day and can use the common room where there is a television set. They are not allowed to move beyond the detention ward without an escort. Detainees are allowed one hour of open air exercise each day, under the supervision of border guards in a yard. Border guards try to accommodate various nationalities and/or persons of different religions separately.

### ***Contact with the outside world***

Detainees can receive visitors between 8am and 4pm. They may contact a lawyer of their choice or NGOs providing legal assistance. The HHC lawyer visits the premise on a regular basis (every two weeks) and provides free legal advice and representation. A public payphone, located within the closed ward, is available for detainees to use at their own cost. Phone cards can be bought through the border guards from detainees' deposited money. Similarly, if detainees want to purchase other items (e.g. food, hygiene articles, etc.) they can do so by giving a list to the guards who order it from a store contracted by the Border Guard Directorate.

### ***Activities for detainees***

There is a television and some newspapers available. During the one-hour daily open-air exercise, they can play basketball or football, weather permitting.

### ***General services for detainees***

There are no social workers, regular services by priests or psychiatric counselling available for detainees (both asylum seekers and illegally staying foreigners). The HHC provides free legal services to asylum seekers through a lawyer who visits the premises every two weeks.

### ***Protection of particularly vulnerable people***

On the rare occasions when women are accommodated in this premise, they are placed apart from the men. The jail is not wheelchair accessible and there are no special provisions for persons with physical disabilities.

### ***Information for detainees***

Detainees receive a copy of the house rules upon reception. The house rules are displayed in the jail as well. Information leaflets produced by the HHC are available in the jail, as well as IOM posters on its voluntary return programme. Information sheet dispensers, produced by the UNHCR, containing information leaflets on the asylum produced by the UNHCR and/or NGOs such as the HHC are available on entry, in the short-term arrest room, but not within the jail itself.

### ***De-facto duration of detention and release***

In most cases, this procedure can last up to 6 months. In practice, most people only spend three to four days in this detention premise.

### ***Reports***

There have not been any public reports on this facility published in recent years.

## **NYÍRBÁTOR BORDER GUARD DIRECTORATE**

*The issues of staff, health care, protection of vulnerable people and de facto duration and release, have also been covered in the overview.*

### ***Type, description and administration of the premise***

This premise is an alien policing jail maintained by the Nyírbátor Border Guard Directorate in the centre of the north-eastern town of Nyírbátor. It has the strictest regime among all the alien policing jails in Hungary. The 169-person capacity jail is in a separate three-storey building within the Directorate and was opened after extensive refurbishment in spring 2005. Prior to refurbishment, which was carried out with support of the EU Phare Programme, the jail had very poor material conditions and was overcrowded. The building has a small outer yard encircled by a brick wall topped with barbed wire. Two floors are used for detention, one for women and the other for men.

House rules and the daily regime are established by the jail commander. The rules govern the regular routine schedule, reception of visitors, correspondence, and so on. The main differentiating feature of this premise, as opposed to others in Hungary, is that it applies a regime almost identical to high-security prisons. Detainees are not allowed to move around freely within the ward and must remain in their cells unless the house rules provide otherwise.

The jail commander has very little formal disciplinary powers but detainees have expressed that a few guards have resorted to physical violence when faced with disturbing behaviour of detainees. Detainees may address complaints and requests to the jail commander in writing. Many such requests are submitted to the commander, mostly concerning requests for making telephone calls or purchasing items. The county prosecutor's office pays supervisory visits to the jail every two weeks but detainees hardly ever raise any complaints to him.

### ***Staff***

The overall number of staff is 83, including some members who are public employees (secretaries, nurses). They work in four 12-hour shifts of 19-20 persons per shift, 10 to 13 of who guard the detainees. Considering that recently the average number of detainees has been quite low (about 20 persons), the guard-detainee ratio is particularly high.

There are female guards. However, they do not work in the ward for male detainees. The guards are generally around 30 years, and many have served for several years in the facility. Half of the staff has taken part in mediation and conflict resolution training organised by an NGO, Menedék Hungarian Association for Migrants. Furthermore, 26 staff members are currently attending introductory English and German language courses.

### ***Detainee population***

The alien policing jail is used for the detention of foreigners who are in held under the Act II of 2007, including asylum seekers. Detailed detention records are properly kept and a daily report is available, as well as monthly statistics. The reports do not contain information about legal procedures concerning the detained foreigners, and the staff are not always aware when a detainee is an asylum seeker.

In 2006, there were 26.68 persons in detention on an average day. (In 2001, prior to the jail's refurbishment, the average daily number was 483.) When the HHC visited to the jail on 3 April and 10 May 2007, there were 17 and 19 detainees respectively. The vast majority are single men aged between 18 and 45. There are relatively few women (three on 10 May 2007). The detainees came from Serbia, China, Mongolia, Angola, Nigeria, Pakistan, Morocco, Bangladesh, Moldova, Russia, Georgia, Ukraine, and Turkey.

### ***Accommodation***

The jail is newly refurbished with adequate and well-kept facilities. It is clean, almost sterile. There are 11 cells with three beds each in the ward for women, and 38 cells (with three, four or seven beds in each) on the floor where men are held. There are plenty of common bathrooms with toilets and

showers. Additionally, each cell is equipped with a toilet, which is to be cleaned by the detainees themselves in each cell.

Each cell door has a small opening where guards check on detainees hourly. Detainees cannot leave the cells and move around freely in the ward unless the daily routine and guards allow. This means detained foreigners communicate mostly with their (generally two) cellmates if they share a common language. The jail commander said detainees of the same ethnic group, nationality or religion are generally accommodated together. Detainees leave their cells when ordered to do so by the guards for meals, outdoor exercise, showers or watching television in the evening, or when they receive visitors. As smoking in the cells is forbidden, smokers are allowed to leave the cells for a few minutes every hour.

There are two dining rooms in each ward, with tables and chairs screwed to the floor and a television set up in one corner. A rectangular-shaped empty grassy yard, encircled by a high brick wall topped with barbed wire, is where detainees are escorted for one hour per day to be outdoors.

Detainees eat the same food for lunch as the border guards working in the Directorate, but they often complain about the monotony of breakfast and dinner (consisting generally of bread and small cans of meat).

### ***Contact with the outside world***

Detainees can receive visitors during working hours. A notable sign of the strict regime is a Plexiglas wall separating the visitor from the detainee in the visitors' room, which is normally found in prisons but not in facilities like this one. Contact between the detainee and his visitor is supervised, but guards stand out of hearing. Most detainees never receive visitors during the six months they spend in detention. If detainees wish to make a telephone call (at their own cost) they have to submit a written request to the commander on the previous day, specifying the time and person/organisation they wish to contact. Phone calls are limited to about 15 minutes, according to the detainees. The only public payphone is located on the ground floor of the jail building, so a guard escorts the detainee to the telephone and stands nearby while the phone call is made therefore the privacy of the phone call is not always and entirely respected by the guards.

The commander said that sometimes a Christian pastor, or staff of the Budapest-based Mahatma Gandhi Human Rights Organisation, visits the detainees. The HHC lawyer pays weekly visits to the jail to provide free legal assistance to detainees. Apart from this, there is no regular NGO presence for monitoring or to provide social or psychosocial support to detainees.

### ***Activities for detainees***

In the evening, detainees can watch television, but CNN (the only foreign language channel) is only available in the television of one of the dining rooms, which is not used when there are only a few detainees. So a special request has to be submitted to watch CNN under the supervision of a guard. There is no library, only few Hungarian books are available for detainees. Foreigners have the right to go out in the court to play football or to walk one hour per day, but as there are no sport equipments available, physical activities mostly remain unreachable.

### ***General services for detainees***

Some guards speak basic English or Russian, so basic communication is manageable. Some detainees come to the premise from a prison, where they have already learned some Hungarian. There is no translation or interpretation available apart from that for legal procedures.

### ***Health care***

The doctor is a civilian contracted by the Border Guards, while his aide, a paramedic, is an officer of the border guards. There is no laboratory and no X-ray machine, so illnesses go undiagnosed unless detainees have visible signs of illness or inform the doctor. There are no tests for HIV, or for tuberculosis. The doctor can prescribe medicines for sick inmates. Those who are traumatised or mentally ill get tranquillisers. In cases of serious illness, detainees are transported to the local clinic to be treated by a specialist (dentist, gynaecologist) or if needed, to the hospital. There is a section of isolation wards for detainees who have serious contagious illnesses, e.g. contagious hepatitis.

### ***Protection of particularly vulnerable people***

There are no arrangements for persons with physical disabilities. There have been several cases of pregnant women, who receive prenatal care in the local clinic in Nyírbátor.

### ***Information for detainees***

The house rules and information on the asylum procedure as well as the IOM voluntary return programme are placed on a wall in the dining rooms. The name and phone number of the HHC lawyer is posted on the wall apart from information displayed in common with other facilities.

### ***De-facto duration of detention and release***

Most detainees spend at least 30 days but generally several months in the jail. A high number of detainees were detained for the maximum time limit of 12 months. In cases where the legal time limit of detention has expired and removal from Hungary was not successful, detainees will be released to the community shelter maintained by the Office of Immigration and Nationality, located in the neighbouring building on the premises.

### ***Incidents***

Prior to the refurbishment of Nyírbátor jail, hunger strikes and suicide attempts occurred quite frequently. Since the reopening of the jail, such serious incidents have not taken place. The jail commander reported that in 2006, 12 extraordinary incidents (e.g. violence between detainees, use of physical restraint by guards, self-injury, attempted escape) occurred, and there were two such incidents in 2007 (verbal fight between detainees where guards had to use restraint and a short hunger strike due to worms found in the food).

### ***Reports***

An international delegation of human rights NGOs, all members of the International Helsinki Federation for Human Rights (IHF) paid a visit to Nyírbátor alien policing jail in May 2005.<sup>62</sup> After each monitoring visit, the UNHCR and the HHC write a report on the main findings of the visit, including urgent problems, most important issues to address to the management and urgent follow-up actions.

## **GYŐR BORDER GUARD DIRECTORATE**

*The issues of staff, health care, protection of vulnerable people and de facto duration and release, have also been covered in the overview.*

### ***Type, description and administration of the facility/premise***

The Győr Alien Policing Jail is an administrative detention premise consisting of a building and a courtyard measuring circa 50 square metres. The facility is located in the city of Győr, about 50 kms from the Austrian border. Around the jail and inside the premises, there are administrative buildings of the Border Guard and the alien policing department of the Office of Immigration and Nationality. The building, which has a maximum capacity of 50 persons (40 men and 10 women), was last repainted in 2006, but is otherwise in fairly poor condition.

The jail has a set of house rules, which includes the time of getting up, breakfast, lunch, dinner, open air and free time activity. If detainees have a problem, they usually turn to the guards or write a complaint letter to the management, which eventually investigates the problem.

The detainees may keep their money in a safety deposit box in the building and if they would like to buy something from outside the facility (e.g. cigarettes or extra food), they may ask the staff to do so on certain days of the week.

### ***Staff***

The majority of the staff are male (at the time of the last visit by the HHC on 7 May 2007, there was only one female guard for female detainees). Guards are generally aged between 27 and 40 years.

### ***Detainee population***

Only third-country nationals, including asylum seekers, are accommodated in the premise. In 2006, the daily average of detainees was 28.58 persons. At the time of the last visit of the HHC on 7 May 2007, there were 33 detainees: four women and 29 men. Among them there were Chinese, Moldovan, Serbian and Turkish citizens.

### ***Accommodation***

Apart from the cells, there is a dining room of circa 40 square metres with a TV and a small book shelf that the border guards call a "library". The border guards told the HHC that they had introduced a

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<sup>62</sup> The findings of the visit are summarised in the report "Places of Detention in Hungary : Report from the visit of the delegation of human rights NGOs to places of detention in Hungary on 11 and 12 May 2005", pp. 65-69 ([http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=58&d\\_id=4218](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=58&d_id=4218) )



Chinese language TV-channel for the Chinese detainees, which the latter confirmed. There is a bad smell in the dining room. Sanitary facilities are in poor condition but are acceptable.

Men are accommodated together in one part of the building, and women are in a separate part behind the men's section. Men are accommodated together according to nationality or ethnicity as much as possible. The women's section has four rooms and looks depressing. They have one TV in the corridor.

Detainees are allowed one hour of open-air activity per day. According to the border guards, the detainees are allowed to stay longer and may go out at other times in the courtyard, if there is need. They usually stay in their cells for the rest of the day but the border guards said they could watch TV. They are not allowed to leave the small corridor outside the cells. There is no other recreational activity available to them and boredom and frustration are a general problem.

#### ***Contact with the outside world***

Detainees are allowed to contact a lawyer if so wish. In addition, they can use a pay phone placed in the corridor any time during the day. They can receive visitors between 8 am and 4 pm.

The HHC conducts regular monitoring visits to the Győr premises to monitor the condition and status of the detainees. The Prosecutor's Office also visits the centre twice a month and makes regular recommendations for improvement.

#### ***Activities & services for detainees***

No recreational activities are organised by border guards, NGOs or other organisations or individuals. The lack of purposeful activity often leads to depression. The border guards said that there used to be a table tennis but the detainees destroyed it.

There are no social workers, services by priests or psychiatric counselling available. The HHC provides free legal services to asylum seekers through a lawyer who visits the premise on a weekly basis.

#### ***Health care***

The management of the facility said they must find money to cover medical costs in their annual budget as there is no separate budget for this.

#### ***Protection of particularly vulnerable people***

According to the management of the facility, no specific protection is provided to the physically disabled, the elderly or single mothers with children.

#### ***Information for detainees***

Although the border guards said that detainees receive information about their rights and obligations in written form, the HHC met several detainees who were not aware of information leaflets and who had not received any information on their detention (reasons, length, legal assistance, etc) upon arrival.

#### ***Reports***

After each monitoring visit they conduct, UNHCR and the HHC write a report on the findings of the mission. They also report on urgent matters immediately to the management of the facility and discuss possible quick solutions.

## **4 EXISTING CIVIL SOCIETY ACTIVITIES**

Regrettably there are relatively few Hungarian non-governmental organisations that deal with administrative detention of migrants.

Hungarian Helsinki Committee/Magyar Helsinki Bizottság

H-1054 Budapest, Bajcsy-Zsilinszky út 36-38.

H-1242 Budapest, PO Box 317. Hungary

tel/fax: + 36 1 321 4323, 321 4327, 321 4141

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

<http://www.helsinki.hu>

Relevant activity: monitoring detention and free legal counselling

Mahatma Gandhi Human Rights Organisation/Mahatma Gandhi Emberi Jogi Egyesület

Hungary, H-1092 Budapest, Ferenc körút 18.

tel: + 36 1 215 8301

email: [budgandhim@yahoo.com](mailto:budgandhim@yahoo.com)

Relevant activity: visiting detainees and free legal advice

### INTRODUCTION<sup>63</sup>

This report contains the situation on the ground Internment Camp for Illegal Immigrants in Olaine, the only centre currently being used for immigration detention purposes in Latvia. The findings in the report were elicited through direct observation and questionnaires conducted between 18 June and 20 June 2007, with seven detainees, five men and two women, from the Russian Federation, Moldova, and Iraq, and with two members of staff at the detention centre. Altogether, a total of nine interviews were conducted and evaluated.

### 1 ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004

After Latvia regained independence in 1991, many new problems arose in connection with the administrative detention of asylum seekers and illegally staying third-country nationals – there were hardly any such people in the country before. In 1995 a detention premise for asylum seekers and illegally staying third-country nationals was created at Olaine, but it was only after applying to join the EU that detention became a real issue for Latvia, because membership would make it an external border state of the bloc. Since its accession, Latvia has been obliged to act according to the policy agreed upon by EU Member States. Multiple complaints from experts of the European Commission, which found living conditions of the said premise to be inadequate, led to improvements. In 2002, renovation works were carried out in the camp, and it was put under the jurisdiction of the State Border Guard, which is still running it to date.

In 2002, the Immigration Police Board of the State Police was reorganized and made part of the Border Guard of the Republic of Latvia. Consequently, the Border Guard took over all the tasks related to controlling ‘aliens’ in the territory of Latvia. The only detention centre in Latvia, called the Internment Camp for Illegal Immigrants in Olaine (*Nelegālo imigrantu uzturēšanās nometne „Olaine”*), falls under the jurisdiction of the Border Guard.

### 2. SUMMARY OF NATIONAL LAW

The main legislation dealing with the detention of asylum seekers and illegally staying third country nationals in Latvia is the Immigration Law Act of 31 October 2002.

#### 2.1 Legal grounds for detention

Article 51 Immigration Law Act<sup>64</sup> of 31 October 2002 states that a foreigner can be detained by the Border Guard or the State Police if s/he has illegally crossed the border of the Republic of Latvia or has otherwise violated the rules and regulations for foreigners entering the Republic of Latvia or if the competent authorities have grounds for suspicion that the foreigner poses a threat to security of the state or to public order and security.

In terms of article 52 of the same Act, the Border Guard or State Police officer has to write a detention protocol at the moment a person is taken into custody. The protocol must contain information about the time and place s/he was taken into custody, the name and rank of the officer making the arrest, the detainee’s personal details and the reasons for detention. Article 57 states that Border Guard or State Police officer has to ascertain the detainee’s identity, take his fingerprints, conduct a search of his property and, if necessary, arrange for a medical examination. All this information has to be included in the protocol.

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<sup>64</sup> Hereinafter referred to as the ‘Immigration Act’

## **2.2 Legal grounds for the detention order**

To detain a foreigner for longer than 10 days, the Border Guard or State Police officer needs to obtain a detention order from a regional judge, who can issue an order to detain the foreigner for a maximum period of two months<sup>65</sup>. After the expiry of this period, the Border Guard or State Police officer can ask for an extension in the same court. Factors that have to be taken into account by the court when assessing the need for extension of period of detention include: lack of cooperation with the immigration authorities or deliberate concealment of identity on the part of immigrant concerned; lack of the required financial means to support his/her stay in the Republic of Latvia; suspicion that the foreigner is a member of a criminal or anti-governmental organization or that s/he poses a threat to security of the state or to public order and security; evidence that the foreigner has committed a crime against humanity, crime against peace, a war crime or has participated in genocide, which has been recorded in court.

## **2.3 Legal grounds for right of appeal**

In terms of article 51 of the Immigration act the Border Guard or State Police officer has the legal right to detain a foreigner for up to 10 days. This period may be extended by the court upon request of the Border Guard or State Police. The detainee has the right to appeal the detention decision in the court. The legal grounds for right of appeal from the Court decision are found in the Article 55(6) of the Immigration Act, which states that the foreigner or his representative has the right of appeal within 48 hours of receiving the Court decision. The appeal is addressed by the Regional Court immediately, and the Court decision is final and is no longer subject to appeal.

## **2.4 Legal grounds for instructions on right of appeal**

Article 56(1) states that the detainee has the right to appeal the detention decision in the Regional Court, to contact his/her country's consulate and receive legal assistance. It also stipulates that the foreigner must be informed of these rights at the moment of detention. Detainees must pay for legal assistance as there is no provision for free legal assistance.

## **2.5 Legal grounds for legal maximum duration**

The legal grounds for the maximum duration of detention are laid down in the Article 54 of the Act of 31 October 2002, which states that for detention to be extended beyond 10 days the Border Guard officer needs to obtain a detention order from a regional judge. If the authorities do not manage to expel the foreigner within the period of time stipulated by the Court, the judge, upon the request of the Border Guard, can extend the detention of the foreigner for further periods of 2 months at a time, up to a maximum of 20 months.

## **2.6 Legal grounds for contact with the outside world**

Article 59 of the Immigration Act states that foreigners detained in terms the said Act must be placed in specially equipped facilities or in a residence centre, separate from persons arrested or detained within the context of criminal procedures. This centre falls within the jurisdiction of the State Border Guard – it is not a prison and it only accommodates people detained for breaching immigration law.

The second part of Article 59 prescribes that after being placed in the residence centre the detained foreigner is informed of his rights and obligations, as well as with the centre's internal rules and regulations, in a language s/he understands (if necessary, with assistance of an interpreter). It further states that the detainee has the right (1) to contact his/her country's consulate, (2) inform his/her family members, relatives or other people of his/her place of residence, (3) receive legal help from his/her own funds, (4) meet with family members or relatives, as well as with representatives of international and non-governmental human rights organizations, (5) file complaints and petitions.

## **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Part 1 of Article 59(2) of the Immigration Act stipulates that when a foreigner is placed in the residence centre s/he must undergo a medical examination and any other necessary sanitary measures. If the detained foreigner has health problems, s/he may be placed in a specially designed room, on the advice of the medical personnel. Part 2 of the Article 59 states that the detainee has the right to emergency medical aid and the necessary health support.

The detainee also has the right to obtain medical services from a doctor of his choice and medication prescribed by the examining medical personnel at his/her own expense.

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<sup>65</sup> Article 54 of the Immigration Law Act

## **2.8 Legal grounds for protection of particularly vulnerable people**

Article 59 part 1(3) of the Immigration Act states that, upon placement in detention, detainees shall be treated in a manner that respects general human rights principles and internal security, with due regard for individual characteristics and psychological match.

Point 3.1 states that male and female detainees should be accommodated separately. If the detained foreigner is underage, s/he shall be accommodated together with his or her parent or legal guardian. Detained families too are accommodated together, if this is what they want. When an adult detainee has a minor child that has not been detained, s/he may request that the child is placed in the detention centre with his/her parent. The child of the detained foreigner has the same rights and obligations in the residence centre as his/her parent.

## **2.9 Legal grounds providing for release**

According to Article 59(4) of the Immigration Act a detained foreigner can be released from the residence centre (1) if the detention term has ended, (2) for the purpose of expulsion, or (3) in accordance with the State Border Guard officer's decision about the release of the detained foreigner.

## **3. OVERVIEW OF CONDITIONS IN DETENTION**

There is one centre used for the detention of asylum seekers and illegally staying third country nationals in Latvia: the Internment Camp for Illegal Immigrants in Olaine.

### ***Type and description of the centre***

The Internment Camp for Illegal Immigrants is located just outside the town of Olaine, 30 km from the capital Riga. The detention premise consists of about 5000m<sup>2</sup> of territory surrounded by a fence, with a main two-storey building and a separate fenced yard. The area is bare, without trees; there are just a few patches of grass and asphalt. Detainees, the centre staff and guards all reside in the building. The premise was built in 1979-1980 as a rehabilitation centre for alcoholics. The building was renovated in 2002-2003 for the accommodation of illegal immigrants, and a new boiler house was built and a new heating system was installed.

No information on the budget of the Internment Camp for Illegal Immigrants in Olaine is publicly available, but we discovered that the camp does not have its own separate budget. Its expenses are covered by the Department of Riga of the State Border Guard. There are no official data available on the costs of the upkeep of the premise and the needs of the detainees, but we learned through the interviews that the costs amount to about €8.60 per person per day on average. From this, the detainees are allocated about €3.50 per person per day for food, which they can order according to their needs and wants through the guards. The detainees are not required to cover any of the costs of their stay at the camp.

### ***Staff***

All the guards at the Internment Camp for Illegal Immigrants are Border Guards, and about 60% are male and 40% female. The Border Guard organizes specialized training courses for its officers who work with immigrants, and currently about 80% of the staff have undergone such training. Although it is not compulsory, that Border Guards may attend a course for working with immigrants is a positive sign.

Knowledge of foreign languages is not a requirement for guards working at the camp, but all speak Latvian and Russian fluently, and some also know English. Translators are called in as necessary. A nurse is present in the camp and when necessary, a doctor is called.

The administration tasks and procedures for the guards are clearly defined. The guards at the camp perform basic everyday tasks, such as ensuring security of the premise and respect for the rights of the detainees. Some problems arise due to the fact that the upper management of the centre is the Department of Riga of the State Border Guard, which means that any complaints or suggestions have to go through them, a long bureaucratic process which takes a lot of time. In reality hardly anything filters through this system.

### ***Detainee population***

There were eight detainees in the camp at the time the research was conducted: five from the Russian Federation, one from Iraq, one from Moldova, and one whose citizenship had not been identified. The

vast majority of the detainees who pass through this camp are citizens of one of the former Soviet Union countries. Most come from the Russian Federation. According to 2005 statistics, there were 45 detainees from the Russian Federation; 31 detainees from Moldova; 16 from Ukraine; seven from Somalia; six from Belarus; five from Lithuania; four from Kazakhstan, and one each from Armenia, Georgia, USA, Finland, Azerbaijan, Estonia, Afghanistan, Syria, Israel, Peru, and Sweden. The following statistics show how the number of foreigners detained in Olaine is decreasing steadily:

- In 1997 – 2005
- In 1998 – 1690
- In 1999 – 1541
- In 2000 – 893
- In 2001 – 877
- In 2002 – 234
- In 2003 – 283
- In 2004 – 257
- In 2005 – 155
- In 2006 – 115

About 25% were female, and less than 5% were minors.

### ***Accommodation***

The main building is divided into three areas, separated by metal bars/gates, each catering for a different type of detainee: one for men, another for male asylum seekers and the third for women and families. On the first floor, there are administrative facilities and the block for women and families, and on the second floor there are the other two blocks. The entrance of each block has metal bars, as do all the windows of the premise. The detainees are accommodated in rooms according to language and cultural groups. Each block has several rooms for two or four people, ranging from 10m<sup>2</sup> to 16m<sup>2</sup>.

At the time the interviews were conducted, there were relatively few detainees, so each had a separate room. The current capacity of the premise is 40 people, but the guards said it could accommodate up to 70 people if need be, by putting bunk beds. All rooms have basic furniture such as beds, tables, chairs, and dressers. Since the building underwent renovation less than five years ago, all the rooms look fairly neat and are in decent shape. The rooms for common use are restrooms, showers, and a kitchen in each block, where detainees prepare meals for themselves, but there are no separate dining rooms. There is a recreational room with a TV set in each block, and a library and a gym room with weight-lifting equipment and a ping-pong table, for the common use of all the detainees.

Posted on a notice board in each block is a list of items that detainees are allowed to keep in their rooms: a plate, a cup, a spoon, a towel, clothes, shoes, two bars of soap, shampoo, a toothbrush, toothpaste, a plastic comb, shaving equipment, glasses, contact lenses, crutches (with a prescription from the doctor), notepaper, a notebook, pens, postal stamps, books and magazines, documents related to detention, cigarettes, a lighter, matches, a personal computer without access to Internet, a mobile phone, and make-up that does not contain alcohol.

The detainees can walk around their block without any restrictions. The guards are located on the first floor and can be called by pressing a button that is installed in each of the blocks. There is also a room for those detainees who violate the internal rules and regulations. The guards said it is very seldom used.

### ***Contact with the outside world***

There are no restrictions placed on contact with people outside the camp. Detainees may contact any organisation or individual they wish, such as non-governmental organisations, lawyers, diplomatic representatives, family members, friends, and priests. They may use a payphone which is available for four hours every day or they may resort to written correspondence. There is no access to Internet or e-mail. Face-to-face meetings are permitted every day for three hours and there are no restrictions on visitors.

There are special rules for meeting consulate and embassy workers, so the detainees can meet with them at any time.

In theory there are no limitations placed on access to contacts or any limit on the number or type of contacts. It is true that the three-hour visiting time per day (and unrestricted time for embassy and consulate workers) is enough to meet detainees' needs. However, the most common form of communication with the outside world is the phone, and the detainees have only four hours per day of access to the only payphone in the entire premise, although on special request, the guards can arrange

phone calls at a particular time. Having said this, it is pertinent to note that detainees are allowed to make use of their mobile phone, if they have one.

As far as independent monitoring is concerned, there is no ongoing process, but upon request any NGO may send a representative to monitor the conditions of the premise and the detainees. So far only the Latvian Red Cross Organisation has shown any interest in doing so.

### ***Activities for detainees***

There is a set schedule for each day that is posted on the notice board in each of the blocks in Latvian and Russian. In practice this schedule is not observed very strictly and the detainees can more or less choose the time they want to eat or go to the recreation room. The daily schedule is as follows:

7:00 – 8:00	Waking up
8:00 – 8:30	Morning wash-up
8:30 – 9:30	Making and having breakfast
9:30 – 10:00	Cleaning rooms
10:00 – 13:00	Filing complaints and suggestions to the camp officer, visiting medical personnel, meetings with relatives and other visitors, recreational time
13:00 – 14:00	Making and having lunch
14:00 – 19:00	Visiting medical personnel, recreational time
19:00 – 20:00	Making and having dinner
20:00 – 22:00	Recreational time
22:00 – 23:00	Getting ready for sleep
23:00 – 7:00	Night rest, silence

As the schedule suggests there is a lot of time for activities and recreation. The detainees can watch TV, which has only the five local channels, or listen to radio, both located in the recreation room in each block. There is also a library from where they can take books to read in their rooms. There are board games, such as chess and checkers, and cards. Then there is the gym room and outside in the yard there is a basketball hoop, where detainees play sometimes, but they are permitted outside only for four hours every day – two hours before lunch and two hours after.

Due to the fact that the detainees are forced to spend most of the time indoors behind bars, the overall atmosphere is rather depressing, and for the most part they are very passive and just watch TV.

Although theoretically a range of recreational activities are available to the detainees – from reading books to playing board games and cards, to listening to radio and watching TV, to weight-lifting and playing ping-pong, to playing basketball in the yard outside – in reality only a few are pursued and by far the most popular pastime is watching TV. Thus the general mood among the detainees is somewhat depressing. One improvement, which was suggested by several detainees, would be to increase the outdoors time from four to at least eight hours, because the inability to move around and being confined is what brings the morale of detainees down.

### ***General services for detainees***

One service provided is that of translation – translators for Russian, English, Spanish, and French are immediately available, but a few days may be needed to organise the service in other languages. A few years ago, when there were two detainees from Somalia, an interpreter was invited from Estonia. Priests and pastoral services are available on request. For social services and assistance, like second-hand clothing, detainees have to contact organisations themselves. Members of staff do not go out of their way to arrange such services, although they welcome any aid which comes.

### ***Health care***

All detainees have to undergo a general medical examination upon entering the premise, and if necessary they are treated. First aid and medical services are available for detainees every weekday, since a nurse works at the camp. In case of more serious need, a doctor or the emergency medical service is called and the detainee is taken to the hospital. However, although basic physical health needs are met, psychological problems are neglected, as there is no treatment available for stress and depression related illnesses. No request for such treatment has ever been made.

### ***Protection of particularly vulnerable people***

There are no special measures designed for the protection of particularly vulnerable people. Other than the fact that families are housed together, other groups of detainees do not receive any special care. There was a case of the oldest man ever detained in this camp, who was 92, and he had to live in the same conditions and under the same rules as everyone else. Further, there is no special place to house

minors without relatives or guardians. The premise is not suitable for wheelchair use, and all the guards said they could do was to place a disabled person on the first floor in a separate room. It should be noted that the premise has never accommodated any unaccompanied minor detainees or disabled people with special needs.

### *Information for detainees*

At the time of arrival at the premise, detainees are given a booklet in six languages that addresses all of the following points:

- Who can detain you and on what grounds
- Rights of a detainee
- Detention order
- The duration of detention
- The decision of a judge on the detention and the appeal procedure
- Where you will be accommodated
- What procedural activities the state police officers or state border guards who have detained you are allowed to carry out
- Decision regarding forcible expulsion
- Language of communication
- Legal aid

At the end of the booklet, there is a list of the following governmental and non-governmental organisations with all their contact information:

- Office of Citizenship and Migration affairs
- The State Border Guard Riga Board Immigration Service
- The Olaine Internment Camp for Illegal Immigrants
- Administrative District Court
- Riga Regional Court
- Specialised Inter-branch Office of the Prosecutor
- State Human Rights Office
- Latvian Red Cross
- Latvian Centre for Human Rights and Ethnic Studies

As mentioned above, the centre's rules, schedule and a list of permitted items are posted on notice boards in each of the blocks.

**Although detainees are provided with a considerable amount of information, the procedural explanations that would help detainees to access these possibilities is lacking, so any improvement in the detainees' situation is left to their own initiative.**

### *De-facto duration of detention*

As was explained earlier, according to the Immigration Law of the Republic of Latvia, to detain a foreigner for longer than 10 days, the Border Guard or State Police officer needs to obtain a detention order from a regional judge, who can issue an order to detain the foreigner for a maximum period of two months. After the expiry of this period an extension of the detention period must be authorised by a judge upon request of the Border Guard or the State Police. The court may order prolongation for periods of up to two months each, up to a maximum of 20 months. The guards said that, in practice, on average each detainee spends around two months at the camp. The longest case was of two citizens of Somalia who spent 11 months at the camp. However, the administration and staff of the centre do whatever they can to ensure the swift expulsion of those foreigners who are ordered to leave the centre.

## **4 EXISTING CIVIL SOCIETY ACTIVITIES**

After the accession of Latvia to European Union, when the situation of asylum seekers and illegal third-country nationals became a greater issue, there has been increased interest in conditions and rights of asylum seekers, but a lot less attention has been paid to the illegal immigrants. Several projects have been carried out regarding the conditions of asylum seekers and persons in process of getting legal status in Latvia, mainly sponsored by the European Union. But only a couple of non-governmental organizations have shown interest in the detainees at the Internment Camp for Illegal Immigrants in Olaine. One of such organizations is Latvian Red Cross. They have been at the camp and provided the detainees with food and some second-hand clothing. Another organization that has shown interest in these detainees is a journalistic organization "Dialogi", which acts primarily in order to raise public

awareness on certain events. They have interviewed several of the detained foreigners and publicized a few articles on the issues of their living conditions and detention conditions.



### INTRODUCTION<sup>66</sup>

In Lithuania, as of 1<sup>st</sup> March 2007, there was only one detention centre called the Foreigners' Registration Centre, with two separate premises: one for asylum seekers whose claims are being processed (the reception premise) and another for illegally staying third-country nationals.

Two non-governmental organisations have access to the detention centre: the Lithuanian Red Cross Society and Caritas of Vilnius Archdiocese. Although both organisations spare no efforts to help asylum seekers in the reception premise, those in the detention premise are forgotten.

The findings in this report were elicited through direct observation and questionnaires with 8 detainees from Armenia, Kazakhstan, Morocco, Nigeria, Russia, as well as seven people who have access to the centre, among them representatives of UNHCR Lithuania, the Lithuanian Red Cross Society, and staff of the Foreigners' Registration Centre. Altogether a total number of 15 interviews were conducted and evaluated.

The interviews with detainees in the Foreigners' Registration Centre reveal their concerns and complaints:

- No help from NGOs or religious groups, and a lack of social work;
- No opportunities for legal consultation;
- Unsatisfactory accommodation conditions;
- Lack of sport equipment, meaningful activities to occupy the time, limited opportunities to watch television;
- Lack of money required for communication with the outside world; delay in getting postage stamps.

### 1. ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004

The practice of administrative detention of illegally staying third-country nationals has been in place in Lithuania since 1996. Since then, there have been major changes in the practice of administrative detention.

The report focuses mainly on the current legal situation and detention conditions in Lithuania, but this section gives a brief overview of how the law and practice on detention of illegally staying third country nationals and asylum seekers in Lithuania developed in recent years.

There are three main laws pertaining to detention in Lithuania: the Law on the Legal Status of Foreigners; the Law on Administrative Proceedings; and the Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre, approved by the Decree of the Government of the Republic of Lithuania.

The Law on the Legal Status of Foreigners provides that a foreigner may be detained for the purposes of removal in case of illegal entry or stay or return where admission into national territory has been refused. Foreigners suspected of using forged documents may also be detained. The Law on the Legal Status of Foreigners also authorises detention where it is necessary to prevent the spread of dangerous infective diseases and to protect public policy, public security and public health.

Until December 1996, if a foreigner was detected by the police or border guards and needed to be detained before being removed, s/he used to be kept in a police cell. After the detention centre for illegally staying or illegally arrived third-country nationals – the Foreigners' Registration Centre – was founded in Pabradė on 1<sup>st</sup> January 1997, all foreigners arrested for the purpose of removal were detained in that centre.

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After Lithuania ratified the Geneva Convention on 27<sup>th</sup> July 1997 and a Law on the Legal Status of Refugees came into force, the centre also began to host asylum seekers who were kept in detention while their claim for asylum was initially investigated, until they could be moved to the Refugee Reception Centre in Rukla. The initial investigation takes about one month and includes a first asylum interview, identification and other checks.

Before Lithuania joined the EU, the Law on the Legal Status of Foreigners of 29 April 2004 made no distinction between the grounds for detention of illegally staying third-country nationals and asylum seekers and provided for less restrictive measures than detention, i.e. alternatives to detention, such as reporting to the local police, accommodation in the Foreigners' Registration Centre without restriction of movement and others. Accommodation of asylum seekers without restriction of movement became the most frequently used measure for asylum seekers.

Since new amendments to the Law on the Legal Status of Foreigners came into force in December 2006, there are no longer any real legal grounds to keep an asylum seeker in detention while he or she is awaiting the outcome of the asylum procedure. In fact, asylum seekers are usually housed in the Foreigners' Registration Centre and are not detained.

## **2 SUMMARY OF NATIONAL LAW**

The main laws regulating detention of illegally staying third country nationals and asylum seekers in Lithuania are the following: the Law on the Legal Status of Foreigners and the Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre, approved by the Decree of the Government of the Republic of Lithuania. The Law on Administrative Proceedings is also relevant.

### **2.1 Legal grounds for ordering detention**

Article 113 of the Law on the Legal Status of Foreigners provides that a foreigner may be detained for one or more of the following reasons: in order to prevent unauthorised admission into national territory; in case of illegal entry or stay; where there is a suspicion that a foreigner is using false documents; in order to return the foreigner refused admission to the country s/he came from; where a decision on removal of the foreigner from the Republic of Lithuania has been taken.

In addition to the grounds relating to breaches of Lithuania's immigration law, outlined above, the said legal provision also authorises detention of foreigners on public health grounds, *to stop the spread of dangerous ... communicable diseases*, and on security grounds, *when the foreigner's stay in the Republic of Lithuania constitutes a threat to public security and public policy, public health*.

### **2.2 Legal grounds for the detention order**

Article 114 of the Law on the Legal Status of Foreigners authorises detention by an administrative authority, i.e. *the police or any other law enforcement institution officer*, for a maximum of 48 hours. Detention beyond 48 hours must be authorised by a court order.

In terms of article 116 of the said Act, where grounds for the continued detention of a foreigner exist, the police or any other law enforcement institution officer shall apply to the local district court, within 48 hours from the moment of detention of the foreigner, to request authorisation to detain him/her for a period of over 48 hours or to grant a measure alternative to detention. The court's decision to detain a foreigner must state the grounds for detention, the time period of detention with the exact calendar date indicated and the place of detention<sup>67</sup>.

### **2.3 Legal grounds for right of appeal against the detention order/for right to challenge detention**

Article 117 §1 of the Law on the Legal Status of Foreigners provides detained foreigners with the right to appeal the regional court's decision to detain him/her or to extend the detention period or to apply measures alternative to detention. The appeal must be filed before the Supreme Administrative Court of Lithuania, according to the procedure established by the Law on Administrative Proceedings. The appeal may be submitted through the Foreigners' Registration Centre, which shall transfer the appeal to the Supreme Administrative Court of Lithuania.

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<sup>67</sup> Article 116 §4

#### **2.4 Legal grounds for instructions on right of appeal/instruction on right to challenge detention**

Article 87 §1 and §5 of the Law on Administrative Proceedings stipulate that the court's decision should consist of opening, descriptive, motivational and resolution parts. The resolution part should include, among other things, the term of appeal and appeal order. Article 85 §3 of the said Law requires that the descriptive and resolution parts of the court decision are written and announced in public the day after the hearing.

#### **2.5 Legal grounds for legal maximum duration**

Lithuanian law does not lay down a legal maximum duration of detention or alternative to detention, but there are two articles which are relevant.

In terms of article 116 §4 of the Law on the Legal Status of Foreigners, the district court ordering detention beyond the initial 48 hour period<sup>68</sup> determines its duration; this must be stated in the detention order, with the exact calendar date indicated and the place of detention.

Article 119 of the said law provides that a detained foreigner shall be immediately released, upon the disappearance of the grounds for his/her detention, according on the effective court's decision, or once his/her detention period expires.

#### **2.6 Legal grounds for contact with the outside world**

The legal grounds for contact with outside world are found in the Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre, approved by the Decree of the Government of the Republic of Lithuania on January 29, 2001 Nr. 103

Article 17 of the said order stipulates that persons accommodated at the Centre shall have a right to:

- 3) obtain legal assistance guaranteed by the state;
- 5) receive and send an unlimited number of letters;
- 6) receive an unlimited number of printed media or books and parcels;
- 8) receive and send postal orders and money;
- 9) recruit an attorney for whose services s/he will pay;
- 10) use paid telephone services which are offered in the residential territory;
- 13) perform religious rituals;
- 14) meet with the persons visiting him/her in the territory of the Centre upon the permission of the head of the Centre.

Article 18 also provides that, besides the above rights, asylum seekers shall have the following rights, which are related to the refugee status determination procedures:

- 3) the right to obtain the services of an interpreter;
- 6) the right to communicate with representatives of the United Nations High Commissioner for Refugees

#### **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Provision of healthcare is regulated by the Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre.

Article 29 states that primary health care and emergency aid, including a possibility of inoculation pursuant to the national programme of immunisation carried out in the Republic of Lithuania, shall be guaranteed to the persons accommodated at the Centre.

In terms of article 30, such health care shall be organised according to the laws regulating health care of the Republic of Lithuania. Primary health care services shall be provided by a general practitioner, doctor or nurse<sup>69</sup> and emergency aid services shall be provided by health care institutions according to the order established by the laws and other legal acts of the Republic of Lithuania<sup>70</sup>.

Patients and persons who are suspected to be ill with dangerous or especially dangerous contagious diseases shall be hospitalised, isolated if necessary, examined and treated<sup>71</sup> in accordance with national laws on prevention and control of contagious diseases<sup>72</sup>. Moreover, in terms of article 34, persons

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<sup>68</sup> Laid down by Article 114

<sup>69</sup> Article 31

<sup>70</sup> Article 32

<sup>71</sup> Article 33

<sup>72</sup> The main legislation in this area is the Law on Prevention and Control of Contagious Diseases of the Population of the Republic of Lithuania (News, 1996, No 104-2363)

having arrived from territories infected with especially dangerous disease agents can be declared subjects of partial quarantine according to the order established by the Ministry of Health Care.

In addition to healthcare, the law provides for psychological services to be provided to people who experienced torture or rape, minors, single women and the elderly<sup>73</sup>.

Article 36 provides for the regular disinfection and pest control of all living spaces and communal, canteen, subsidiary, storage premises pursuant national standards regulating hygiene requirements.

## **2.8 Legal grounds for the protection of particularly vulnerable people**

The only provision relating to the protection of particularly vulnerable people is that contained in article 35 of the Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre, which stipulates that psychological services shall be provided to the persons who experienced torture or rape, minors, single women and the elderly.

## **2.9 Legal grounds providing for release**

The provisions regulating release are those found in article 119 of the **Law on the Legal Status of Foreigners, which states that** upon the disappearance of the grounds for the foreigner's detention, stated in the court's decision, the foreigner shall be immediately released. The same applies when the foreigner's detention period, established by law<sup>74</sup> or by the court<sup>75</sup>, expires.

## **2.10 Legal grounds for any other rights**

Asylum seekers also have rights related to the asylum procedure.

Article 71 of the Law on the Legal Status of Foreigners lays down the rights and duties of an asylum applicant in the Republic of Lithuania while his asylum application is being examined. Paragraph 1 of the said article states that:

*During the processing of an asylum applicant's application for asylum in the Republic of Lithuania the applicant shall have the following rights:*

- 1) to be accommodated at the Foreigners' Registration Centre or Refugee Reception Centre and to use the services provided by them;*
- 2) to manage and have notarised documents relating to the processing of the application for asylum;*
- 3) to make use of legal assistance guaranteed by the state;*
- 4) to receive compensation for the use of means of public transport where the use is linked to the processing of the application for asylum;*
- 5) to make use of the interpreter's services free of charge;*
- 6) to receive free immediate medical aid and social services at the Foreigners' Registration Centre or Refugee Reception Centre;*
- 7) to receive a monthly monetary allowance in the manner laid down by the Minister of Social Security;*
- 8) to apply to and meet representatives of the Office of the UNHCR;*
- 9) other rights that are guaranteed under international treaties, laws and other legal acts of the Republic of Lithuania.*

Minor asylum seekers have the right to study at state educational facilities, including vocational schools.

## **3 OVERVIEW OF DETENTION CONDITIONS**

This section provides a description of conditions in the one centre currently being used to detain irregularly staying third country nationals and asylum seekers.

### **FOREIGNERS REGISTRATION CENTRE**

#### ***Type and description of the premise***

The Foreigners' Registration Centre is run by the State Border Guard Service, which falls under the Ministry of Internal Affairs of the Republic of Lithuania. It is located in a rural area, in Švenčionys district, Pabradė, 45 km northeast of Vilnius, 12 km from the EU external border with Belarus. The premise consists of two separate reception areas (accommodation for asylum seekers without

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<sup>73</sup> Article 35

<sup>74</sup> Article 114

<sup>75</sup> Article 116

restriction on freedom of movement) and detention (for illegally staying third-country nationals). Although the maximum capacity of the detention premise is 265 persons (male – 250, female – 15), recently less than 200 persons have been detained per year.

The detention area is divided into two parts, one for male and the other for female detainees. An enclosed space is used for walking and sport activities. An area of approximately 1000 m<sup>2</sup> surrounds the building for male detainees. The detention facility for women is encircled by a paved yard, approximately 400 m<sup>2</sup>. There is a room measuring about 8 x 6 square metres, with facilities for table tennis, body-building as well as a gym ladder inside the building for male detainees. An area outside is used for volleyball and soccer.

The detention buildings of the centre were built in 1965. The Foreigners Registration Centre was opened on 1st January 1997. Sanitary facilities were renovated in the building for male detainees in 1999 with funding from the EU PHARE programme and in the building for female detainees in 2000 with funding from the state budget. A reconstruction plan was drawn up in 2005 by the authorities for the renovation of the detention buildings. It is still waiting for approval.

There are no cells or other areas used for punishment or seclusion in the centre.

The Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre, approved by the Decree Nr. 103 of the Government of the Republic of Lithuania on 29th January 2001, is the main document establishing internal rules in the centre. It is public and may be found on Internet.

There are also internal rules based on this document and approved by the Head of the centre, which lay down the daily regime for detainees:

- **common wake-up at 7am**
- **morning check**
- **airing of rooms 7.30 – 9.30am**
- **breakfast in the canteen (separate building) between 8 and 9.20am**
- **cleaning of the living rooms and premises 9.30am – 12.30pm**
- **lunch 12.50 – 2.50pm**
- **free time 2.50 – 5pm**
- **supper 5 – 6.50pm**
- **airing of rooms 10 – 11pm**
- **check 7.10 – 7.30pm**
- **rest 11.00pm – 7am**

Services, such as accommodation, food and medical care, at the centre are free of charge.

The Foreigners' Registration Centre has kept the records of detainees since 1st January 1997. Records kept are related to the number, ages, and nationality of detainees, as well as the duration of detention, their photos and information about the identity documents obtained.

The annual budget of the centre in 2005 was 903,000 EUR. In 2006 it was increased to 967,000 EUR.

### ***Staff***

The staff consists of civil servants and State Border Guard Service officers, who are non-military but uniformed. A total of 91 people (53 men and 38 women) are employed, including 56 officials (around 40 guards and nine officers from the investigation unit) and 35 civil servants (logistics). The number of persons employed by the centre is not dependent on the number of detainees and has remained stable for about 10 years.

As the detainee population consists of men and women, the staff members are also both men and women. Every shift of the guards includes a female officer to deal with women in detention. Staff members are quite young.

There is no special programme to prepare an officer to work in a detention centre, but at least there is a requirement that guards should have graduated from the State Border Guards Training School before being employed. Members of staff of the centre are continually trained on legal issues, human rights, conflict management and cultural differences. This ongoing training is organised by national training centres, UNHCR and NGOs.

### ***Detainee population***

In 2005 183 persons were detained in the centre and 193 in 2006. In the first quarter of 2007, 35 people were detained in the Foreigners' Registration Centre. Most detainees in the centre are men. In 2005, out of a total population of 183, there were 151 men and 32 women. In the first quarter of 2007 out of 35 people detained in the centre, there were 29 men and 6 women.

On 1 March 2007, there were 22 detainees, four women and 18 men. All the women are aged between 20 and 40 years. Male detainees (12) are between 25 and 50 years old, 5 between 50 and 60, 1 is 70 years old.

In 2005, most of the male detainees came from Russia and Belarus. In 2006 most of the men came from such countries as Belarus, Moldova, Russia and Georgia. On 1 March 2007, most men came from Belarus, Georgia, Russia and Uzbekistan. Lithuanians who have lost the documents that prove their personal identity are detained in the premise together with illegally staying third-country nationals.

### ***Accommodation***

Detainees stay and sleep in rooms of between four to six beds. In every detention building, there are toilets and showers. There are five toilets, two showers and one bath on each floor in the building for men. In the building for women, there is one shower and one toilet. There are washing machines and clothes driers in both buildings.

There were numerous complains from detainees about accommodation conditions: *Very bad conditions of living - dampness and mould on the walls; windows don't open, only ventilation panes; water pipes are blocked, no help from plumber.*

Detainees are free to move inside and outside the building in the area closed in by a fence.

If an asylum seeker is detained, he will be accommodated on the first floor of the same building where illegally staying third country nationals (male) are detained.

Since there are no special premises for the detention of families in the centre, couples are not detained in Lithuania (court practice). In practice, minors are not detained at all, but should it be decided to detain minors and their parents, they would stay together. Women are accommodated separately from men in different buildings and the areas of each group are separated. They never meet during their stay in the centre.

When a detainee arrives at the centre, the administration decides where he/she will be accommodated. As a rule, nationality and cultural background are taken into account when rooms are allocated. If possible, people speaking the same language are accommodated together. This practice helps to prevent conflicts between people coming from different cultural groups. Although nationality and cultural background are taken into account, some respondents complained of the language barrier when it comes to communicating with their roommates.

Access to open air is not restricted during the day time (7am – 5pm) in the Foreigners' Registration Centre.

### ***Contact with the outside world***

The house rules allow face-to-face visits during working hours (8am – 5pm) from Monday to Thursday for relatives, friends, family members etc. Visits are allowed following a written application addressed to the Head of the Centre. Contacts with relatives and friends are mostly carried out through the public telephone and the post although not all the detainees can afford this. Detainees need legal advice but have no real possibility of getting any. Most respondents did not have any contact with NGOs.

### ***Activities for detainees***

Detainees may use the library of the Centre, which has a collection of books in different languages. They may also watch national TV, play table tennis and use body-building equipment. Outside the building, they can play soccer and volleyball. Respondents complained of a lack of availability of indoor sports and of activities that occupy one's time meaningfully and of the opportunity to watch TV (there are three TV units in the men's building). Detainees are obliged to clean their living facilities.

### ***General services for detainees***

Detainees are systematically provided with information about the identification and return process in their regard. Officers provide detainees with translation services, if necessary. There are no social workers in the centre. Social assistance is sporadically provided by NGOs, although detainees

complained of a lack of attention from NGOs and religious groups. Receiving attention from people other than the officers is a big need felt by the majority of detained respondents.

Detainees are aware of how different NGOs are involved in helping asylum seekers and detained illegal migrants. Both groups live on the same premise but enjoy different rights and privileges.

#### ***Health care***

A special Medical Unit within the structure of the premise provides medical treatment, including primary health care and emergency aid to all persons accommodated in the premise. Primary health care and emergency aid is provided by doctors and nurses. There are two doctors and three nurses employed in the centre. Medical services are provided throughout the whole week during working hours (8am – 5pm). If any problems occur after working time, the person in charge of the guards calls the nearest clinic. If a person needs special medical treatment, which is beyond the competence of the general practitioner, he/she is taken by the nurse and guards to hospital, usually in Vilnius (45 km away from the centre). Detainees are not kept under guard in hospital.

#### ***Protection of particularly vulnerable people***

Psychological services are provided for those who underwent torture or rape, for minors, single women and elderly people. Since there are no psychologists on the staff, the service is undertaken by outside resources (special hospitals in Vilnius). No other measures, except for general health care, are designed and implemented for the protection of particularly vulnerable people.

#### ***Information for detainees***

A detainee is provided with information about his/her status, about his/her rights and obligations in his/her native language in written and/or oral form. Information about the removal procedure (if the detainee is an illegally staying third-country national) is provided orally in a language that the detainee understands. Information about the reason for detention and information about legal possibilities to challenge the detention order are provided orally in the native language of the detainee and in written form in the official language of Lithuania. Information about the asylum procedure (in the case of asylum seekers) is provided in the native language of the asylum seeker in written and oral form. Information about internal rules of the detention premise is read by detainees in English or Russian or else the rules are explained orally.

#### ***De-facto duration of detention and release***

Illegally staying third-country nationals were detained for an average of 58 days in 2005 and 78 days in 2006. The average duration of detainees interviewed was of 2.5 months. Two respondents couldn't say for how long they were detained.

#### ***Incidents***

Four male detainees tried to commit suicide in the detention premise since Lithuania joined the EU. Typically the men had been moved to the Foreigners' Registration Centre to be returned to their home countries after having served a sentence of imprisonment for criminal acts done in Lithuania.

#### ***Reports***

Since EU accession, there have been no reports written about the Foreigners' Registration Centre.

## **4 EXISTING CIVIL SOCIETY ACTIVITIES**

There are two non-governmental organizations – Lithuanian Red Cross Society and Caritas of Vilnius Archdiocese – that are active in the Foreigners' Registration Centre. NGOs are mostly involved in the asylum seekers reception premise, where residents are not deprived of their freedom of movement. There is no systemic or regular contact with detainees. There have been some sporadic efforts – the opening of a library and occasional humanitarian help. On 16 January 2006, the Apostolic Nuncio visited the Foreigners' Registration Centre, including the premise for detainees.

### INTRODUCTION<sup>76</sup>

This report contains a description of the situation on the ground in all of the detention centres currently being used for the long-term detention of illegally staying third country nationals and asylum seekers in Malta<sup>77</sup>. It also outlines national law, policy and practice relating to detention of this category of migrants.

In Malta, as of 30 April 2007, three detention centres were being used to detain illegally staying third country nationals for long periods of time. They are:

- Lyster Detention Centre;
- Safi Detention Centre;
- Ta' Kandja Detention.

### 1 ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004

Malta's immigration law<sup>78</sup>, enacted in 1970 and in force since 1972, provides for the administrative detention of irregularly staying third-country nationals. With the exception of some significant changes, regarding the maximum duration of detention and release of vulnerable immigrants, national law and policy on detention of this category of immigrants has remained virtually unchanged since.

The Immigration Act stipulates that immigrants against whom a removal order has been issued or who are refused admission into national territory shall be detained until removal can be effected.

The application of this law has always implied that migrants who apply for asylum after they have been placed in custody are detained until their asylum application is finally determined and only released if they are granted some form of protection.

Until 2002, there were rarely more than 80<sup>79</sup> immigration detainees at any given time, and often significantly less. The majority had either been apprehended because of irregular entry or stay or refused admission into Malta. They were almost all male; most did not apply for asylum and few spent more than a few weeks in detention. However, as at the time neither law nor policy placed a time limit on administrative detention of irregularly staying third-country nationals, in rare cases individuals spent years in detention<sup>80</sup>.

In 2002, Malta experienced an abrupt change in migration patterns as large numbers of undocumented migrants travelling by boat in an irregular manner, usually leaving from Libya, started reaching Maltese shores. In 2002 alone, 21 boats carrying 1686 immigrants arrived in Malta in this manner, compared to just 57 in 1 boat the previous year. In the years that followed, with the exception of 2003, the number of arrivals did not decrease significantly: in 2003 some 502 immigrants arrived in 12 boats; in 2004, 1388 immigrants arrived in 53 boats; in 2005, 1822 immigrants arrived in 46 boats and in 2006, 1780 immigrants arrived in 57 boats<sup>81</sup>.

The application of existing laws and policies to these new migratory flows brought about a number of changes in the situation on the ground within the centres. As all arrivals were detained, the number of detainees increased dramatically; now, as a rule, there were hundreds of people, including women and children, in detention at any given time. Most applied for refugee status, which created a huge backlog of cases for the recently-established Office of the Refugee Commissioner (set up by the Refugees Act,

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<sup>76</sup> This report is owned by Jesuit Refugee Service Malta (JRS Malta). It is publicly available at [www.jrsmalta.org](http://www.jrsmalta.org). Reproduction and quoting are authorised, provided the source is acknowledged, save where otherwise stated.

<sup>77</sup> It does not include any information on facilities used for short-term detention, e.g. the detention facility at Luqa International Airport, or the facility at Mount Carmel Hospital, where detainees receiving psychiatric treatment are held.

<sup>78</sup> Immigration Act, 1972, Act IX of 1970 as subsequently amended, Chapter 217 of the Laws of Malta

<sup>79</sup> Ombudsman's report on Ta' Kandja Detention Centre and Hal Far Immigration Reception Centre, 2001/2

<sup>80</sup> A couple of individuals spent approximately 6 years in detention, but such cases were the exception rather than the rule.

<sup>81</sup> Government of Malta, 2007



2000). This fact, coupled with the logistical and other difficulties posed by repatriation, meant that most immigrants now spent months, as opposed to weeks, in detention.

Detention was indefinite until December 2003, when the government started releasing groups of detainees who had spent more or less 18 months in detention. A government policy document published in January 2005, entitled 'Irregular Immigrants, Refugees and Integration', formally established an 18-month time limit on detention and stipulated that immigrants who are vulnerable because of their age and/or physical condition would no longer be detained. Since June 2005, asylum seekers whose application is still pending after 12 months are released from detention to await the outcome of their asylum application in the community.

Although both Malta's detention policy and the conditions within detention centres have been criticised on numerous occasions by national and international organizations, there is political agreement at national level regarding continued the use of long-term detention as a policy of reception.

As a result, with the passage of time detention has become more institutionalised. Whereas previously immigration detention centres were administered on a more or less ad hoc basis by the army or police, depending largely on whether they were located within police or army property, in August 2005 a new agency, known as the Detention Service was created, to administer all facilities used to detain irregular migrants.

## **2 SUMMARY OF NATIONAL LAW**

As was previously stated, the primary law regulating administrative detention of irregularly staying third country nationals, including asylum seekers, is the Immigration Act<sup>82</sup>. The Refugees Act<sup>83</sup>, particularly the regulations enacted to transpose the provisions of the Reception Directive into national law<sup>84</sup>, are also relevant.

### **2.1 Legal grounds for ordering detention**

In terms of the Immigration Act, detention is the automatic consequence of a refusal to grant admission into national territory<sup>85</sup> or the issuing of a removal order in respect of a particular individual<sup>86</sup>.

Removal orders are issued by the Principal Immigration Officer, an administrative authority, against persons considered liable to removal as "prohibited immigrants"<sup>87</sup>. This includes those who enter or are present in Malta without the required authorisation from the immigration authorities and those who become "prohibited immigrants" for one of the reasons listed<sup>88</sup>.

Unlike immigrants detained by virtue of a removal order, immigrants refused access to national territory, they "shall be deemed to be in legal custody and not to have landed"<sup>89</sup>.

Article 16 of the Immigration Act provides that any person who is in Malta without the required leave from the immigration authorities or who is "reasonably suspected of having so acted", may be taken into custody without warrant by any police officer and while he in custody he shall be deemed to be in legal custody.

### **2.2 Legal grounds for the detention order**

Maltese law does not provide for the issuing of a detention order; detention is the automatic consequence of a removal order or of a decision to refuse admission into national territory.

### **2.3 Legal grounds for right of appeal against the detention order/for right to challenge detention**

Maltese law contains no provision for automatic judicial review of detention.

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<sup>82</sup> Act IX of 1970 as subsequently amended, Chapter 217 of the Laws of Malta.

<sup>83</sup> Act XX of 2000 as subsequently amended, Chapter 420 of the Laws of Malta.

<sup>84</sup> L.N. 320 of 2005 – official date of entry into force: November 22<sup>nd</sup> 2005, hereinafter referred to as the Reception Regulations

<sup>85</sup> Article 10(3) of the Immigration Act

<sup>86</sup> Article 14(2) of the Immigration Act

<sup>87</sup> Article 14(1) of the Immigration Act

<sup>88</sup> The reasons listed include: indigence, suffering from a "mental disorder or" being "a mental defective", being convicted of a serious criminal offence, engaging in prostitution and/or contravening the provisions of the Immigration Act

<sup>89</sup> Article 10(3) of the Immigration Act, Chap 217 of the Laws of Malta

Article 25A(5) of the Immigration Act provides for the possibility of an appeal from a decision to issue a removal order. Any such appeal must be presented to the Immigration Appeals Board<sup>90</sup>, within three working days from the date of issue of the removal order. If the removal order is revoked, the immigrant concerned is automatically released from custody.

The Board has the authority to grant the immigrant concerned provisional release from detention, even on a verbal request, during the course of any proceedings before it under such terms and conditions as it deems fit<sup>91</sup>.

In addition, in terms of article 25A(9) of the same Act, the Board has jurisdiction to hear and determine applications, made by persons held in custody by virtue of a deportation or removal order, to be released from custody pending the final determination of their asylum application or their deportation/removal from Malta, as the case may be. In such cases, release will only be granted where, the Board is of the opinion that, the continued detention of the applicant is unreasonable as regards duration, in the light of the circumstances of the case, or where there is no reasonable prospect of deportation within a reasonable time<sup>92</sup>.

The Board may refuse to grant release where the individuals concerned have refused to cooperate with legitimate attempts to remove them from national territory<sup>93</sup>. The law further restricts the scope of this remedy, by prohibiting release in certain cases<sup>94</sup>. Persons released by virtue of this remedy must report at least once a week to the Immigration authorities<sup>95</sup>. Moreover, in certain circumstances, they may be taken into custody again, pending their removal from Malta<sup>96</sup>.

In practice it would seem that the Board considers government policy on detention to be reasonable in the vast majority of cases and only grants release in exceptional circumstances<sup>97</sup>. There is no fixed time limit within which the Board has to decide applications – procedures have lasted up to 3½ months and, in some cases, the applicant was released, in terms of government policy, before a decision was taken on his request for release.

Article 409A of the Criminal Code<sup>98</sup> also provides any detainee with the possibility of applying to the Magistrate's Court to challenge the lawfulness of his detention. If the court chooses to release the applicant, the Attorney General may apply for the person's re-arrest if he is of the opinion that the continued arrest was founded on any provision of this code or of any other law. The law imposes very strict timelines for the determination of such applications, which are usually rigorously observed by the courts.

This remedy was used on at least three occasions by immigrants (two asylum seekers and one rejected asylum seeker) to challenge their detention, but all three applications were rejected. On each of these occasions<sup>99</sup> the Court held that as there is a national law (the Immigration Act) authorising detention, which imposes no limit on the amount of time a person may spend in detention, such detention is lawful. According to the Court, the scope of this remedy does not include an examination of whether there are other circumstances which make the detention unlawful, e.g. if the detention violates the individual's fundamental human rights.

Irregularly staying third country nationals may also challenge the lawfulness of their detention in terms of article 34 of the Constitution of Malta and article 5 of the European Convention on Human Rights, which is now part of Maltese law and can be invoked before the local courts. There are currently two

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<sup>90</sup> Set up in terms of article 25A(1) of the Immigration Act, Chap 217 of the Laws of Malta

<sup>91</sup> Art 25A(6) of the Immigration Act, Chap 217 of the Laws of Malta

<sup>92</sup> Art 25A(10) of the Immigration Act, Chap 217 of the Laws of Malta

<sup>93</sup> Art 25A(10) of the Immigration Act, Chap 217 of the Laws of Malta

<sup>94</sup> Art 25A(11) of the Immigration Act, Chap 217 of the Laws of Malta – these include cases where the applicant's nationality and identity have yet to be verified, where the elements on which the applicant's asylum claim is based still have to be determined and in case of a threat to public order and security.

<sup>95</sup> Art 25A(13) of the Immigration Act, Chap 217 of the Laws of Malta

<sup>96</sup> These are cases where there exists a reasonable prospect of deportation, where the immigrant concerned is refusing to cooperate with legitimate attempts to remove him, or, where an asylum seeker is not granted any form of protection in terms of the Refugees Act

<sup>97</sup> Such circumstances would include vulnerability due to age, disability or mental health problems. However, health problems alone are not sufficient to guarantee release; in one case release was refused although the applicant, a rejected asylum seeker, suffered from health problems which were being exacerbated by detention, as he was deemed not to be cooperating with legitimate attempts to deport him.

<sup>98</sup> Chap 9 of the Laws of Malta

<sup>99</sup> *Napoleon Mebrahtu v Commissioner of Police*, Magistrates Court, 26 June, 2003; *Karim Barboush v Commissioner of Police*, Criminal Court, November 5, 2003; *Kinfé Asmelash Gebrezgabiher v Commissioner of Police*, Magistrates Court, June 27, 2006

such cases pending before the First Hall of the Civil Court (Constitutional Jurisdiction)<sup>100</sup>. Legal proceedings of this nature generally take months, if not years, to be finally determined.

#### **2.4 Legal grounds for instructions on right of appeal/instruction on right to challenge detention**

Maltese law does not make specific provision for instructions on the right to appeal from a removal order or to challenge detention.

#### **2.5 Legal grounds for legal maximum duration**

Asylum seekers may be detained for a maximum of one year. This time limit is not specifically stated in the law.

Regulation 10(2) of the Reception Regulations states that asylum seekers shall be granted access to the labour market if a decision at first instance has not been taken within one year of the presentation of an application for asylum and that this access shall not be withdrawn during the appeal stage of the RSD procedures<sup>101</sup>. As it is impossible to work while in detention, these provisions have been interpreted to mean that all asylum seekers will be released from detention if their application is still pending after one year.

There is no legal time limit on the detention of rejected asylum seekers and illegally staying third country nationals who do not apply for asylum. In terms of government policy, published in January 2005, no immigrant may be detained for longer than eighteen months.

#### **2.6 Legal grounds for contact with the outside world**

Although paragraph 19 of the information booklet<sup>102</sup> provided to detainees upon being placed in detention refers to a right “to maintain reasonable contact, through telephone and/or by written correspondence, with family, friends or others without hindrance, other than that necessary on grounds of security and safety”, this entitlement is not guaranteed by national law, which does not contain any provisions guaranteeing or regulating detainees’ contact with the outside world.

#### **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

In terms of article 10 of the Refugees Act<sup>103</sup> asylum seekers are entitled to receive state medical care and services. The law does not specify the scope of the healthcare to be provided. Although such healthcare is usually provided free of charge, regulation 11 of the Reception Regulations provides that, where applicants are working regularly or have sufficient means, they may be required to cover or contribute to the cost of material reception conditions.

There is no specific legal provision regarding healthcare for detainees who do not apply for asylum or whose asylum application has been rejected.

#### **2.8 Legal grounds for the protection of particularly vulnerable people**

Regulation 14(1) of the Reception Regulations provides that, in the implementation of the provisions relating to material reception conditions and health care, account shall be taken of the specific situation of vulnerable persons which shall include minors, unaccompanied minors and pregnant women, found to have special needs after an individual evaluation of their situation. Regulation 11(2) also states that material reception conditions for asylum seekers shall be such as to ensure an adequate standard of living for persons who have special needs.

Moreover, in terms of government policy on immigration, people who are vulnerable by virtue of their age or physical conditions shall not be detained.

#### **2.9 Legal grounds providing for release**

National law does not contain specific provisions regarding release. Procedures for release are implemented by the immigration authorities, and are regulated by policy and practice rather than by law.

#### **2.10 Legal grounds for any other rights**

National law does not contain provisions regarding the rights of illegally staying third country nationals held in detention.

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<sup>100</sup> Karim Barboush v Commissioner of Police et and Taffar Besabe Berhe v Commissioner of Police et

<sup>101</sup> Regulation 10(3) of the Reception Regulations

<sup>102</sup> “Your Entitlements, Responsibilities and Obligations while in Detention”, Ministry for Justice and Home Affairs, 2006

<sup>103</sup> Chapter 420 of the Laws of Malta

Asylum seekers, whether or not they are in detention, enjoy certain basic rights in terms of Article 10 of the Refugees Act. This article provides that asylum seekers have the right to access state education as well as the right to be protected from forced removal pending the final outcome of their application. Article 10 of the Reception Regulations provides for access to the labour market after 12 months from the date of an application for protection.

### 3 OVERVIEW OF CONDITIONS IN DETENTION

This section of the report starts by outlining the characteristics common to all of the centres. It then goes on to describe that which is particular to each of the centres currently in use.

#### 3.1 Description of characteristics common to all centres currently in use

##### *Type and general description*

The detention centres described in this report are all administrative detention centres located inside Maltese national territory.

All of these centres are situated inside police or army barracks, and in two out of three centres detainees are accommodated in more than one location within the barracks. All the facilities used have surrounding outer space and may therefore be considered as ‘detention premises’ for the purposes of this report<sup>104</sup>.

##### *Administration and funding*

The Detention Service, which is directly accountable to the Ministry for Justice and Home Affairs (MJHA), is responsible for running all the centres described in this report.

The running of the centres is funded partly by the MJHA and partly by the Malta Police Force and the Armed Forces of Malta, in whose territory the premises are situated. The latter provide both financial support and services in kind, such as maintenance works and provision of staff. In recent years some funding for refurbishment and provision of services was also obtained from the EU.

##### *Internal rules and administration of discipline*

Each centre has different rules regulating the daily regime within the centres, such as access to open air, use of telephone, etc., which are described later on in this report<sup>105</sup>. There are, however, a number of general rules which apply across the board.

On arrival detainees are issued with a 10-page booklet published by the Ministry for Justice and Home Affairs, entitled “Your Entitlements, Responsibilities and Obligations while in Detention”. This booklet, published in French, English and Arabic, very briefly outlines detainees’ rights and obligations in relation to their application for asylum. It also lays down the basic rules of conduct within the centres.

In terms of this document, detainees are obliged *to behave in a well-mannered, cooperative, orderly and disciplined manner* at all times and to keep themselves and the premises in which they are detained clean and tidy. In addition they must follow medical treatment prescribed and ensure that they *do not indulge in any self-harm or do anything that may require unnecessary medical attention*. Lastly, they are obliged to abide by the security arrangements of the closed centre and not do anything that might endanger the health, security or personal safety of others.

This document does not prescribe punishments for breaches of these obligations but it does provide that *temporary confinement of violent or undisciplined irregular immigrants in accommodation specifically identified for this purpose may be resorted to by the Commander Detention Service after consultation with the Commander AFM or the Commissioner of Police as to the appropriate place of confinement. This will achieve the correct balance between the requirements to maintain order and discipline, while having due regard to the individual and, in particular the need to prevent self-harm*<sup>106</sup>.

In practice, discipline is usually administered by the officer in charge of the detention centre, who decides what punishment will be inflicted in the particular case.

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<sup>104</sup> See glossary

<sup>105</sup> See description of *Internal rules* for each specific centre in paragraphs 3.2.1.1, 3.2.2.1 and 3.2.3.1 below

<sup>106</sup> Paragraph 39

One of the most common offences is that of escaping from the detention centre. Immigrants apprehended while at large or otherwise found to be in breach of the rules they are expected to abide by, are often confined in a cell at Lyster Barracks for a number days<sup>107</sup>.

According to the Detention Service, those who return voluntarily are at times spared this treatment, in practice seclusion or confinement of detainees, in one of two small cells on the ground floor of Hermes Block, set aside for this purpose, is used routinely – almost every week there are at least one or more persons in seclusion.

Although the reasons for which a person is placed in seclusion are never clearly stated, we have reason to believe that in most cases seclusion is imposed as a punitive measure or as a measure of control. Most detainees are placed there because they are caught while attempting or after managing to escape from the barracks. In some cases, detainees are placed in confinement after having behaved in a rowdy or insubordinate manner, e.g. jumping over the fence to go to speak to the officer in charge or banging on the gate and shouting.

The length of time immigrants spend in seclusion varies considerably and does not seem to depend on the offence of which they are accused. Some claim to have been held in seclusion for 3 days, others for 6, 10, 13 or even 21 days. In all cases the immigrants claimed not to have been told at the outset for how long they would be held in seclusion.

There have been allegations that, on occasion, staff have beaten detainees accused of misbehaving, particularly while they were in seclusion or when they were caught escaping.

Where immigrants commit other offences, such as assaulting or insulting staff or damaging property, they may face prosecution and court proceedings. There are currently at least two such cases pending before the Magistrates Court.

The said regulations also provide for the maintenance of security within the centres, which should entail *no more restriction than is required* for the detainees' safe-custody through measures designed to ensure that *irregular immigrants are accounted for and properly supervised in a well-ordered community*<sup>108</sup>. They state that *arrangements for irregular immigrants under escort will be based on the need for your [i.e. the detainee's] safety and security and may entail handcuffing while in transit*<sup>109</sup>. They also allow for the possibility of searches, including strip searching, *to detect and deter threats to the security of the centres, which should be carried out in as consistent and sensitive a manner as possible taking into account gender, religious and cultural beliefs, age and other relevant factors*<sup>110</sup>.

### **Complaints mechanisms**

There is no formal, independent mechanism in place for detainees to lodge complaints against the staff, nor is there any mechanism in place to monitor the conditions in detention.

In some centres we were told by staff that detainees may write letters to the officers in charge of the centre and give them to the guards to pass them on to them. When they receive such letters, the officers concerned will speak to the detainees and try to solve the issue amicably. Detainees however complained that their letters and written complaints elicit no response from the authorities concerned. It is practically impossible for detainees to lodge a police report as they have no access to the police.

### **Records**

Staff at all centres keep records regarding the number of detainees, personal details such as gender, age, nationality, police tag number, date of birth, family number (if accompanied by family), date of arrival and date of release and date of any escape and subsequent return to the barracks. All personal data is that submitted by the detainees on arrival and is often not subject to independent verification.

The medical history of each detainee is also kept in a confidential file by the staff working on provision of healthcare for detainees. In some centres they informed us that they also keep records of any noteworthy incidents, such as riots, unrest, etc.

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<sup>107</sup> Refer section on Lyster Barracks for more information

<sup>108</sup> Paragraph 36

<sup>109</sup> Paragraph 37

<sup>110</sup> Paragraph 38

### ***Staff***

The staff composition in the centres varies, but in all centres the staff consists exclusively of police, army or detention service personnel (recruited from among ex-members of the security forces, including police, army and prison wardens). There are no social workers or care staff employed within the centres and the overwhelming majority are male.

There is no written code of conduct for detention centre staff.

Staff receives initial induction and should also receive ongoing training. Initial induction/training consists of a series of lectures by professionals, DS officers and NGOs working in the field. DS staff also participates in sessions on stress management run by an NGO working in the area of mental health.

### ***Detainee population***

All detention centres accommodate asylum seekers and illegally staying third country nationals, including rejected asylum seekers and prohibited immigrants who do not apply for asylum. Most of the detainees arrived in Malta irregularly by boat (often colloquially referred to as “boat people”) and were detained from the moment of their arrival in Malta. A small percentage was apprehended at large in the community because of illegal entry or stay; most of the detainees within this category are held at Ta’ Kandja. The vast majority of the immigrants in detention apply for asylum.

### ***Contact with the outside world***

As a general rule, detainees are allowed to receive visits from friends and relatives, however visitors must first obtain a police permit, which is not always easy and often takes time. In practice, in some centres (Ta’ Kandja and some parts of Safi) visits are restricted or non-existent, apparently because of the logistical difficulties involved and lack of space to hold visits.

NGO personnel and pastoral workers can access the detention centres during the daytime, whenever they need to do so, provided they are in possession of the necessary permit from the police. Lawyers too have relatively easy access to the centres once their permit has been cleared by the competent authorities.

Making contact with people outside the centre is often far more difficult for detainees, although the situation is not identical in all centres. Detainees have no access to email. In some centres they have free access to the telephone both to make and receive calls (Safi Barracks and Tent Compound at Lyster Barracks), however they must have a pre-paid card to make calls. In other centres (particularly Hermes Block at Lyster Barracks) access to the telephone is more limited as the phone is situated outside the detainees’ quarters. Detainees in all centres are provided with a pre-paid card to be able to make calls approximately once every two months.

Until recently detainees in all centres were allowed to keep a mobile phone, however, it now seems that detainees will no longer be allowed to have mobile phones.

### ***Activities for detainees***

Here are no formally organized recreational or educational activities in any of the centres currently in use.

Detainees in most centres often organise activities among themselves, including football or volley ball matches (where there is sufficient space to do so), prayer meetings and other religious activities. On Sundays a priest celebrates mass for Christians in some centres and on occasion, e.g. Christmas and Easter, NGOs organise activities within some of the centres.

Each of the premises in use has a TV, which is often shared by some 100-200 detainees. According to the detainees they only have access to programmes in Maltese and Italian. Some detainees have radios and DVD or CD players but these are not provided by the detention centre administration. There is no library in any of the centres, but sometimes detainees obtain books from NGO personnel or friends.

### ***General services for detainees***

Detainees are provided with state medical care and legal aid at appeal stage of the asylum procedures. Until recently Appogg provided social work intervention in a limited number of cases; this role will now be undertaken by OIWAS who will start placing staff within detention centres soon. To date, other, limited, services are provided by NGOs.

One major problem faced by detainees seeking to access basic services is the lack of proper translation services. In most cases translation is provided by fellow detainees.

### ***Health care***

Each centre has a basic clinic, where detainees can receive primary medical care. For medical needs which cannot be met on site, detainees are referred to the state hospital or health centres for treatment and follow-up. When taken outside the barracks to receive treatment detainees are handcuffed and escorted by police escort/Detention Service personnel.

In recent weeks the medical service provided at the larger centres has been considerably upgraded and today a doctor and nurse are present in the centre on a daily basis between 9am-1pm. Previously the medical service on site was provided by a doctor who would visit the centre for one or two hours three times weekly, visiting some 8-10 patients on each visit. This arrangement was totally insufficient to meet the needs of the detainee population.

A number of detainees complained about the medical care provided. Most complaints related to difficulties accessing the service, delays in receiving prescribed medication (up to a week at times) and lack of follow-up care. Some detainees claimed that they repeatedly missed hospital appointments for testing or follow-up care – this was usually due to lack of transport or staff availability. On occasion detainees are taken to hospital without an interpreter, usually due to lack of transport or escorts, which makes it practically impossible for them to obtain the treatment they require. It should be stated that most of these complaints came from detainees at the larger centres.

### ***Protection of particularly vulnerable people***

In terms of current government policy vulnerable immigrants, including families with minor children, unaccompanied minors, pregnant women, lactating mothers, persons with disability, people with serious and/or chronic physical or mental health problems, are not detained<sup>111</sup>.

In practice, however, all immigrants who arrive in Malta in an irregular manner, including vulnerable immigrants are detained upon arrival. Once vulnerable immigrants are identified by the authorities concerned, procedures for their release are initiated. However these procedures take time to complete and vulnerable immigrants often spend months in detention. During the past year, release of obviously vulnerable asylum seekers, such as female-headed family units with minor children, was frequently delayed, at times for up to 6 months, usually by the lack of accommodation in the community. The release of pregnant women too was often delayed, in some cases for even longer than six months.

There are no special facilities for the accommodation of vulnerable detainees. The centre housing the largest number of vulnerable detainees is usually Hermes Block at Lyster Barracks, Hal Far, as it is the only centre housing women and families with minor children.

None of the centres currently in use provide special support or services to vulnerable detainees while they are in detention. Detainees complain that even when, for health reasons, the doctor recommends that they receive a special diet they do not always get it.

Vulnerable detainees are usually identified by the Immigration Police on arrival in Malta, Detention Service personnel, fellow detainees or NGO personnel. Until recently they used to be referred to the Refugee Service Area of Appogg, the main government social welfare agency, for assessment. This function has now been passed on to a newly-created government agency, OIWAS (Organization for the Integration and Welfare of Asylum Seekers). In cases where they believe the detainee concerned to be vulnerable, they will issue a recommendation for release from detention.

Whereas release is automatic in the case of “obviously vulnerable” immigrants, such as unaccompanied minors, pregnant women and families with minor children, the same cannot be said of other categories of vulnerable detainees, such as persons suffering from disabilities or physical or mental health problems. In such cases a request for release must be made to the Principal Immigration Officer, who usually grants authorisation where the competent social welfare agency recommends it.

The lack of a clear timeline within which requests must be examined and release effected means that procedures for release often takes weeks, if not months to be completed. Release is often further delayed by the lack of suitable available accommodation in the community.

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<sup>111</sup> ‘Irregular Immigrants, Refugees and Integration’, published in January 2005

### ***Information for detainees***

On arrival detainees are usually issued with a Removal Order by the Immigration Police and they are given basic information about lodging an appeal.

Shortly after their arrival at the centre detainees are provided with a 10-page booklet published by the Ministry for Justice and Home Affairs entitled “Your Entitlements, Responsibilities and Obligations while in Detention”. This booklet, available in English, French and Arabic, provides information about detainees’ entitlements and obligations while in detention. It also provides basic information about the asylum procedure, but no information about challenging detention or requesting release in terms of law.

From speaking to detainees it is clear that the information contained in this booklet, particularly that relating to the asylum procedure, is insufficient to enable them to fully understand the procedure. Moreover it is not published in all the main languages spoken by the detainees (e.g. Tigrinya, Amharic and Somali). It is also inaccessible to detainees who cannot read.

NGOs and UNHCR have access to the centres to provide information if they wish to do so. JRS Malta published a booklet in French and English, entitled “Asylum in Malta: what you should know”, which is distributed free of charge to asylum seekers in detention. Information is also provided verbally with the help of interpreters. NGO resources are however far from sufficient to meet the needs of all detainees.

In addition to generic information, individual detainees often request information regarding their particular situation as it is very difficult for them to make contact with the authorities handling their case. There is no formal structure in place to provide this service in any of the centres, however, in Ta’ Kandja Detention Centre, which is much smaller than the others, staff follow up detainees’ requests for information and try to provide them with the information they require.

### ***De-facto duration of detention and release***

Most detainees, apart from those of North African origin who are usually repatriated soon after arrival, are eventually released from detention to live in the community as few are removed following the exhaustion of the asylum procedure.

In the case of asylum seekers granted some form of protection detention usually lasts as long as it takes for their asylum application to be determined. Most asylum seekers granted protection granted protection in recent years spent between 3-10 months in detention. Where an asylum application is still pending after 12 months, asylum seekers are released to await the final outcome of their application in the community.

In the case of rejected asylum seekers or immigrants who do not apply for asylum, the maximum period of detention is set at 18 months.

In practice detention may last slightly longer, as prior to release detainees must undergo screening for active TB and they must wait until accommodation in the community is found for them.

At times, after having waited for 12 months and completed the medical procedures required for release, detainees are notified with a negative decision on their asylum application at the very last moment – meaning that they would be condemned to spend a further 6 months in detention. This understandably causes considerably distress and anguish.

Until very recently immigrants diagnosed with TB prior to release would be held in detention until they completed the prescribed course of treatment, i.e. at least 6 months. This policy has recently changed and now each case is viewed on its merits, with release being ordered in most cases provided the immigrant concerned agrees to comply with medical treatment.

## **3.2 Description of specific conditions in each centre**

### **SAFI DETENTION CENTRE, SAFI BARRACKS, SAFI**

#### ***Type and description***

In this centre, detainees are currently held in three separate detention premises situated within the grounds of the same military barracks, Safi Barracks, which is headquarters of the Third Regiment of the Armed Forces of Malta (AFM). Safi Barracks is situated at the outskirts of Safi Village, just opposite the runway of the Malta International Airport.



The three premises are known as: Warehouse 1, Warehouse 2 and C Block. Warehouse 1 and 2 are situated right next to each other, while C Block is situated a short distance away, out of sight of the two warehouses. Another building within this barracks called B Block was previously used as a detention centre but it is currently being refurbished.

### ***Internal rules***

Within this detention centre detainees are not bound by strict schedules, apart from those relating to access to the yard in C Block.

### ***Staff***

Originally this centre was staffed exclusively by military personnel. Today the staff at this centre is made up of a mixture of military personnel (AFM) and casual detention service officers. The latter are civilians, usually ex-police or ex-soldiers, employed to work within the Detention Service.

At the moment all administration is carried out by AFM personnel and shift (guard) duties within the different detention premises are carried out by AFM personnel and Casual Officers. Eventually the plan is to replace all the military personnel currently working within the centres with civilian staff, and to have a civilian manager for staff administration.

Currently some 88 members of staff work at this detention centre, including 30 Casual Officers, 56 soldiers and 2 military officers. The staff works in shifts of 19 persons, composed of 17 guards, 5 in Block C and 12 in the 2 Warehouses, which are treated as one compound, one duty officer and one duty driver. In addition, during the day there are some 16 soldiers employed within the Detention Service, including duty officers, administration and medical support.

All the staff working in this detention centre is male, as is the detainee population.

### ***Detainee population***

On 7<sup>th</sup> March 2007, there were 178 immigrants detained in C Block and 228 immigrants detained in Warehouse 1 and 2. All of the detainees in this centre are male, and the majority are between the ages of 20 and 30.

On 16<sup>th</sup> April 2007, the breakdown by age was as follows: 133 immigrants between the ages of 15 and 20, 138 between the ages of 21 and 25, 111 between the ages of 26 and 30 and 55 between the ages of 31 and 40. The detainees come from 29 nations, and the vast majority are of African origin. The largest groups are from Ethiopia (87), Eritrea (63), Ghana (52), Ivory Coast (40), Mali (26), Sudan (34), Nigeria (26), Togo (24) and Somalia (19)<sup>112</sup>.

### ***Accommodation***

#### ***General description***

**Warehouse 1 and 2** were constructed in 2004. They were being built to provide storage space for military use, but in 2005, as they were nearing completion, it was decided that they would be converted into detention premises, to cope with the large number of immigrants arriving in Malta.

Warehouse 1 was first used in July 2005 and Warehouse 2 in November 2005. Each can accommodate up to 200 persons, but have occasionally housed up to 230.

Both warehouses consist of a single large space, divided into dormitories and a common area. The ceiling in both warehouses is very high – some 4¼m from the ground – and all the windows are set high in the wall, approximately 2m off the ground. The different living spaces are separated by means of wooden partitions and, in some cases, sheets strung from wires. As the partitions do not reach up to the ceiling, the noise level in the building, which can house up to 200 people, is often extremely loud. Each of these warehouses has a large yard, surrounded by wire fencing topped with razor wire. Neither of the yards has a shaded area.

The Warehouses share a guard room, which is located at the entrance to Warehouse 1, and a medical room, which is located right next to the guard room.

**C Block** is the only detention premise currently in use that was actually designed and constructed for the purpose of detaining immigrants. Part of the cost of construction was covered by EU funds. It was

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<sup>112</sup> The registered ages and nationalities are those declared by the detainees on arrival.

built between January and October 2005 and it was used for the first time in February 2006. This centre can house a total of 220 people, up to 72 persons in each unit.

It consists of three separate units, each of which has its own sanitary facilities and access to a yard at the back surrounded by wire fencing and topped with barbed wired. There is also another, adjoining, unit which is used as a guard room.

Since these buildings started being used as detention centres they have always housed a considerable number of immigrants, and so it has been possible to effect little more than the minor repairs needed due to wear and tear, e.g. change of geysers or drains and repair of roof, fencing, etc..

Until the beginning of 2006 there was another detention premise at Safi Detention Centre that was used to detain immigrants. This building, known as B Block, was closed for repairs at around that time and is currently being refurbished.

### ***Sanitary facilities***

In **Warehouse 1**, the sanitary facilities are housed in four small, tiled rooms, measuring 7m by 3m. Two of these rooms contain showers (7 in one and 8 in the other) and sinks (3 in each room) and the other two contain a total of eight toilets. There are also six sinks in the room housing the toilets. These rooms are joined by a common room. The showers separated by plastic partitions but have no door, so detainees have to hang a blanket or sheet for privacy. The fittings are in a poor state of repair and it seems that there is hot water in only one of the shower rooms. The toilets have doors but no lock and, more often than not, the flushing does not work so detainees have to pour water from a container to flush the toilets.

**Warehouse 2** also has tiled bathrooms, situated behind the common room. A long corridor with 2 sinks, 1 of which does not work, leads to a room where there are 12 showers. All 12 showers have a pipe but no shower head and no curtains. This room also contains 4 sinks and 1 iron door with a small opening at the top, which is only covered with an iron bar. In another room there are 2 toilets and 8 urinals, of which 4 do not work. Each toilet has a door. There is a small room for washing clothes however it has no washing basins or taps. There are 4 geysers but it seems none of them work.

In **C Block** there are 2 tiled bathrooms in each room/unit. Each bathroom has 1 geyser, 5 sinks, 4 toilets with doors and 4 showers. The showers have partitions but no doors. All of the bathrooms are in a rather poor state of repair; not one of them has fully-functioning facilities. Many of the toilets do not work and a number of the taps are broken. The detainees complain that the geyser is too small to provide water for all the detainees accommodated in the unit concerned. Moreover, most of the shower tiles have come loose.

### ***Sleeping arrangements***

Detainees sleep in dormitories in all of the detention premises within this centre.

The sleeping area in **Warehouse 1** is divided into 12 sections/dormitories. Each section measures 8m by 5m and has one window, with iron bars on the outside and measuring 158 cm by 151 cm, set high in the wall. The dormitories contain only beds – there are no wardrobes. Detainees have to store their things in carton boxes or hang clothes on iron bars. There is no dividing wall between the dormitory and the corridor, so detainees hang blankets across the opening to separate dormitory from corridor. They also put blankets around their beds for privacy. When the warehouse has a full capacity of 200 detainees, each dormitory could have up to 8 bunk beds accommodating 16 detainees

In **Warehouse 2** there are 2 sleeping areas, one on either side of the common area. Each area is divided with wooden partitions into 4 smaller units/dormitories; in all there are 8 such units. Each unit/dormitory measures approximately 5m by 17m and can fit up to 20 bunk beds. The layout of these sections is much the same, with bunk beds aligned head to the wall along the length of room on both sides with a small passage in the middle. The 4 dormitories to the right of the common area each have an iron door at the end of the passage, which leads to the yard. The detainees have hung blankets and sheets around the sides of every two sets of bunk beds, converting them into ‘small rooms’ for privacy.

In **C Block** there are 2 dormitories in each room. Each dormitory measures 15m by 7m. All the rooms have 2 windows, with the exception of 1, which has 5, all measuring approximately 1m by 90cm. The dormitories are lit by neon tubes, of which many do not work. The dormitories have between 8 and 19 bunk beds in each one – most have 17-18.

### ***Recreation space***

Inside **Warehouse 1**, the recreational space consists of a common room measuring approximately 9m by 12m. The three windows are set high in the wall, way above eye level. In the common room there are 15 benches with tables which are fixed to the ground, however 4 table tops are broken. There is 1 TV 21" (with aerial connection), 1 fridge, 1 water boiler and 1 telephone set with fixed line. In the common area there is a gate that separates the detainees' quarters from the main iron door of warehouse. There is a small room at the end of the corridor that was used as a gym area – it seems that the detainees' friends had brought them some equipment for physical exercise however they were confiscated by the soldiers during a search on March 6, 2007.

Recreational space outside consists of a yard measuring 34m by 14m. Another yard adjacent to the main yard measuring 16m by 24 m is also used by detainees. A small hole at the bottom of the fence makes it possible for detainees to enter from one yard to the other. The main yard is covered with gravel while the adjacent yard is covered with tarmac. The yards have no shaded area and are surrounded by an iron fence approximately 5m high topped with barbed wire. The main yard has 4 floodlights. The yards are surrounded by fields and other AFM buildings. There are 2 basketball boards and a volley ball net. The detainees use rubbish bins to serve as goal posts. Some time ago there was also a ping-pong table but it broke and has not been replaced.

The recreational space inside **Warehouse 2** consists of a common room measuring 9m by 20m. The common area is slightly larger than that in Warehouse 1 but, as it is situated in the middle of the building and has fewer windows and little natural light, it is much darker. It contains one television, one fridge, one hot water boiler and one long table with benches attached. This leaves more space for other activities, such as communal prayer. As in Warehouse 1, this area has an iron gate, which separates the common room from the main door of the Warehouse. There is one telephone, but the detainees complained that they can only make phone calls – they cannot receive phone calls from outside.

Recreational space outside consists of an L-shape yard measuring 448 square metres. The yard has no shaded area. The ground is covered with tarmac and the perimeter of the yard is surrounded by an iron fence some 5m high topped with barbed wire. The yard has 3 floodlights. Detainees complain that during the night there isn't sufficient light in the yard. In April 2007 the DS put up a volley ball net in the yard. There are also some ropes hanging on the iron fence so detainees can hang their clothing to dry. However they are not sufficient for the number of people in the warehouse, so detainees have to wait for a rope to be free before washing their clothes and hang them to dry. There are 2 basketball boards. Some time ago there was also a table-tennis but it broke

Each of the three units in **C Block** has its own common room, measuring some 7m by 9m. Inside the common room there is a metal gate separating the iron door of the unit from the room. Each gate has a hole in it for soldiers to be able to pass food and other items to the detainees. The electricity switches are placed outside the metal gate. Since Block C has opened there have been no chairs and/or tables in any of the common rooms. In some rooms detainees use beds or mattresses to provide seating. Each common room has 1 TV set with aerial connection, 1 hot water boiler and 1 telephone set. The windows and lighting are in a poor state of repair.

Outer recreational space consists of a tarmac-covered yard for each unit, measuring approximately 15m by 10m. The yards of Room 2 and 3 have walls on 3 sides and a metal fence on one side while the yard of Room 1 has walls on 2 sides and metal fences on the other 2 sides. The walls and gates are approximately 4m high. The upper part of the fence (eye level) is covered with metal sheets. The yard is empty; detainees complained they lack basketball boards and that the yard is too small to play football.

### ***Locations used for punishment or seclusion***

At Safi Barracks Detention Centre there are no locations used for punishment or seclusion. However, as was explained earlier, detainees from Safi are often confined in the cell at Lyster Barracks set aside for this purpose.

### ***Detention regime and access to open air***

In the two Warehouses, detainees are free to move around, both within the building and the yard, at any time of the day or night.

In C Block, detainees may move freely inside the building at any time, but access to the yard is restricted from 9am to 4pm. The doors to the yards are locked from outside and are opened and closed

by the soldiers at the stipulated times. For 7 months detainees in Block C did not have access to the yard since the fence needed repairs.

### ***Accommodation arrangements***

Safi Barracks Detention Centre accommodates only males. Detainees of different nationalities and language groups are detained together. In practice, within the centres, detainees tend to stick with others from their own ethnic/linguistic background. Unaccompanied minors and adults are detained together.

### ***Incidents***

There were a number of incidents at this detention centre since EU accession. The most widely-reported were possibly the protests that took place in January 2005. There were a number of other protests, some of which received considerable media attention, in February, May and September 2006. Most were an attempt by detainees to draw public attention to their plight. They were particularly concerned about the length of their detention and the conditions in which they were detained.

### ***Reports***

The following reports refer to the conditions in Safi Barracks; all were published following EU accession :

- Council of Europe, Office for the Commissioner for Human Rights, Follow-up report on Malta – 2003-2005, Strasbourg, March 29, 2005
- Council of Europe, Committee for the Prevention of Torture, Report on visit to Malta carried out from 18-22 January 2004, Strasbourg, August 25, 2005
- European Parliament Committee on Civil Liberties, Report by the LIBE Committee Delegation on its visit to the administrative detention centres in Malta, Brussels, March 30, 2006

## **LYSTER DETENTION CENTRE, LYSTER BARRACKS, HAL FAR**

### ***Type and description***

In this centre, detainees are held in two separate detention premises situated within the grounds of the same military barracks, Lyster Barracks, which is headquarters of the First Regiment of the Armed Forces of Malta (AFM). The two premises are known as: Hermes Block and Tent Compound. Hermes Block is the centre used to accommodate female detainees and families with minor children.

Lyster Barracks is in Hal Far, very close to Malta International Airport. Hal Far is a largely industrial area, situated close to the coastal village of Birzebbuga.

### ***Internal rules***

The regime in the two detention premises in this centre is extremely different, primarily, but not only, because the two centres are so different.

In the Tent Compound detainees are not bound by any sort of schedule.

In Hermes Block conditions are far more restrictive. Detainees are confined to the zone where they are accommodated<sup>113</sup> and cannot move freely within the block without specific permission. Moreover, certain aspects of detainees' daily life, such as access to open air and access to the telephone, are strictly regulated.

### ***Staff***

As with Safi Barracks, when this centre opened in 2002 it was staffed exclusively by military personnel. Today it is staffed by a combination of military personnel (AFM) and casual Detention Service officers. At the moment all administration is carried out by AFM personnel and shift (guard) duties within the different detention premises are carried out by military personnel and Casual Officers.

At Hermes Block there are usually some 8 Detention Service officers on shift/guard duty. During the day, in addition to the shift staff, the officers responsible for administration and medical support will also be present at the Centre.

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<sup>113</sup> Refer to section 1.2(d) below for a description of Hermes Block

This centre has some three female members of staff, but most of the staff is male. The training provided for staff at this centre is identical to that provided for staff at Safi Barracks<sup>114</sup>.

### ***Detainee population***

On 9 March 2007, there were 330 immigrants detained at Lyster Barracks; 66 of these were women. All of the detainees at the Tent Compound are male, mostly between the ages of 20 and 30. The women are detained at Hermes Block, together with men. At times, particularly during the summer when large numbers of immigrants arrive by boat, children are detained at Hermes Block; in fact, on 9 April 2007 there was a baby. Again, most of the detainees at Hermes Block are relatively young – aged between 20 and 30.

On 9 April 2007 the majority of male detainees come from Eritrea/Ethiopia, Sudan, Ivory Coast, Nigeria, Ghana and Somalia, while most of the female detainees came from Eritrea, Somalia, and Nigeria<sup>115</sup>.

### ***Accommodation***

#### ***General description***

**Hermes Block** is a two-storey building, originally intended for use as a military barracks rather than as a detention centre. A staircase runs from ground to second-floor at either end of the block. A corridor runs the length of the building, from one landing to the other, and a number of rooms (all of which are used as dormitories) lead off the corridor.

The building is divided into five Zones (Zone A-Zone E): Zone A is on the ground floor, Zones B and C are on the first floor and Zones D and E on the second floor. Zones B and C and D and E are separated by means of a metal gate cutting across the corridor and dividing the floor into two. Entry into each Zone is through a gate on the landing, which is always kept locked.

The facilities at Hermes Block are in a poor state of repair – many of the windows are broken and the premises have a very dilapidated air.

Detainees spend most of the time locked inside their Zone. The staff is usually either occupied in the guard room/office, which is on the ground floor, or on guard in sentry boxes placed around the perimeter of the building. To attract the attention of the guards, detainees must shout or bang on the gate.

The **Tent Compound** is a patch of ground, measuring roughly 200m by 100m, surrounded by a wire fence, and containing some 13 tents and one building, housing the common room and the sanitary facilities. The tents are erected on raised concrete platforms and each tent contains some 30 beds, meaning that the compound has a maximum capacity of close to 400 detainees. The ground of the compound is dusty, rough and stony.

#### ***Sanitary facilities***

In **Hermes Block**, there is a bathroom leading off the landing in each Zone, containing 3 showers without doors, three toilets and three basins. These facilities must be shared by all the people accommodated in the Zone, which could be anything from 50 to 80 people, whether male or female. Detainees complain about the lack of privacy in the bathrooms, particularly where they are used by both men and women. They also say that the flushing is often out of order and there is never enough hot water for everyone.

The sanitary facilities at the **Tent Compound** consists of some 10 wash hand basins in a corridor, one room containing 12 toilets and another containing 12 showers. The showers have no doors or curtains and some of them do not work. Detainees complained that the toilet flushing mechanisms are often out of service.

#### ***Sleeping arrangements***

In **Hermes Block**, most detainees sleep in dormitories leading off the corridor. Each room contains some 8 or 10 bunk beds, depending on the size of the room. There are also a number of smaller rooms, leading off the bathroom and the landing, where some 2 to 4 detainees sleep. In the larger rooms, detainees hang sheets between the beds to separate the room into smaller sections and to provide some privacy.

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<sup>114</sup> See section 1.1(b) above

<sup>115</sup> The registered ages and nationalities are those declared by the detainees on arrival

In the **Tent Compound** too, detainees sleep in a kind of dormitory – each tent is a dormitory accommodating up to 30 immigrants. The detainees have divided the tents into smaller sections, by hanging sheets between the beds, to provide some privacy. Many of the tents have been damaged by the strong winds and constant exposure to the elements.

### ***Recreation space***

In **Hermes Block** the recreation area in Zone A is in the corridor. It consists of three or four of armchairs lined up behind each other, a television and a fridge. In Zones B to E, the recreation area is on the landing. On one side the recreation area is bounded by a large metal fence, separating it from the stairs and/or the rest of the landing, which is used to access the other floors. Each recreation area contains a motley selection of torn sofas and armchairs or beds and mattresses, which the detainees use as seating, and one television, with an aerial connection. The outside recreation area is a yard at the back of the building, which is bounded by a barbed wire fence. There are no sports facilities in this yard, though detainees often play football.

The **Tent Compound** has a common room, containing one television and a number of long tables with benches attached, like the ones in the Warehouses at Safi Barracks. Outside there is a volley ball net and a ping pong table.

### ***Locations used for punishment or seclusion***

There are two cells on the ground floor at Hermes Block which are used for confinement or seclusion of detainees.

Conditions in these cells are very poor. The cells have no natural light and only receive fresh air through a small opening high up in the wall, just below the ceiling. The only other aperture in these cells is the door, which is made of iron bars backed by wire mesh, with a small opening at the bottom through which the detainees can get their food and other objects, which are placed on the doorstep of the room by the soldiers. The doors of these rooms lead onto a shower room and toilets, so the air is always foul-smelling and the floor is often full of puddles of water. Large amounts of flies and mosquitoes frequently collect in these puddles, just outside the doors of these cells. Detainees reported that the electric light inside these cells is switched on from the outside. Whenever we have seen these cells the light has always been switched off. Since there is little natural light, it is always quite dark inside these cells.

The cells themselves are very small – one has space for little more than three single bed mattresses: when placed side by side on the floor, they fill the space from wall to wall, with the exception of about one metre of floor-space between the foot of the mattresses and the door. The other is only slightly larger. The mattresses are placed directly on the floor and the detainees only have blankets, no sheets. The rooms have no other furnishings apart from these three mattresses.

These cells often house more than one person at any given time – the largest number of people we have seen in one (the smaller) cell at one time is 8. On the occasion all the detainees had to lie on the three available mattresses to sleep. All had been there for some days.

Detainees in seclusion do not have direct access to showers or toilets; the soldiers have to open the gate for detainees to be able to use the facilities. Detainees have often complained that they were not allowed to wash for days on end and that they had to urinate in a plastic mineral water bottle in the cell. As a rule, detainees in seclusion do not have access to open air during the period they are held there.

According to the Detention Service, detainees in seclusion are supposed to have free access to medical care, however many claim that, while in seclusion, they were denied access to medical treatment or that they were not given the treatment prescribed.

This is problematic primarily, but not only, because a number of detainees claim to have been beaten immediately prior to being placed or even while in seclusion. In addition, when they are allowed to see a doctor the examination is usually conducted in the presence of a non-medical member of staff.

Having said this it must be stated that the treatment received by detainees in seclusion, particularly as regards access to services and sanitary facilities is largely determined by the person on duty at the time – some treat the detainees with dignity and respect while others are less accommodating or even, at times, abusive.

During the past months, JRS members of staff were no longer allowed to talk to the people in confinement or to go inside and see them.

#### ***Detention regime and access to open air***

In **Hermes Block**, detainees must remain within the confines of their Zone – they are not allowed to move around the building freely without permission. They are usually allowed out of their Zone only to visit the doctor, speak to their lawyer or other professional or to go out in the open air. Detainees in this detention premise are allowed out into the open air once or twice a week for an hour or two each time.

In the **Tent Compound** detainees are allowed to move freely within the compound at any time of the day or night. They also have unlimited access to open air.

In both detention premises there are a number of restrictions regarding the objects that may be brought into the barracks, so visitors may be subjected to a search of their person and possessions.

#### ***Accommodation arrangements***

Both detention premises within this centre house detainees of different nationalities and language groups. However, in the Tent Compound people are divided between the tents more or less according to their nationality.

Hermes Block also houses a mixture of women, men and even children in some Zones. Most of the men detained with women are part of a family unit, but at times even single men are held with women. Unaccompanied minors are detained with adults.

Couples are usually detained together, provided they claimed to be a couple from the moment they arrived in Malta. As a rule children are accommodated with their parents.

#### ***Activities for detainees***

Activities within Lyster Detention Centre are much the same as those available to detainees at Safi<sup>116</sup>. There are no formally organised activities for detainees. Until recently there was a library at Hermes Block, but it seems that detainees will no longer be allowed to use it.

#### ***Incidents***

Since EU accession there were a number of incidents at this detention centre, mostly protests, a few of which received considerable media attention. As with the protests by detainees at Safi, most were an attempt by detainees to draw public attention to their plight - the length of their detention and the conditions in which they are detained.

#### ***Reports***

The following reports refer to the conditions in Lyster Barracks ; all were published following EU accession :

- Council of Europe, Office for the Commissioner for Human Rights, Follow-up report on Malta – 2003-2005, Strasbourg, March 29, 2005
- Council of Europe, Committee for the Prevention of Torture, Report on visit to Malta carried out from 18-22 January 2004, Strasbourg, August 25, 2005
- European Parliament Committee on Civil Liberties, Report by the LIBE Committee Delegation on its visit to the administrative detention centres in Malta, Brussels, March 30, 2006

### **TA' KANDJA DETENTION CENTRE, SAG HEADQUARTERS, L/O SIGGIEWI**

#### ***Type and description***

In this centre, detainees are held in one detention premise, which is situated within the grounds of the headquarters of the Special Assignment Group (SAG) of the Malta Police Force. Ta' Kandja Detention Centre is situated at the outskirts of Siggiewi Village.

#### ***Internal rules***

Within this detention centre detainees are not bound by strict schedules, apart from those relating to access to the yard.

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<sup>116</sup> Refer section 1.1(f) above

In this centre, seclusion or confinement of detainees in the cell at Lyster Barracks is not normally resorted to – in fact we do not know of any cases where this measure was used.

### ***Staff***

This centre is staffed exclusively by members of the police force. There are approximately 50 people working there and some 10 people work on each shift.

All the staff working in this detention centre is male, as is the detainee population.

In this centre, where the detainee population is much smaller than that in the other centres, staff members have a more personal relationship with detainees and communication is far better than in other, larger centres. This is hardly surprising, considering the staff to detainee ratio in other centres, e.g. 17 members of staff to 406 detainees at Safi Barracks – and this is in April, when the detainee population is relatively small.

Better staff-detainee relations could also be due to the attitude of the staff as, aside from all other considerations, in practice, the attitude of the individual staff members working within a particular centre usually makes a big difference to the quality of treatment detainees receive.

### ***Detainee population***

On 9 March 2007 there were some 60 detainees held at Ta' Kandja. Most were people who arrived by boat, but a few (approximately 10-15 at any give time) would have been apprehended for illegal stay.

### ***Accommodation***

#### ***General description***

The detention premise at Ta' Kandja was never intended for use as a detention centre. At Ta' Kandja detainees are housed in two large rooms, containing bunk beds lined along both walls, a table and benches and a television. Detainees eat, sleep and live in this room, which is provided with sanitary facilities in an adjoining room and can accommodate up to 40 people.

The centre also has a small clinic where the doctor sees patients and the medical records are kept. There is also another room in the same building which is used by lawyers to speak to their clients.

There is a large yard, surrounded by a wire fence just outside the building housing the detention centre.

#### ***Locations used for punishment or seclusion***

At Ta' Kandja Detention Centre there are no locations used for punishment or seclusion.

#### ***Detention regime and access to open air***

Detainees spend most of the day confined to their room – which acts both as dormitory and living area. They cannot go out whenever they like, however they do have an hour of access to the open air each day.

#### ***Accommodation arrangements***

Ta' Kandja Detention Centre accommodates only males. Detainees of different nationalities and language groups are detained together. Unaccompanied minors and adults are also detained together.

#### ***Information provided to detainees***

As in the larger centres, there is no formal structure in place to provide detainees with information about the status of their claim or to allow them to communicate with the authorities taking decisions about their claims. However, staff regularly follows up requests for information from detainees; this goes a long way towards alleviating detainees' anxiety and reduces unnecessary tension.

### ***Reports***

The following report refers to the conditions at Ta' Kandja and was published following EU accession :

- Council of Europe, Committee for the Prevention of Torture, Report on visit to Malta carried out from 18-22 January 2004, Strasbourg, August 25, 2005

## **4 EXISTING CIVIL SOCIETY ACTIVITIES**

In Malta, although there are a number of NGOs who work exclusively with immigrants and asylum seekers, very few of these organisations work within detention centres.



Most NGOs are small, under-funded and heavily dependent on volunteers; none are international organizations and few have worked on international projects. The larger NGOs, including Emigrants Commission (Kummissjoni Emigranti) and Peace Lab (Laboratorju tal-Paci), work mostly with immigrants who have been released from detention to live in the community, offering accommodation and a number of other essential services.

Although they do not work directly within the centres on a regular basis, some refugee-assisting NGOs are occasionally present and most have expressed concerns regarding current government policy of long-term detention and related issues.

UNHCR Malta visits the centres on a regular basis as part of its activities locally. The Malta Society of the Red Cross (Socjeta' Maltija tas-Salib l-Ahmar) too is present within the centres, offering humanitarian and material assistance.

In addition to refugee-assisting NGOs and organizations, there are a number of other groups, mostly religious organizations, such as the Legion of Mary, the Society of Christian Doctrine (MUSEUM) and the Jehovah Witnesses, whose members are regularly present within one or more of the centres offering pastoral care and organizing religious services.

Although there is no formal NGO platform or association, most refugee-assisting NGOs collaborate on a regular basis. This collaboration is usually linked to advocacy on a particular issue, organization of activities or collaboration on individual cases, and includes sharing of information as well as more practical collaboration.

None of the organizations working in the field, apart from the Malta Red Cross Society and the UNHCR, have international links.

### **INTRODUCTION<sup>117</sup>**

In Poland, as of 30 March 2007, there were a total number of 24 detention centres out of which one in Wrocław was being renovated. These centres are located at the borders as well as inland in *Kłodzko, Krosno Odrzańskie, Lublin, Piotrków Trybunalski, Nowy Sącz, Limanowa, Wrocław, Włocławek, Warszawa Okęcie, Warszawa (Bemowo), Opole, Suwałki, Gdynia, Bielsko – Biala, Jaworzno, Katowice, Konin, Piła, Szczecin and Lesznowola.*

Another three centres in eastern Poland are currently under construction and should be opened by the end of this year. They will probably be run by Border Guards.

This report describes the situation on the ground in six of the detention centres currently being used for immigration detention purposes.

The findings in the report were elicited by means of direct observation and questionnaires with 27 detainees (from Armenia, Bangladesh, Byelorussia, Chechnya, China, Ecuador, Gambia, Georgia, India, Liberia, Moldova, Mongolia, Nigeria, Pakistan, Sudan, Ukraine, and Vietnam) as well as seven staff members in detention centres. Altogether 34 interviews were conducted and evaluated.

Caritas Polska owes special gratitude to Komendant Główny Policji and Komendant Główny Straży Granicznej and to all the other persons, including detainees, who helped Caritas Polska to accomplish this report.

In Poland, Caritas Polska is not the only NGO which has access to detention centres. Others are the Halina Nieć Association, Helsinki Foundation, UNHCR, Legal Intervention Association as well as a number of others that may be granted the access to the detention centres on request.

### **1 ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004**

In Poland, legal amendments were made in June 2003 with the enactment of two laws, namely an Act on Aliens of 13 June 2003 (Journal of Laws, 2003, No 128, it. 1175) and an Act on granting protection to aliens within the territory of the Republic of Poland of 13 June 2003 (Journal of Laws of 2003, No 128, item 1176). These laws define the procedures for the administrative detention of asylum seekers and illegally staying third-country nationals as well as Dublin II cases. The amendments came into force one year before EU accession.<sup>118</sup>

Although the Acts of Law lay down a number of legal regulations, they omit issues of great importance, such as life itself, and one's personal feelings and suffering. They do not provide solutions for those people who have been living in Poland for more than eight years, who have graduated from the Polish educational system, who are fully integrated and assimilated within Polish culture but who lack documents. Such people are detained and placed under arrest for the purpose of expulsion and receive documents in a language that is formally their mother tongue but which in practice is unknown to them.

Further, the fact that the majority of detainees are not criminals seems to have been overlooked; the centres are prison-like places, with little respect and understanding for people from different cultures. The authorities justify the isolation imposed on detainees by recalling that they have disobeyed Polish law by entering the country without the legally required permission to do so.

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<sup>117</sup> This report is owned by Caritas Polska. It is publicly available at [www.migranci.caritas.pl](http://www.migranci.caritas.pl). Reproduction and quoting are authorised, provided the source is acknowledged, save where otherwise stated.

<sup>118</sup> The full texts of the Acts available under the following address: <http://www.uric.gov.pl/Polish.law.265.html>

## **2 SUMMARY OF NATIONAL LAW**

### **2.1 Legal grounds for ordering detention**

The legal grounds for ordering detention are found in Article 101 of the Act on Aliens of 13 June 2003, which says that foreigners can be detained by the Border Guards or Police for not longer than 48 hours. The authority which has detained an alien should take his/her fingerprints without delay and, if required by the circumstances, it also should make a request to the court to place the alien in the guarded centre or in a facility for people arrested for the purpose of expulsion.

In accordance with Article 41 of the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland, an alien referred to in Article 40 shall be placed in the guarded centre or in a facility for people arrested for the purpose of expulsion. Arrest for the purpose of expulsion shall be applied if the circumstances determined by the Border Guard indicate that it is necessary for state security and defence as well as for public security and policy.

### **2.2 Legal grounds for the detention order**

The legal grounds for a detention order are found in Point 3 of Article 101 of the Act of 13 June 2003 on aliens, which says that a detention order is issued by the Court, and Article 104 which defines the details of the detention order. The Act on granting protection to aliens says that the ruling on placing an alien in the guarded centre or in the facility for people arrested for the purpose of expulsion shall be rendered by the court for a period of 30 days. In cases where an application for granting refugee status is submitted by an alien in the guarded centre or in the facility for people arrested for the purpose of expulsion as a consequence of the execution of the court's ruling, rendered on the basis of the Act of 13 June 2003 on Aliens, the court shall extend the period of the alien's stay for 90 days. The day of submission of an application for granting the refugee status shall be regarded as the first day of the period of extended stay.

### **2.3 Legal grounds for right of appeal against the detention order/for right to challenge detention**

In accordance with Article 106 of the Act of 13 June 2003 on aliens, the detainee has the right of appeal within seven days from the day of receipt of the Court decision. The appeal shall be treated by the court immediately.

Article 44 §3, states that: An alien may appeal against the decision of the President of the Office on refusal to accept a request for release from the guarded centre or from the arrest for the purpose of expulsion within the time limit of the days from the date the decision has been delivered. The appeal shall be submitted to the district court competent with respect to the seat of the President of the Office, through the head of the guarded centre or through an officer responsible for conducting the arrest for the purpose of expulsion. The said officer shall - within the time limit of two days - send the appeal to the court, which shall examine it immediately<sup>119</sup>.

The law stipulates that provisions of the Code of Criminal Procedure regulating the procedure for complaints against rulings on preventive measures, shall apply *mutatis mutandis* to the procedure for appeal referred to above; the function of the public prosecutor shall be exercised by the President of the Office.

### **2.4 Legal grounds for instructions on right of appeal/instruction on right to challenge detention**

No such instructions are available. The detainees feel confused and do not know whom to contact and what to say in such appeals. Further, the period of seven days is not enough for them to contact and to get feedback from professionals. In many cases they contact Halina Nieć Association and Helsinki Foundation, one based in Cracow and the other in Warsaw, which means that there is not enough time for procedure and gathering information.

### **2.5 Legal grounds for legal maximum duration**

Article 106 of the Act of 13 June 2003 on aliens stipulates that detention cannot be longer than 90 days however it can be prolonged for a specified period of time if such extension is necessary to execute the decision on expulsion, which was not executed due to the fault of the foreigner. The period of detention in the guarded centre or in a facility for people arrested for the purpose of expulsion cannot exceed one year.

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<sup>119</sup> Article 44 §4

However, what is not defined in the Act of Law is how many times the same person can be arrested and placed in detention, which in practice leads to situations such as the following: an illegally staying third country national was detained for one year after which he was released because he could be not be detained any longer and he could not be deported because of a lack of documents. As his legal status remained unchanged, he was still an illegally staying third country national so he could be detained again.

## **2.6 Legal grounds for contact with the outside world**

Article 117 of the Act of 13 June 2003 on aliens states that a foreigner who is detained in the guarded centre or in a facility for people arrested for the purpose of expulsion has the right to contact the following: the Polish authorities, diplomatic representatives, and NGOs. Paragraph 14 stipulates that a foreigner can meet face-to-face with the close persons in rooms especially set aside for this purpose.

Art. 43 §1, states that an alien placed in the guarded centre or in a facility for people arrested for the purpose of expulsion shall be informed in a language s/he understands about the organizations which statutorily deal with refugees' affairs, and that s/he shall be allowed to correspond or make telephone contact with these organizations.

Paragraph 2 of the same article provides that detainees may, particularly for the purpose of being granted legal assistance, personally contact the representative of the United Nations High Commissioner for Refugees or the organizations dealing statutorily with refugees' affairs, in the guarded centre or the facility for people detained for the purpose of expulsion. Exceptions to this rule may only be justified by the necessity of ensuring public security and policy or observing organizational rules in the centres concerned<sup>120</sup>.

## **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Article 113 §1, of the Act of 13 June 2003 on aliens states that upon being accommodated in the detention centre or guarded foreigner's centre, the foreigner shall be immediately submitted to a medical check-up and, if necessary, will undergo sanitary treatment.

Article 117 §4, of the Act of 13 June 2003 on aliens states that a foreigner has the right to access medical aid or can be put in a medical centre if his/her health condition so demands.

## **2.8 Legal grounds for the protection of particularly vulnerable people**

Article 103 of the Act of 13 June 2003 on aliens refers to situations in which detention could affect the health condition of a foreigner and therefore does not allow his/her placement in a detention centre.

Article 115 says that female and male foreigners should be separated. It also stipulates that a foreigner accompanied by a minor should be accommodated in the same room as the minor if possible. In addition, if an unaccompanied minor is accommodated in a guarded detention centre, he is to be put in a separate part of the centre so as to avoid contact with adults. Those foreigners who declare they are with relatives may be accommodated, as per a written request they must make, in the same room. Article 121 stipulates that a woman up to 7 month of pregnancy can be accommodated in the centre for detention for the purpose of expulsion. After that time pregnant women are transferred to the guarded detention centre.

The Act on Protection to Aliens includes procedures with participation of aliens whose psychophysical state allows presuming that they have been victims of violence or of aliens with disabilities

Article 54 §1 of the said Act states that in case of an asylum seeker whose psychophysical state leads to the presumption that s/he has been a victim of violence, or in the case of aliens with disabilities, procedures for the determination of refugee status shall be effected:

- in conditions assuring a freedom of speech, in a particularly tactful manner, adjusted to the alien's psychophysical state;
- in the place of his/her residence;
- on a date adjusted according to his/her mental and physical state, taking into consideration the dates of medical treatments undergone by such an alien;
- with participation of a psychologist and - if necessary - of an interpreter of the sex indicated by an alien or by a doctor.

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<sup>120</sup> Article 44 §3

In terms of law, such persons shall not be placed in the guarded centre or in the arrest for the purpose of expulsion<sup>121</sup>. Moreover, article 55 stipulates that, in the case of such vulnerable persons, activities undertaken during status determination procedures or in order to grant assistance within the centre may be undertaken by a person of the sex indicated by an alien who has received vocational training in working with victims of crimes or violence and with persons with disabilities.

Furthermore article 54 §2 states that: *If it is justified by the mental or physical state of an alien placed in the centre, he/she shall be provided with a transport in order to: 1) give testimonies and statements in the proceedings for granting the refugee status; 2) undergo the medical treatment.*

## **2.9 Legal grounds providing for release**

Article 44 of the Act on Protection to Aliens says that an alien may be released from the guarded centre or from the facility for those arrested for the purpose of expulsion in cases referred to in article 107 §1 of the Act of 13 June 2003 on Aliens; or on the basis of the decision of the President of the Office rendered ex officio; or on the request of an alien, if evidence indicates that the alien is likely to meet the conditions for refugee status as per the Geneva Convention and the New York Protocol or the conditions for obtaining a permit for tolerated stay on the basis of article 97§1 p. 1. This decision shall refer also to minor children and the spouse accompanying the said alien.

## **3 OVERVIEW OF CONDITIONS IN DETENTION**

This section of the report starts by outlining the characteristics common to all of the centres researched. It then goes on to describe that which is particular to each of the centres currently in use.

### **3.1 Description of characteristics common to all centres currently in use**

#### ***Detainee population***

As for nationalities of detainees, the Vietnamese definitely make up the largest group, followed by Chechens, Armenians, Byelorussians, Pakistani, Sri Lankan and also Chinese and Africans. Detainees are mostly young people aged up to 30. A minority of detainees are aged around 50. In accordance with legal regulations, it is forbidden to put older and ill people in detention and the same applies to those whose life would be endangered if they are detained.

#### ***Staff***

There are no regular training programmes for staff working with aliens, nor does the recruitment process require job applicants to know any foreign languages. The situation is worse in those centres managed by the Police. At least the border guards do participate in some language and cultural training related to the unique nature of work with foreigners although these are not regular programmes. Since only a limited number of guards speak foreign languages fluently, there are reports of communication problems. In practice, some of the detainees translate for those who are unable to communicate.

#### ***Accommodation***

When it comes to **accommodation**, there is no distinction between asylum applicants and illegally staying third country nationals or Dublin II cases. Convicted prisoners are not kept in the centres apart from those who were convicted in Poland and who are awaiting deportation towards the end of their sentence.

Apart from the Lesznawola Guarded Centre for Aliens, all detention centres are prison-like. This is either because they are located in the same buildings as real prisons or else because they were adapted for the purpose of arrest. This has a great influence on detainees especially when they are locked up for most of the day.

Whenever possible, detainees are accommodated according to language and cultural groups. In case of conflict or other circumstances, a detainee may ask for a change of room. Men and women are accommodated separately. Families and minors cannot be detained for the purpose of expulsion. They are sent to the Lesznawola Guarded Centre for Aliens. The size of the rooms must comply with the Act of Law for foreigners, which means that they should be 3m<sup>2</sup> for men and 4m<sup>2</sup> for women. In each and every detention centre researched, **sanitary facilities** did not comply with hygiene norms. These facilities were insufficient for the number of detained and all needed renovation. Most did not allow for privacy, were in terrible conditions and smelt awful. They badly need ventilation and to be equipped with damp-proof systems. Dormitories for those under arrest for the purpose of expulsion are small and shabby, with a lack of light; the windows are barred and access to fresh air is very limited.

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<sup>121</sup> Article 54 §3

People in such dormitories sleep and eat in the same place. What's more, there is not enough furniture to hold personal possessions. Recreation space consists of one room about 4m x 5m with small windows and no equipment apart from a TV without satellite. There are no cells used for punishment or isolation.

Detainees do not have to cover any costs of detention.

### ***General services for detainees***

In general, the following services are provided: basic hygiene kits; medical services from Monday to Friday and in cases when emergency aid is needed; translation; pastoral services on request (but this service is rarely accessed); social work, to a greater or lesser extent, for those who need.

### ***Activities for detainees***

Without doubt, this is the worst and the most neglected aspect of the detention system in Poland. There are no regular recreational activities organised for detainees and no initiative is taken by the managing authorities.

Activities offered in the detention centres include table tennis and board games. Listening to the radio and watching TV is allowed but since in reality there is only one TV set in the recreation area, this leads to conflict.

### ***Health care***

Detainees undergo a medical check-up when they are placed in a detention facility, and they also have the right to visit the doctor. Most of them reported that the medical aid provided was very basic and that internal and psychological illnesses were not properly treated. Stress-related illnesses are also somewhat ignored. Psychological support is available in the centre on request but detainees do not avail themselves of this service as they feel it is neither objective nor effective.

### ***Protection of particularly vulnerable people***

There are no special procedures or protection for particularly vulnerable people. However families cannot be detained, nor can elderly people whose health condition could be adversely affected by detention. People with mental disabilities, minors, sick people and single mothers with children cannot be accommodated in facilities for those arrested for the purpose of expulsion. They are sent to Lesznawola Guarded Centre for Aliens. Pregnant women can be detained up until the seventh month of pregnancy.

### ***Contact with the outside world***

Contact takes place unhindered. This is positive: detainees may contact NGOs, lawyers, diplomatic representatives, family members, friends and priests via telephone, fax, face-to-face, or in written form as frequently as they wish, but they have no access to email or the Internet. Face-to-face meetings may be up to an hour long. Detainees did not make any complaints about the frequency of contact with the outside world, nor about any restrictions imposed. They may also receive packages and letters although they are opened and their contents checked in the presence of a foreigner.

### ***Statistics***

Regarding arrests for the purpose of expulsion, **no precise statistics** are available of the number of detainees, their gender, the duration of detention, release, etc.

### ***Cost of detention***

Data on the financial cost of detention and annual budgets are unavailable however the total cost of detention per day per detainee is estimated to be 18.23 PLN, which amounts to around 4.60 EUR per day. This includes the daily cost of food of 4.50 PLN per day, that is, 1.15 EUR for three meals. Subsequently, it is hardly surprising that hunger strikes are commonplace and quite frequent. The meal portions are not sufficient for men and the same food is served all the time. Breakfasts and suppers are based on large quantities of bread, which leads to digestion problems. Only the eating habits of Muslims are respected and this solely as regards meat. Detainees do not have to cover any of the running costs of their detention however, in accordance with legal regulations they cover deportation costs.

The inadequacy of food served sometimes lead to **hunger strikes**, the most common type of 'incident' reported, and this is not likely to improve unless costs for catering increase.

### ***Administration of discipline and complaints mechanism***

As regards discipline, the governor of the premise is responsible for order and conflict resolution. Formally there are no sanctions for breaking the rules however detainees are denied possibility of getting shopping if they break them.

Complaints are submitted to the governor of the premise and are tackled by him alone. No independent advisors are asked to provide their expertise. Crucial and more serious complaints are submitted by the governor to his supervisor. However, even in those cases, no independent body is asked for input.

### ***Monitoring***

As far as independent monitoring is concerned, this does not take place on a regular basis, but NGO representatives may monitor conditions in detention centres on request. So far such activities have been carried out mainly by the Helsinki Foundation (airport ...) and the Halina Nieć Association. The Circular Courts have the right to monitor the detention premise and such monitoring takes place once a year. Further, an internal body within the Border Guards provides such a service, however the independent factor is excluded in this case. Sanitary and living conditions are checked by a governmental body.

### ***Information for detainees***

Information is provided in the following ways:

**Information about the status of foreigners** is given to the person at the moment of detention. He is informed about his rights as a foreigner in a language that is understandable to him.

**Information about the rights of foreigners** is also passed on either in the mother tongue of the foreigner in question or in a language that is understandable to him. However, I have observed that detainees are not really clear about what they can do in their situation; they have no access to legal regulations and they seem not to know what to expect.

**Information about the reasons for detention** is always clear for detainees and they understand the reasons well. This information is passed on to them when they are detained.

**Information about the asylum procedure (in the case of asylum seekers)** is unavailable to detainees unless requested and passed on by NGOs. The asylum procedure is a complete mystery to the majority of the Vietnamese group.

**Information about the removal procedure** is available for detainees and they are well accustomed to it.

**Information about legal possibilities to challenge a detention order** is completely unavailable.

**Information about legal possibilities to challenge detention conditions** is included in the internal regulations and is also available for detainees so they know whom to contact in such cases. They pass this information among themselves. In some cases the detainees attract media attention if there are hunger strikes.

**Information about disciplinary rules and procedures** is always available in the form of Internal Rules that apply to each detention premise separately and are approved by the governing body of the premise. These rules are made known to each detainee at the time of his/her detention and are signed by him/her. It is worth noting that these rules are largely unavailable in written form for detainees during the detention period. It was explained to me that these rules were previously put in every room and cell but were torn out by detainees so now they are not placed there unless requested.

**Information about existing complaints mechanisms:** Complaints are submitted to the governor of the premise and are tackled by him alone. No independent advisors are asked to provide their expertise. Crucial and more serious complaints are submitted by the governor to his supervisor. However, even in those cases no independent body is asked for its input. The Internal Rules stipulate that a detainee may visit the governor of the premise but in reality, this opportunity is reportedly rather limited.

**Information about NGOs** is available and pasted on information boards with the name of the organisation, fax and phone numbers. However, information on the services rendered by each organisation is unavailable. The posters of Halina Nieć Association and Helsinki Foundation are also

put in detention facilities. If requested the information on services and support provided by NGOs is placed.

### **3.2 Description of specific conditions in each centre**

#### **FACILITY FOR PEOPLE ARRESTED FOR THE PURPOSE OF EXPULSION AT OKĘCIE INTERNATIONAL AIRPORT**

##### ***Type, description and administration of the facility***

The facility for people arrested for the purpose of expulsion at Warsaw Airport is administered by Nadwiślański Oddział Straży Granicznej, (Border Guard of Nadwiślański Region), and is located close to Warsaw International Airport. This was the worst of all the detention centres monitored in our research. The Warsaw International airport is Poland's largest; it serves around 56% of all the country's flights and saw one million passengers in 2006, a figure that is steadily on the rise. Heavy air and road traffic in and around the airport as well as the ongoing construction of two terminals are the main causes of the constant unbearable noise. The building is owned and administered by the Border Guard. The walking space is a tiny, concrete cage without trees or grass. The building was adopted for the purpose of detaining those arrested in July 2003 but no data is available about EU co-financing. The maximum capacity of the facility is 51 persons – 48 men and three women. Rooms are either for eight detainees or for four. There is an INTERNAL ORDER prepared on the basis of foreigners accommodation provided for by the Ministry of Home Affairs, but the director is free to decide himself.

##### ***Staff***

The majority of the staff is composed of guards aged up to 30 years but the turnover of guards is quite high. There are five guards and 54 detainees at Warsaw Airport detention centre. There are two guards per shift, which means 11 detainees per guard. I was informed that there are vacancies.

##### ***Detainee population***

Most detainees at Okęcie are Vietnamese men, closely followed by Chechens and Ukrainians. In 2006, 140 people were admitted to the detention centre and 110 were released.

##### ***Accommodation***

There is one room for three women. The rooms are designed either for eight or for four people. The lighting is dim and the conditions shabby, with basic furniture like beds and shelves. The detainees are locked up for most of the day, apart from breaks for walks, and they have no recreation space or sports facilities available. The corridors as well as the area for walking are monitored. Sanitary facilities do not allow for privacy and are in poor condition. They are stuffy and there is not enough ventilation, which leads to damp. Food is served by a catering company but there is no dining room.

##### ***Contact with the outside world***

As noted in the overview, there is no limit placed on visits and contacts. There is a separate monitored room for visitors and only one phone booth available in the facility so that in practice conversations cannot last longer than 10 minutes per person.

##### ***Activities for detainees***

In this facility, there is nothing for detainees to do apart from playing cards and games. There are no sports facilities or regular recreational activities. The fact that people are locked up for most of the day leads to passivity and feelings of isolation. The Vietnamese play soccer with a hand-made ball. Some people have started to learn Polish with the aid of some educational material while women do some handicrafts. Most people play cards.

##### ***Incidents***

There were hunger strikes and one outbreak of fighting.

##### ***Reports***

The premise was monitored by Halina Nieć Association in 2004 as well as the Helsinki Foundation.

#### **ARESzt W CELU WYDALENIA LUBUSKIEGO ODDZIAŁU STRAŻY GRANICZNEJ W KROŚNIE ODRZAŃSKIM**

##### ***Type, description and administration of the premise***

The premise for people arrested for the purpose of expulsion in Krosno Odrzańskie is administered by Lubuski Oddział Straży Granicznej (the Border Guards of Lubuski Region). The premise consists of a



building and an area where detainees can walk, located within a complex of buildings owned and administered by the Border Guards. The space for walking consists of two concrete cages without trees or grass. The detention centre is located within 30 km of the western border of Poland. It is an administrative detention premise that is designed for asylum seekers as well as illegally staying third country nationals. The building was adopted for the purpose of arrest in July 2000 but no data is available on the source of EU co-financing. The maximum capacity of this premise is 66 persons. There are four rooms for six women each and four rooms for eight men each and two isolation rooms where people are placed on the doctor's decision. There is an INTERNAL ORDER prepared on the basis of foreigners accommodation provided for by the Ministry of Internal Affairs, but the director is free to decide himself. The "house rules" in Krosno Odrzańskie stipulate:

- **the end of silence at 6am apart from Sundays (7am)**
- **common breakfast between 9 and 10am**
- **10am – 2pm is set apart for cultural and educational activities (this seems quite peculiar since no such activities exist in reality)**
- **2 – 3pm is lunch time**
- **3 – 4pm is foreigners' time**
- **5.30pm is dinner time**
- **Lights out at 8pm**

Female detainees are free to move around during the day but male detainees are locked up and can move freely only during breaks.

As far as discipline is concerned, the governor of the premise is responsible for order and conflict resolution. Formally there are no sanctions for breaking the rules; however, detainees may be denied the opportunity of getting their shopping done for them if they break any rules.

### ***Staff***

Most of the staff is made up of guards aged up to 35 years. There are three guards and one supervisor per 12-hour shift. On 3<sup>rd</sup> April 2007, there were 45 detainees in the centre of Krosno Odrzańskie, so three guards per shift means that there were 15 detainees per guard. I was informed that there are vacancies. There are no regular training programmes for staff and the recruitment process does not require job applicants to know any foreign languages. However, border guards participate in language and cultural training on the specific nature of work with foreigners even if regular programmes are not held. In Krosno, in-house training on unspecified topics is held once a month and external training sessions are held five times a year. None of the detainees interviewed complained about the staff but then the interviews were carried out in the presence of a translator (although he was not needed) and a member of staff.

The code of conduct of border guards includes a number of provisions but its literal translation is *Rules of professional ethics of border guards* so it is rather general and not specifically about work with aliens.

### ***Detainee population***

Most detainees are illegally staying third-country nationals but the premise does not cater exclusively for them. The number of detainees in recent years was: 2004 – 216 persons admitted; 2005 – 159; 2006 – 127 and up until 3<sup>rd</sup> April 2007, 32 persons were admitted to the detention premise. The majority are male Vietnamese and Chinese. On the day the research was carried out, there were 45 detainees in Krosno.

### ***Accommodation***

Recreation space consists of one room measuring about 4 by 5m with small windows and no equipment apart from a TV without satellite. What's more, there is no library nor are there any newspapers in foreign languages. Detainees are allowed out in the open air once a day for one hour and then they walk in two cement cages with no bushes, trees, or grass, surrounded by brick wall. Women are allowed to leave their cells during the daytime and to move around the facility freely. Men are not allowed to move freely other than during the time allocated for walking, washing, and so on. Couples, single parents, children, and minors are not accommodated in this premise. Food is provided by a catering company.

### ***Contact with the outside world***

As noted in the overview, contact with the outside world is unhindered. House rules allow visits from Monday to Friday between 9am and 2pm. Religious meetings may take place in the recreation area of

the detention facility from Monday to Friday at a time agreed with the Governor. There is only one room for visits but there were no reports that this affected opportunities for visits.

### ***Activities for detainees***

There are no regular recreational activities for the detainees and the managing authorities do not take any initiative in this respect. There is just table tennis, and some board games and playing cards are provided. Playing football is judged too risky due to possible injuries. There are no opportunities or any willingness to hold special events. Women are engaged in handicrafts and organise fashion shows just to kill the time.

### ***General services for detainees***

A translator of Arabic, English and Vietnamese is employed on a full-time basis.

### ***De-facto duration of detention and release***

In accordance with Polish law, the maximum period of detention is 90 days but it can be prolonged for another 90 days and up to one year. In effect, this means that a detainee may presume that he will be detained for up to one year even if he received a court decision saying his detention period is for 90 days.

The de-facto duration of detention of those interviewed was: three months, one month, over 10 months. No precise data is available about the number of other detainees and when they were released.

### ***Incidents***

One incident was reported – a protest.

### ***Reports***

UNHCR, Halina Nieć Association and Helsinki Foundation

## **FACILITY FOR PEOPLE ARRESTED FOR THE PURPOSE OF EXPULSION IN SZCZECIN**

### **Type, description and administration of the premise**

The facility for cases arrested for the purpose of expulsion in Szczecin is administered by Pomorski Oddział Straży Granicznej (Border Guard of Pomorski Region). The premise consists of one building and an area where detainees can walk located within a complex of buildings owned and administered by the Border Guard. The area for walking is spacious and open. Guarded and surrounded by a wall complete with security measures, this area has some trees and grass, and contrary to other detention premises, it has a volleyball court. The detention centre is located within circa 25 km from the western land border of Poland as well as the coastline. It is an administrative detention premise that is designed for asylum seekers as well as illegally staying third country nationals.

The building was constructed in the thirties and was renovated in 2001. The outer elevation was renovated in 2005 but no data is available about EU co-financing. The maximum capacity of this premise is 55 persons. At the time this research was carried out, there were 50 men and 5 women detained. The rooms are designed for four people and there is one room for one person. There is an INTERNAL ORDER but it is being changed as a result of the recent escape of two detainees. As far as discipline is concerned the Commander of the premise is responsible for order and conflict resolution. Formally there are no sanctions for breaking the rules.

### ***Staff***

Around 40 people are employed in the premise altogether. Most of the staff members are guards who worked in the Border Guard for up to 10 years; others work over 10 years. There are six guards per 12-hour shift. On 4<sup>th</sup> April 2007 there were 55 detainees in the detention centre of Szczecin so this means that there were nine detainees per guard. There are no regular training programmes for staff and the recruitment process does not require job applicants to know any foreign languages. However, border guards participate in language and cultural training on the specific nature of work with foreigners even if regular programmes are not held. None of the detainees interviewed complained about the staff.

### ***Detainee population***

Most detainees are illegally staying third-country nationals but the premise does not cater exclusively for them. On 4<sup>th</sup> April 2007 there were 53 detainees from the following countries: 32, the majority, came from Vietnam; eight from China, three from Moldova and Ukraine, two from Byelorussia and Nigeria, and one from Turkey, Jordan and Armenia. In 2006 a total of 272 persons were admitted to the facility, in 2005 the number amounted to 216 and in 2004 there were 168.

### ***Accommodation***

The sanitary facilities are insufficient for the number of detainees and there are no separate shower facilities for women. Further, they need renovation. They do not allow for any privacy, are in terrible conditions and smell awful. They badly need ventilation and to be equipped with damp-proof systems. Dormitories for those under arrest for the purpose of expulsion are small and shabby, with a lack of light; the windows are barred and access to fresh air is very limited. Detainees are allowed out in the open air once a day for one hour in a spacious yard with some grass and trees that is surrounded by a brick wall decked with security measures. Both men and women are allowed to leave their cells during daytime and move around the facility freely. The decision to unlock rooms was taken after hunger strikes were held and it appears to be the right one. Couples, single parents, children, minors are not accommodated in this premise.

### ***Contact with the outside world***

As noted in the Overview, contact with the outside world is not hindered. The house rules allow visits from Monday to Friday between 9am and 2pm. Religious meetings may take place in the recreation area of the detention facility from Monday to Friday at a time agreed with the Governor. There is only one room for visits but no reports that it affected the possibility of visits.

### ***Activities for detainees***

In Szczecin, the spacious yard is a big advantage but there are no organised activities. The time allocated to walking outside is one hour; there is one TV set for all detainees and table tennis for those accommodated upstairs.

### ***De-facto duration of detention and release***

The de-facto duration of those interviewed persons: one month, four months, and almost a year. No precise data or analysis are available about other detainees.

### ***Incidents***

One suicide attempt by a citizen of Georgia was reported and there were two Chechen runaways.

### ***Reports***

UNHCR, Halina Nieć Association and Helsinki Foundation

## **PREMISE FOR PEOPLE ARRESTED FOR THE PURPOSE OF EXPULSION IN LUBLIN**

### ***Type, description and administration of the facility***

The facility for people arrested for the purpose of expulsion in Lublin is administered formally by Voivodships Police Station however it is located in the Municipal Police Station in Lublin. The facility of the arrest for foreigners is part of a whole prison. The walking space is a very constrained concrete around 3 x 3 m<sup>2</sup> cage with barred access to the air.

The detention centre is located 95km from the eastern land border of Poland. It is an administrative detention premise that is designed for asylum seekers as well as illegally staying third country nationals. The building was constructed in the seventies and renovated in 2006. The walls were painted and the sanitary facilities were renovated but no data is available on EU co-financing. The maximum capacity of this 19-room premise is 40 persons. At the time of this research, 30 men and five women were detained. In 2005, 294 detainees were placed in the centre and in 2006, there were 347.

### ***Staff***

The age of the staff ranges from 24 to 51 years with the majority of policemen aged 35. On 5<sup>th</sup> April 2007 there were 35 detainees in the detention centre in Lublin and five guards per shift which means seven detainees per guard. None of the detainees interviewed complained about the staff, however, it was often pointed out that there were communication problems especially in the case of English speakers and Vietnamese speakers.

### ***Detainee population***

Most detainees are illegally staying third-country nationals but the premise does not cater exclusively for them. On 5<sup>th</sup> April 2007 the population of detainees was composed as follows: most came from Vietnam, followed by Chechens, Armenians, Ukrainians, Byelorussians, Chinese, citizens from Sri Lanka and India. In 2005, 294 people were admitted and 347 in 2006.

### ***Accommodation***

The sanitary facilities are insufficient for the number of detainees and there are no separate shower facilities for women. What's more, they need renovation. They do not allow for any privacy, are in terrible conditions and smell awful. They badly need ventilation. Dormitories are small and shabby, with a lack of light; the windows are barred and access to fresh air is very limited. People eat and sleep in the same place and there is not enough furniture to hold one's personal possessions.

Recreation space consists of one room measuring about 4 by 5m with small windows and no equipment apart from a TV without satellite. What's more, there is no library nor are there any newspapers in foreign languages; there are just some books left by other detainees. Detainees are allowed out in the open air once a day for one hour in a spacious yard with some grass and trees that is surrounded by a brick wall equipped with security features. Both men and women are allowed to leave their cells during daytime and move around the facility freely. The decision to unlock rooms was taken after hunger strikes were held and it appears to be the right one. Couples, single parents, children, minors are not accommodated in this premise.

#### ***Contact with the outside world***

As noted in the overview, contact with the outside world is unhindered. House rules allow visits on Tuesdays and Thursdays for 60 minutes. Religious meetings may take place if requested by the detainees. There is only one room for visits but there were no reports that this affected opportunities for visits.

#### ***Activities for detainees***

There is just table tennis but not all detainees avail themselves of this opportunity. Some board games and playing cards are provided. There are no opportunities nor is there any willingness to hold special events.

#### ***De-facto duration of detention and release***

The de-facto duration of the detention of those interviewed was: one month, four months, and almost a year. No precise data is available on the rest of the detained population and their time of release.

#### ***Incidents***

Hunger strikes were reported.

#### ***Reports***

UNHCR, Halina Nieć Association and Helsinki Foundation

### **FACILITY FOR PEOPLE ARRESTED FOR THE PURPOSE OF EXPULSION IN WŁOCŁAWEK**

#### ***Type, description and administration of the facility***

The facility for people arrested for the purpose of expulsion in Włocławek is administered formally by the Voivodships Police Station but it is located in the Municipal Police Station of Włocławek. The facility for arrested foreigners is part of a whole prison. The area for walking is a closely guarded concrete cage measuring around 3 by 3m<sup>2</sup> with barred access to air.

The detention centre is located within 348 km from the eastern border of Poland and also 348 km from the western border. It is an administrative detention premise that is designed for asylum seekers as well as illegally staying third country nationals. There are nine rooms.

#### ***Staff***

The age of the staff ranges from 24 to 51 years with the majority of policemen aged 35. On 16<sup>th</sup> April 2007 there were 35 detainees in the detention centre in Włocławek and five guards per shift which means seven detainees per guard. None of the detainees interviewed complained about the staff, however, it was often pointed out that there were communication problems especially in the case of English speakers and Vietnamese speakers.

#### ***Detainee population***

Most of the detainees are illegally staying third-country nationals but the premise does not cater exclusively for them. On 16<sup>th</sup> April 2007 the population of detainees was composed as follows: nine people from Vietnam, four from Armenia, three from China and Pakistan, two from Georgia, Byelorussia and Chechnya and one from Ecuador, Uganda, Burundi, Kosovo and India. The majority are aged up to 25 years.

### ***Accommodation***

The sanitary facilities are insufficient for the number of detainees and there are no separate shower facilities for women. What's more, they need renovation. They do not allow for any privacy, are in terrible conditions and smell awful. They badly need ventilation and to be equipped with damp-proof systems. Dormitories are small and shabby, with a lack of light; the windows are barred and access to fresh air is very limited. People eat and sleep in the same place and there is not enough furniture to hold one's personal possessions.

Recreation space consists of one room measuring about 4 by 5m with small windows and no equipment apart from a TV without satellite. What's more, there is no library nor are there any newspapers in foreign languages; there are just some books left by other detainees. There are no isolation or punishment cells. Detainees are allowed out in the open air once a day for one hour and then they walk in a spacious yard with some grass and trees surrounded by a brick wall equipped with security features. Both men and women are allowed to leave their cells during daytime and move around the facility freely. The decision to unlock rooms was taken after hunger strikes were held and it appears to be the right one.

### ***Contact with the outside world***

As noted in the overview, there is no limit placed on contact with the outside world. House rules allow visits Tuesdays and Thursdays for 60 minutes. Religious meetings may take place if requested by the detainees. There is only one room for visits but there were no reports that this affected opportunities for visits.

### ***Activities for detainees***

There is just table tennis but not all detainees availed themselves of this opportunity. Some board games and playing cards are provided and there is one TV set. There are no opportunities nor is there is any willingness to hold special events.

### ***General services for detainees***

No pastoral service is provided in Włocławek.

### ***De-facto duration of detention and release***

The de-facto duration of those interviewed was: 1.5 months, five months, over one month, one month. No precise data is available on the rest of the detained population and their time of release.

### ***Incidents***

No incidents were reported.

### ***Reports***

UNHCR, Halina Nieć Association and Helsinki Foundation

## **STRZEŻONY OŚRODEK DLA CUDZOZIEMCÓW IN LESZNOWOLA**

### ***Type, description and administration of the premise***

The Guarded Centre for Foreigners in Lesznowola is located around 10 km from Grójec and 45 km from Warsaw. An administrative detention premise that is designed for asylum seekers as well as illegally staying third country nationals, it is the only centre where families and children may be placed.

It should be stressed that although children and families are accommodated in the centre, it has no special facilities for them and does not provide for children's needs. Children of school-going age do not have any education facilities nor can they attend school.

The centre is administered by the Voivodship Police Station in Radom. The premise consists of two blocks – a female and family block and a male block. The building was constructed in 1996 and renovated in 2006. Renovation takes place every two years. The maximum capacity of this premise is 131 persons in two blocks. The male block can accommodate 100 persons and the female and family block can take up to 31. The size of the area is 2 ha including around 1 ha of grass.

### ***Staff***

The age of the staff, which is made up entirely of policemen, ranges from 25 to 35. There is one guard per 25 detainees. None of the interviewed detainees complained about the staff however, it was

frequently pointed out that there are serious communication problems where English-speaking detainees are concerned as well as Vietnamese.

### ***Detainee population***

At the time of this research, there were 126 persons including seven children and 22 women. Detainees were mostly young people aged up to 30 from Vietnam, Chechnya, Pakistan, Armenia, India, and Byelorussia. The majority were illegally staying third-country nationals but the premise does not cater exclusively for them. Something worth mentioning is that detailed statistics regarding the centre are easily available and published on the web (<http://www.kwp.radom.pl/lesz.htm>) In total there were 7,022 persons of whom 2,666 applied for asylum, 524 were minors, 1,161 were women, 2,476 were conveyed for the purpose of expulsion and 2,506 were released.

People detained after 1997 came from the following countries: Armenia – 674 Persons, Rumania – 585, Vietnam – 585, Russia – 498, Ukraine – 487, Bulgaria – 428, India – 280, Afghanistan – 278, Pakistan – 259, Bangladesh - 222, and Sri Lanka – 204.

### ***Accommodation***

Families, women and minors are accommodated in a separate building. There is a dining room and a small library but the centre lacks facilities for children like a playing room or playground and what's more, no educational materials are available.

The sanitary facilities are insufficient for the number of detainees. It should be stressed that the sanitary facilities need renovation. They badly need ventilation and to be equipped with damp-proof systems. Dormitories are small but sunny but the windows are not barred. There is not enough furniture to hold personal possessions. There are no special rooms for families with children.

The recreation space consists of one room measuring about 4 by 5m with windows. There is no equipment apart from the one TV set with satellite. There is a library with some books in Russian, English and Polish as well as some newspapers in foreign languages. There are no cells used for punishment or seclusion. No distinction is made between asylum applicants and illegally staying third country nationals when it comes to accommodation.

Detainees can access open air three times a day in a spacious yard with grass and trees surrounded by brick wall equipped with security features. The detainees clearly feel freer in this guarded centre even if the male block looks much worse than the family one. Couples, single parents, children and minors are accommodated in this premise. The food is inappropriate for children and does not provide proper nutrition. The water, even after it has been boiled, has plenty of sediment, which leads to allergies in children and to the discomfort of all.

### ***Contact with the outside world***

As noted in the overview, one positive fact is that contact with the outside world is unlimited. However, detainees have no access to email or Internet. Such facilities would be allowed but there is no technical infrastructure to accommodate them.

### ***Activities for detainees***

In this centre, there is a library and a playing ground as well as a recreation room. There is one TV set and this causes quarrels. It should be noted that some detainees did not even know that a library existed. Although this is the only detention centre where children can be accommodated, no activities and facilities have been organised for them.

### ***General services for detainees***

Translation services of poor quality. Social work is provided only in rare cases.

### ***Health care***

There were reports of communication problems with doctors who had a negative attitude. It seems that doctors do not listen and just mete out basic treatment.

### ***Protection of particularly vulnerable people***

Families, minors, and single mothers with children are accommodated in a separate building. There is no data available about traumatised people.

### ***De-facto duration of detention and release***

The de-facto duration of those interviewed was: 1.5 month, five months, over one month, one month. No precise data is available about the rest of the detained population.

### ***Incidents***

No incidents were reported.

### ***Reports***

The Guarded Centre for Aliens in Lesznowola has been monitored since 1997 by a number of organizations, among them: UNHCR in 1997, 1998, 1999 and 2001, Helsinki Human Rights Foundation, 1997, 1998, 2006, Migration services of Lithuania, Latvia and Estonia 1997, governmental delegations, HUMAN RIGHTS WATCH 2005, Ukrainian delegation and Institute of Public Affairs 2006, Amnesty International 2006 and the Muslim Religious Association, 2006.

## **4 EXISTING CIVIL SOCIETY ACTIVITIES**

In Poland the following civil society actors are active in the field of administrative detention: The Warsaw-based **Helsinki Foundation for Human Rights**, which implements a programme of “Cost-free legal advice for foreigners and refugees”, providing free legal advice to recognised foreigners, and carried out legalisation activities. The programme’s scope of activity also includes monitoring the Polish authorities’ compliance with the Polish Constitution, the Geneva Convention of 1951 concerning Refugee Status, the European Human Rights and Basic Liberties Convention, as well as Polish legislation concerning foreigners. The Helsinki Foundation is also engaged in these monitoring activities. Visits are made to the guarded centre in Lesznowola and extradition facilities, with a focus on the prevailing conditions as well as the correctness of procedures used against detainees. The programme’s employees investigate the situation at border crossings in relation to the extent of the Border Guards’ competence – which covers accepting applications for refugee status in Poland – and the procedures used for the reception and transfer of foreigners.

Research is being carried out into the correctness of extradition procedures, which cover large groups of foreigners.<sup>1</sup>

# SLOVAKIA

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## CARITAS SLOVAKIA

### INTRODUCTION

This report<sup>122</sup> describes the situation in Slovakia's only two centres used to detain illegally staying third country nationals and asylum seekers (as of 1<sup>st</sup> March 2007). These two centres for aliens, *Útvar policajného zaistenia pre cudzincov*, are situated in Medved'ov and Sečovce, close to the border in western and eastern Slovakia.

CARITAS SLOVAKIA is not the only NGO which has access to detention centres and to reception and residential camps. The Slovak Humanitarian Council, Goodwill Society, the International Organisation for Migration (IOM), the League for Human Rights and UNHCR all have access to detention and asylum facilities.

The findings in the report were elicited through direct observation in the two above-mentioned detention centres and questionnaires carried out between 14 February 2007 and 18 April 2007. Interviews were carried out with more than 15 detainees from Pakistan, Bangladesh, Russia, Vietnam, Georgia, Moldavia, Kazakhstan, Iraq, India, Afghanistan, as well as with people who have access to the centres, including representatives of governmental entities, NGO staff in detention centres and lawyers. Altogether 30 interviews were conducted and evaluated.

In order to compare conditions, we also visited two reception camps for asylum seekers, which come under the responsibility of the Migration Office of the Ministry of Interior, and an international airport. Asylum Seekers are confined to the reception camps during their medical screening (there is a 30-day quarantine period). Although the outcome of these visits was not included in the national report, they nevertheless proved useful to understand the overall situation.

### 1 ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004

In Slovakia, before 1993, administrative detention of asylum seekers and illegally staying third-country nationals did not exist to the same extent as now because there were hardly any such people. If a foreigner needed to be detained before being removed, s/he was kept in the police cells of regional departments. The first detention centre in Medved'ov was opened in 1997. The second one in Sečovce was established in 2000.

The Slovak Republic came into existence on 1 January 1993. Consequently it signed an Association Agreement with the European Union, which entered into force in October 1993, and submitted an application for EU membership in June 1995. It was only when Slovakia applied for EU membership that detention became an issue because the country became an external border state of the EU. Moreover, since it attained full EU membership status, SLOVAKIA has been obliged to act according to the EU policy agreed upon by the EU Member States.

### 2 SUMMARY OF NATIONAL LAW

The main law dealing with the detention of illegally staying third country nationals and asylum seekers in Slovakia is the 48/2002 Coll. Act of 13 December 2001 On Stay of Aliens and on Amendments and Modifications to some other Acts, which came into force on 15 December 2005.

#### 2.1 Legal grounds for ordering detention

Section 62 §1 of the Act on Stay of Aliens, provides that a police officer may detain an alien for the purpose of executing an expulsion order or facilitating his/her removal in case of illegal entry or stay in national territory.

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## **2.2 Legal grounds for the detention order**

Paragraph 4 of the said article provides that upon taking a person into custody, the police department shall immediately issue a detention order and place the alien in a facility. Where it is not possible to immediately determine the identity of the individual concerned, the police department shall attach any available evidence/ information which will prevent mistaking this person for another person, to the decision on his/her arrest.

## **2.3 Legal grounds for right of appeal against the detention order and/or the right to challenge detention**

Paragraph 6 goes on to state that an arrested alien may file an appeal in court against the decision on the arrest, within 15 days from the delivery of the decision on the arrest. Filing of the appeal shall not have suspension effect.

## **2.4 Legal grounds for instructions on right of appeal/instruction on right to challenge detention**

Article 63(a) of the same law provides that, immediately upon arrest, the police shall be obliged to ensure that a detainee is informed of the reasons for his/her arrest and of the possibility to request a review of the lawfulness of the decision on arrest, in a language which he/she understands.

## **2.5 Legal grounds for legal maximum duration**

Article 62 §3 provides that an illegally staying third country national may be deprived of his/her liberty only for as long as is necessary and, in any case, for not longer than 180 days.

## **2.6 Legal grounds for contact with the outside world**

Articles 71 to 73 of the said Act provide the legal basis for detainees' contact with the outside world.

Article 71 §1 provides that detainees may send written notices at their own expense. Paragraph 2 further provides that, in order to exercise their rights, detainees may file requests and complaints with state authorities of the Slovak Republic. These requests and/or complaints may be handed to the police authorities at the detention centre, who should forward them to the relevant authorities. The said article also provides that detainees may order, at their own expense, books, daily press and magazines including international magazines, provided that they are distributed in the Slovak Republic<sup>123</sup>.

Article 72 regulates the detainees' access to visitors, providing that detainees shall be entitled to receive a (one?) visit from up to two persons, once every three weeks, for a duration of 30 minutes. The facility's director may grant an exception in justified cases. The law does not place any limits on visits from persons providing legal protection<sup>124</sup>.

Article 73 provides that detainees may receive a parcel of up to five kilograms containing items for personal use, once every two weeks. This limitation does not apply clothes parcels. All items received at the centre shall be checked by police, and any prohibited items<sup>125</sup> shall be sent back to the sender at the sender's expense. There is no limit on the receipt of financial gifts/assistance a detainee may receive – any money received is deposited by the police in terms of article 73 §3.

## **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Article 68 §1 provides that detainees shall be obliged to undergo a medical examination as determined by a physician, including the necessary diagnostic and laboratory examination, vaccination and preventive measures determined by an authority for protection of health. The law also lays down that, in cases where a detainee requires healthcare which cannot be provided within the detention centre, the authorities concerned shall ensure that such care is obtained in a medical establishment outside the facility<sup>126</sup>.

In cases where detainees deliberately damage their health they shall be obliged to reimburse the costs of the treatment and the costs incurred for supervision and transportation to the outside medical establishment<sup>127</sup>.

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<sup>123</sup> Article 71 §3

<sup>124</sup> Article 72 §2

<sup>125</sup> These objects are listed in article 66 §1 of the Act 48/2002 Coll. Act of 13 December 2001 On Stay of Aliens and on Amendments and Modifications to some other Acts (15 December 2005 came into force)

<sup>126</sup> Article 68 §2

<sup>127</sup> Article 68 §3

## **2.8 Legal grounds for the protection of particularly vulnerable people**

Article 67, which regulates placement of detainees, stipulates that when accommodating a detainee the authorities shall take into account the individual's age, health condition, family relations and religious, ethnical or national characteristics. Upon placement, the authorities managing the detention centre must ensure that the detainee is informed about where s/he has been placed, his/her rights and obligations related to the arrest and the internal policy of the facility in a language s/he understands<sup>128</sup>.

The law stipulates that minors shall be placed separately from adults to whom they are not related<sup>129</sup>.

Regarding family unity, the law provides that families may be placed together. Where the police authorities decide to detain family members separately, they must take into consideration whether the consequences of such separation are proportionate to the aim to be achieved<sup>130</sup>.

## **2.9 Legal grounds providing for release**

Article 63(f) provides that a detainee should be released without delay, where the reasons for his/her arrest cease to exist, if release is ordered by a court, or if the maximum time limit of 180 days has elapsed.

## **2.10 Legal grounds for any other rights**

Articles 70 to 74 provide for various other rights of detained persons, including: the right to a continuous 8-hours sleep and to daily walks of at least one hour<sup>131</sup>; the right to send letters at his/her expense; the right to file requests and complaints with the state authorities; the right to order books, daily press and magazines, including international magazines<sup>132</sup>, the right to receive two visitors every three weeks for a maximum of 30 minutes; unlimited access to persons providing legal protection<sup>133</sup>; the right to receive packages, subject to certain limitation listed above, and the right to receive monetary assistance, which must be deposited with the authorities managing the facility<sup>134</sup>.

Upon release, the authorities shall return any money deposited with them, as well as deposited documents, items and objects, including addictive substances, provided their possession is not contrary to the laws of the Slovak Republic, to the foreigner concerned<sup>135</sup>.

# **3 OVERVIEW OF CONDITIONS WITHIN THE CENTRES**

The two centres for aliens, *Útvar policajného zaistenia pre cudzincov*, currently in use are run by the police. They fall under the responsibility of the Bureau of the Border and Aliens Police and are situated in Medveďov and Sečovce. As a rule, families are placed in the centre in Sečovce. Situated in western and eastern Slovakia, both are located near the border.

The detention conditions, type of premises and administration in both premises are more or less the same. Also very similar were: staff composition; accommodation conditions; health care services; and de-facto duration of detention and release.

This section of the report starts by outlining the characteristics common to all of the centres. It then goes on to describe that which is particular to each of the centres currently in use.

## **3.1 Description of characteristics common to all centres currently in use**

### ***Health care***

As was explained in the previous section, health care in all the centres is governed by the following proviso:

“An alien shall be obliged to undergo a medical examination in the extent determined by a physician, including the necessary diagnostic and laboratory examination, vaccination and preventive measures determined by an authority for protection of health.”

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<sup>128</sup> Article 67 §2

<sup>129</sup> Article 67 §3

<sup>130</sup> Article 67 §4

<sup>131</sup> Article 70

<sup>132</sup> Article 71

<sup>133</sup> Article 72

<sup>134</sup> Article 73

<sup>135</sup> Article 74

### ***Information for detainees***

Information imparted to detainees in the centres should respect the following proviso: “A police department which operates a facility shall secure, immediately after an alien’s placement in the facility, his/her instruction, in a language understood by him/her, on where he/she was placed and on his/her obligations and rights related to his/her arrest and on the internal policy of the facility”.

Information is provided in different languages, mainly via leaflets, booklets and other written material; translators are available.

### ***De- facto duration of detention and release***

An alien may be arrested only as long as is necessary and for not more than 180 days.

### ***Reports***

The facility is regularly visited and monitored by UNHCR, the Slovak Humanitarian Board, and the League for Human Rights among others.

## **3.2 Description of specific conditions in each centre**

### **MEDVEĎOV DETENTION CENTRE**

#### ***Type, description and administration of the facility***

This detention premise consists of buildings and surrounding outer space, namely a sports ground and yards. It is located about 70 km from Bratislava, close to the Hungarian border. It houses illegally staying third-country nationals and for asylum seekers who apply for asylum after being placed in detention.

The men’s section of the premise has been recently renovated (painting, cables, new electricity, lights, sockets etc.). Renovation is an ongoing process. The maximum capacity of these premises is of 352 detainees. The premise comes under the responsibility of the Bureau of the Border and Aliens Police. Photographing inside is not allowed.

The premise consists of an entrance; a kitchen and dining room; three common TV rooms (two for men and one for women); four and six-bed rooms for detainees; two punishment cells (two beds each); hygiene facilities, that is, showers and bathrooms; stores; corridors; two special rooms for an isolation regime; staff rooms; a room that serves as a clinic and so on. The premises are also guarded by means of a camera system.

The premise is governed by a set of house rules. The director of the centre has the power to order the isolation of detainees deemed to be trouble-makers and those who create disturbances. Sanctions differ, ranging from seclusion to the prohibition of visits. The detainees’ “complaints mechanism” consists of a counsellor employed by the centre and NGO lawyers. The director, deputy director and the counsellor are mandated to resolve problems that arise.

The annual budget for the premise amounts to more than 45 million SK. Detainees are supposed to pay for their stay, but in the majority of cases they are unable to do so and the financial burden falls on the state.

The premise keeps all the relevant records: the number of detainees, their gender, age, nationality and duration of detention, date of release and any incidents that take place (PC, files).

#### ***Staff***

The staff of the premise consists of members of the Police as well as employees with civil status. One employee is a counsellor who offers daily support to detainees. He is a lawyer.

The number of employees was not specified, but the aim is to have a balanced staff-detainee ratio. Staff members include both men and women and the average age of employees is about 30 among the police component and about 40 among the rest.

Regular meetings and special training are provided for the staff on national as well as international level. The topics differ (amendments of acts, communication skills, psychological skills, expulsion etc.) The entire body of the staff is obliged to respect an ethical code of conduct.

#### ***The detainee population***

At the time the research was conducted there were 152 detainees: 112 men and 40 women, from different countries of origin, including: India, Pakistan, Bangladesh, Russia, Ukraine, Moldavia, Russia

and others. As much as possible, detainees are accommodated according to nationality, religion and language group. Male and female detainees are accommodated separately. The age of people detained in the premise varies, starting from 18 years (legal age of adulthood).

### ***Accommodation***

The chief sanitation official of the Ministry of the Interior has approved the amount of space available as adequate. The TV rooms (local TV and satellite) are spacious, but without furniture. There is a library and one may play card games or chess or read. The walls are covered with special papers for drawing. Each corridor is equipped with a phone. One room is used specifically for meditation and prayers.

There is daily access to open air, although outdoor sport activities are ruled out when the weather is bad. Detainees are allowed to move freely within 'their' corridor. They leave this corridor area for meals, regular open air exercise or walks, to visit the doctor, the library and so on.

There is a special reception room too, where detainees are allowed to receive visits every three weeks.

There is a special RAMADAN regime for Muslims – their meals are delivered in the evening.

### ***Healthcare***

There is a post for a doctor at the centre but since this is currently vacant, the services of a contracted doctor from Gabčíkovo are being used. Two medical nurses are employed on the premise. Special examinations, if necessary, are carried out by a medical centre outside the facility.

## **S E Č O V C E DETENTION CENTRE**

### ***Type, description and administration of the facility***

This premise consists of buildings and surrounding outer space, namely a sports ground, a playground for minors, and yards. It is located about 40 km from Košice, close to the Ukrainian border. This administrative detention premise caters for illegal third-country nationals and for asylum seekers. Between 21<sup>st</sup> June 2006 and the end of April 2007, the premise underwent renovation and according to the most recent information, final checks and inspections have been carried out.

The premise is scheduled to be reopened on 15<sup>th</sup> May 2007. The premise can take up to about 200 detainees if necessary. The normal capacity is of 178 places.

Families are placed together in this premise – there is a special corridor and rooms for them. Foreigners younger than 18 must be separated from older foreigners (except when their family is detained too). Unaccompanied minors are to be housed in a special residential centre, and a guardian must be appointed for them.

The Director of the Premise has the power to order the punishment or seclusion of those deemed to be trouble-makers – no visits, a so called "separated regime of detention" in special rooms with special bars.

The premise keeps all the records of the detainees: the number of detainees, their gender, age and nationality, the duration of their detention, release and reports of special incidents.

### ***Staff***

The premise falls under the responsibility of the Bureau of Border and Aliens Police. Members of staff on the premise consist of police staff as well as civil employees. A counsellor who serves the detainees on a daily basis is employed.

The number of employees was not specified, however, the aim is to have a balanced staff-detainee ratio. Staff members include both men and women and the average age of employees is about 30 among the police component and about 40 among the rest.

Regular meetings and special training are provided for the staff on different levels. The entire body of the staff is obliged to respect an ethical code of conduct. At time of the survey the detention premise was vacant.

### ***Accommodation***

This premise was designed for illegal aliens, asylum applicants and third country nationals. People will be accommodated in newly finished rooms furnished with brand new furniture. There will be cosy furnished rooms, television rooms, classrooms for minors' education and language courses, as well as a telephone in each corridor. Well furnished staff rooms, kitchen, stores and dining rooms are more or less ready. One room has been set apart for reception and detainees will be allowed to receive their visitors there.

The whole premise is monitored through a new camera system.

### ***Healthcare***

A Doctor of Medicine and two medical nurses are employed for the premise. Whenever necessary, special examinations will take place in a medical centre outside the facility.

### **Comparative analysis at national level**

Only the detainee population of Medveďov was studied because Sečovce premise was empty due to its renovation. However, it is clear that the completely renewed detention centre, freshly painted, with windows, space, furniture, sports and playgrounds has been turned into a high standard facility for the stay of detainees, including asylum seekers who made their claims after being detained. The premise can offer a decent space where human dignity will be respected.

## **4 EXISTING CIVIL SOCIETY ACTIVITIES<sup>136</sup>**

The following organizations have access to detention and reception centres in Slovakia:

- Slovak Humanitarian Council carries out monitoring of detention conditions and provides legal counselling
- Goodwill Society carries out monitoring of detention conditions and provides legal counselling
- Slovak Catholic Charity provides social assistance and humanitarian assistance within Border Departments
- League for the Human Rights carries out monitoring of detention conditions and provides legal counselling
- IOM – International Organisation for Migration carries out monitoring of detention conditions and provides counselling on return and other migration-related issues

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<sup>136</sup> (29) questionnaire initiatives, networks in your country

# SLOVENIA

## JRS SLOVENIA

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### INTRODUCTION<sup>137</sup>

The report contains information about Postojna Centre for Foreigners (deportation centre) currently being used in Slovenia for immigration detention purposes. The findings in the report were elicited through direct observation and questionnaires. JRS Slovenia interviewed 24 detainees, coming from Iran, Macedonia, Iraq, Palestine, Bangladesh, Ivory Coast, Serbia, Turkey, and Bosnia and Herzegovina. JRS also interviewed 12 persons who have access to the detention centres, among them: NGO staff (JRS and PIC) and staff at the detention centre in Postorna.

As of 30 March 2007, the Postojna centre was the only one being used for immigration detention. However, an Asylum Home (for asylum seekers) in Ljubljana includes a detention facility too.

JRS Slovenia is not the only NGO to have access to Postojna deportation centre. The other NGOs are: PIC (*Pravno Informacijski Center nevladnih organizacij - PIC*), *Slovenska Filantropija*, *Mozaik*, *Ključ*, and *Slovenska Karitas*.

### 1. ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND ILLEGALLY STAYING THIRD-COUNTRY NATIONALS BEFORE AND AFTER 1 MAY 2004

Slovenia is a young state, independent since 1991. A small country with two million inhabitants, it is not (yet) perceived as a country of destination, but rather as a transition country leading to western EU countries. The majority of asylum seekers or illegally staying third-country nationals come from Balkan countries and at times have some connections with Slovenia. They may have relatives or friends or they may have done military service in Slovenia when it was a part of Yugoslavia. After Slovenia joined the EU in 2004, for many of these people, it became the 'obligatory route' to reach the Schengen area of the EU.

In recent years, Slovenia strived to adjust Slovenian legislation and bring it in line with all EU directives, norms and standards. Before 1 May 2004, the Asylum act provided two grounds for restrictions of movement: establishing the identity of the applicant and preventing the spread of contagious diseases. Today the Law on Asylum provides four grounds for restriction of movement: establishing the identity of the applicant; preventing the spread of contagious diseases; suspicion of misleading or abusing asylum procedure; preventing the threat to other persons' life or property.

Before 1 May 2004, both the Asylum act and the Aliens act provided for administrative detention. However, administrative detention was not used to the same extent as today because there were no facilities. For many years, the Asylum Home and Centre for illegally-staying third country nationals were located in separate sections of the same building in Ljubljana.

In 2004, a new Asylum Home was built in Ljubljana. The Asylum Home is an Open Centre, but it includes a detention facility for asylum seekers (i.e. not illegally staying third country nationals) whose freedom of movement is restricted. The detention facility has a small fenced yard, which is part of the larger yard used by residents of the Asylum Home and where children have a small playground. The detention facility is used almost exclusively for single men. Whenever detainees are using the yard there are security guards present.

Most asylum seekers whose freedom of movement is restricted are detained in Postojna detention centre, together with illegally-staying third country nationals. This centre is a prison-like facility, which was previously used for military purposes. Initially there were other centres, including one in Prosenjakovci, near the Hungarian border<sup>138</sup>, but then the decision was taken to establish one large detention centre in Postojna so that everything would be centralised in one place.

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<sup>137</sup>This report is owned by MEDNARODNO DRUŠTVO JESUIT REFUGEE SERVICE -EUROPE, JEZUITSKA SLUŽBA ZA BEGUNCE – EVROPA, (JRS Slovenia). Reproduction and quoting are authorised, provided the source is acknowledged, save where otherwise stated.

<sup>138</sup> This centre was closed in 2006

In 2006, the Slovenia Constitutional Court ruled in four cases that Postojna detention centre was not suitable for children and that their accommodation there was a violation of the Convention on the Rights of the Child. In those four cases, the families were relocated to Ljubljana, in the Asylum Home. However, this was not deemed to be good practice by the Asylum Sector, and later on, new families were relocated from the Asylum Home to the detention centre.

In those very rare cases (not even one case per year in the last few years) when somebody arrives without proper documents at the international airport at Brnik, they are kept in a makeshift detention area. In recent months, they have been building a newer part in the airport to serve as a detention facility, according to Schengen rules.

## 2 SUMMARY OF NATIONAL LAW<sup>139</sup>

The following laws regulate administrative detention in Slovenia:

- The Asylum Act (Zakon o azilu), of 3 May 2006 (as amended on 17. 2. 2006., 13.10. 2003, 10. 08.2001, 29.12. 2000)<sup>140</sup>;
- The Aliens Act (Zakon o tujcih), of 17 October 2006<sup>141</sup>;
- The Regulations on special rules on accommodation and movement in Detention centre and conditions and procedure for the use of milder measures (Pravilnik o posebnih pravilih bivanja in gibanja tujcev v centru za odstranjevanje tujcev in pogojih ter postopku za uporabo milejših ukrepov), of 20 October 2000<sup>142</sup>;

In terms of these laws there are five categories/types of administrative detention of illegally staying third country nationals and/or asylum seekers – there is no official terms for any of these types of detention either in the native language or in English:

- Detention in terms of the Dublin Regulation<sup>143</sup>, known colloquially as ‘Dublin Repulsion Detention’, where an asylum seeker is detained for the purpose of removal to the country responsible for examining his/her asylum application in terms of the Dublin regulations. While awaiting return the asylum seeker would be detained in the Deportation Centre in Postojna.
- Detention of an asylum seeker who makes repeated applications for international protection. In such cases too, the asylum seeker would be detained in the Centre in Postojna.
- Pre-reception detention - upon arrival in the Asylum Home an asylum seeker is accommodated in a pre-reception area for up to 12 hours (sometimes even more); movement is de facto limited.
- Detention of asylum applicants in the detention unit of the Asylum Home, a closed unit within the same home, where s/he will stay until the grounds for limitation of movement subsist, but for not longer than three months.
- Detention of illegally staying third country nationals for the purposes of removal and/or in cases where his/her identity has not been established.

Each section below contains information on the different types of detention.

### 2.1 Legal grounds for ordering detention

The legal grounds for Dublin Repulsion Detention are found in Article 40 a, Paragraph 1; Asylum Act (Dublin procedure) which states that an asylum seeker, who has been issued with an order stating that

<sup>139</sup> This part was done by Jerneja Cifer.

<sup>140</sup> <http://www.uradni-list.si/1/ulonline.jsp?urlid=200651&dhid=82622>

<sup>141</sup> <http://www.uradni-list.si/1/ulonline.jsp?urlid=2006107&dhid=85251>

<sup>142</sup> <http://www.uradni-list.si/1/ulonline.jsp?urlid=200097&dhid=12288>

<sup>143</sup> “Dublin II Regulation”, the EU COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. - In March 2006, the European Council for Refugees and Exiles (ECRE) and the European Legal Network on Asylum (ELENA) published a joint REPORT ON THE APPLICATION OF THE DUBLIN II REGULATION IN EUROPE, which provides a comparative overview of the application of the Dublin II Regulation in twenty EU Member States. This report highlights that many EU Member States “are increasingly using detention in order to enforce transfer under the Dublin system”. ECRE and ELENA state: “This practice is evident in Belgium, the Czech Republic, Finland, Austria, The Netherlands, United Kingdom and Luxembourg.” The report did not mention other EU Member States which joined the EU in 2004.

the Republic of Slovenia will not examine his/her asylum application on the basis of the Dublin Regulation<sup>144</sup> shall be accommodated within the deportation centre, until removal to the state responsible for examining an asylum application can be effected. In terms of article 40 a, Paragraph 1, an appeal against a Dublin Regulation order can be made within three days from the day the order has been served. The appeal does not stay execution of the order.

The grounds for detention of asylum applicants who make successive/repeated asylum applications are found in Article 41§3 of the Asylum Act, which states that in the case of a repeat asylum application, the foreigner facing the procedure of enforced removal or a foreigner who has not left the Republic of Slovenia is accommodated in the detention centre.

Pre-reception detention is regulated by article 26 of the Asylum Act, which provides that in certain circumstances an asylum seeker may be placed in detention in terms of the Aliens Act. Examples include: where from his/her statement made to the police his/her claim does not appear to be based on a Convention ground or on one of the grounds for subsidiary protection; where s/he does not provide any information or where s/he leaves (escapes) the pre-reception detention centre in the Asylum Home.

Detention of asylum seekers in the detention unit of the Asylum Home, is implemented in terms of article 27 of the Asylum act, which states that the movement of an asylum seeker can be temporarily limited in order to:

- establish the identity of the applicant;
- prevent the spread of contagious diseases;
- prevent the threat to other persons' life or property;
- in cases where the authorities suspect that the asylum seeker is misleading or abusing asylum procedure.

With regard to the detention of illegally staying third country nationals, Article 56§1 of the Aliens Act provides that when a foreigner does not leave the state within the stipulated time limit or cannot be removed for any other reasons, the Police will order the accommodation of the foreigner in the detention centre or outside this centre until his/her removal from the state but for no longer than six months. The provisions of this article also apply to circumstances when the identity of a foreigner is not established.

## **2.2 Legal grounds for the detention order**

Asylum seekers subject to Dublin Repulsion Detention or detention because of repeated asylum applications are not issued with a detention order. They are served only with an order on accommodation in the detention centre, issued by the police.

Asylum seekers placed in the pre-reception area of the Asylum Home are not issued with a detention order, however, they are required to sign a statement saying that they agree that their asylum application will be deemed to be withdrawn if s/he leaves the said area.

When asylum seekers are detained in the detention unit of the Asylum Home in terms of Article 27 of the Asylum Act, they are issued with a detention order by the Ministry of the Interior, in terms of article 27§5. This article provides that a written copy of the order must be issued within 48 hours of the oral declaration of the detention order.

Illegally staying third country nationals detained in terms of article 56 of the Aliens Act, would have been issued with a security measure of expulsion by the court according to the Violations Act. Until his/her removal from the state, an illegally staying third-country national must be accommodated in the detention centre; there he/she is served with an order on accommodation in the detention centre by the Police.

## **2.3 Legal grounds for the right to appeal against the detention order/ to challenge detention**

Asylum seekers subject to Dublin detention or detention because of successive applications and illegally staying third country nationals detained in terms of article 56 of the Aliens Act may appeal against the order on accommodation in terms of article 58 of the said Act. Any appeal must be filed within eight days from the date of receipt of the said order. An appeal does not stay the execution of the order. Such appeal is made to the Minister of Interior, who must decide the appeal within eight days. It

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<sup>144</sup> EU COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national



is possible to appeal to the Administrative Court against the Minister's decision. The Administrative Court must decide on the appeal within eight days.

Asylum seekers subject to pre-reception detention cannot challenge their detention. In fact they may ask to be released at any time, but they will no longer be considered asylum seekers.

Asylum seekers detained in the detention unit of the Asylum Home in terms of article 27 of the Asylum Act may file an appeal with the Administrative Court against the written detention order up to three days after a decision has been served to him/her<sup>145</sup>.

#### **2.4 Legal grounds for instructions on the right of appeal against the detention order/to challenge detention**

In the case of asylum seekers subject to Dublin detention or detention because of successive applications and illegally staying third country nationals detained in terms of article 56 of the Aliens Act, the grounds for instructions on the right of appeal may be found in the Act on General Administrative Procedure. Article 13 which provides for the right to appeal against a decision issued by an administrative authority at first instance, except where such appeal is precluded by law. Further, article 210, paragraph 3 stipulates that any order issued by an administrative authority or other state body when they decide upon the rights and obligations of parties in an administrative matter must be in writing and must include: introduction, title, the grounds for the decision and the legal caution.

#### **2.5 Legal grounds for legal maximum duration**

In terms of Article 56 of the Aliens Act, asylum seekers subject to Dublin detention or detention because of successive applications and illegally staying third country nationals detained in terms of article 56 of the Aliens Act, may not be detained for longer than 6 months.

An asylum seeker detained because he made repeated/successive applications who proves that circumstances have significantly changed for him/her since the first decision was issued, is relocated to the Asylum Home in Ljubljana and is no longer detained, since s/he is once again undergoing the regular asylum procedure.

In terms of article 56 §4 the detention of persons awaiting deportation may be extended by the police if, for objective reasons, it is not possible to deport an alien even after six months have passed. Such extension is permissible only if it is realistic to expect that it will be possible to deport the alien within this time and, in particular, if the procedure for determining identity or the acquisition of documents for the deportation of the alien is still in progress, or if the extension is necessary for security reasons. The authorities may also determine another place of accommodation for the alien outside the Centre until his/her deportation, where he/she must observe the rules on accommodation outside the Centre; the alien may otherwise be accommodated at the Centre again. This option may be implemented even before six months have passed if, for objective reasons, it is not realistic to expect that the alien will be deported from the country within that time<sup>146</sup>.

The Instructions on the Procedure and method of dealing with foreigners who enter the Republic of Slovenia and who wish to file an asylum application and on receipt, content and processing of filed applications or statements put on record states, in article 12, that within 12 hours of a foreigner's arrival at the Asylum Home, an asylum application must be lodged. Until then, asylum seekers are accommodated in the pre-reception area.

Asylum seekers detained in the detention unit of the Asylum Home in terms of article 27 of the Asylum Act, may be subjected to limitations on their restrictions of movement until the grounds for it subsist, but for no longer than three months. If the grounds for limitation of movement still exist after the three-month period, the limitation can be extended for a further period of one month. Limitation of movement on the grounds of preventing the spread of contagious diseases shall stay in effect until such grounds subsist.

#### **2.6 Legal grounds for contact with the outside world**

In terms of law, UNHCR and legal representatives have access to all asylum seekers, including those undergoing "Dublin procedure", detained in the detention centre at all times. NGOs are authorised, on the basis of an agreement between NGOs and the Police, to contact detained asylum seekers, but they must comply with the schedule agreed with the Police and/or the Asylum Sector (at the Ministry of

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<sup>145</sup> Article 27§6

<sup>146</sup> Article 56 §9

Interior and the Detention Centre). There are visiting hours when relatives and others can visit asylum seekers.

The only exception is those asylum seekers who are detained in the pre-reception area. Only one NGO (PIC) has access to this area (on the basis of an agreement between PIC, which is UNHCR's implementing partner, and the Asylum Sector).

### **2.7 Legal grounds for health care, including legal grounds defining the scope of health care**

Detained asylum seekers have the right to the same health care as those who are not detained, independent of the reason for their detention, although there is no provision in the Asylum Act that explicitly states this. Health care is restricted to emergency health care (emergency ambulance transport and emergency dental care), essential treatment of disease and medical care for women. In the detention centre, asylum seekers have access to the doctors who visit the centre, but they are not allowed to visit doctors in public health centres. The scope of health care is provided in article 46 of the Asylum Act.

With regard to asylum seekers accommodated in the pre-reception area and illegally staying third country nationals detained in terms of article 57 of the Aliens Act, article 7 of the Act on Health Care and Health Insurance provides for emergency health care for people of unknown origin and for foreigners from countries with which Slovenia did not conclude an international contract. After spending one night in the pre-reception area, asylum seekers are examined by a doctor.

### **2.8 Legal grounds for the protection of particularly vulnerable people**

Article 15a§1 of the Asylum Act requires that when accommodating asylum seekers who are vulnerable people, their specific situation is taken into account. Moreover the law stipulates that material conditions of reception, medical care and psychological counselling and care and are adjusted to the specific situation of such asylum seekers.

There are no provisions in the legislation prohibiting the detention of vulnerable people, but in most cases they are not detained. However, there have been instances where vulnerable asylum seekers were detained at the Deportation Centre. One such case concerned a 17-year old unaccompanied minor who was placed at the Deportation Centre. The Supreme Court eventually decided that it was not in the child's best interest to be accommodated at the Deportation Centre, but by that time he had returned home voluntarily.

Where they are detained, article 15a of the Asylum Act regulating the treatment of vulnerable people is usually respected. In the pre-reception area, vulnerable people are accommodated in a separate room designed for vulnerable people. As general rule, article 15 of Asylum Act regarding vulnerable people is respected.

With regard to illegally staying third country nationals, article 56§3 of the Aliens Act, provides that those who cannot be accommodated in the detention centre due to special reasons or needs are accommodated in other social-protection institutions.

### **2.9 Legislation providing for release**

Persons detained by virtue of the Dublin rules are usually held in detention until their case is resolved. In view of the deadlines contained in Article 17 of the Dublin Regulation, which amount to a total of 5 months, they are usually resolved before the expiry of the six month time-limit on detention found in Article 56 of the Aliens Act.

As was stated earlier, asylum seekers, detained because of successive applications, who manage to prove that circumstances have significantly changed for them since the first decision was issued are relocated to the Asylum Home in Ljubljana and no longer detained, since they are once again undergoing the regular asylum procedure.

Moreover, article 61§1 of the Aliens Act provides that the accommodation of a foreigner in the detention centre will be terminated when the reasons for such accommodation no longer exist or when the purpose of such accommodation is achieved. Paragraph 3 of the said article provides that accommodation in the detention centre may be brought to an end on the request of a foreigner, if the Police establish that the conditions for alternative measures are provided.

### **2.10 Legal grounds for any other rights**

While they are accommodated in the pre-reception area, asylum seekers receive just one food package daily.

In terms of article 43 of the Asylum Act, an asylum seeker whose movement has been restricted (who is detained) has the right to the services of a lawyer, free-of-charge, to file a complaint against the detention order in the Administrative Court, and to file an appeal against the Administrative Court's decision in the Supreme Court. An illegal-staying third country national does not enjoy this right.

### **3 OVERVIEW OF CONDITIONS IN DETENTION**

This section of the report describes conditions in the one detention centre currently used for the detention of asylum seekers and illegally staying third country nationals. It does not describe the conditions in the detention unit in the Asylum Home.

#### **DETENTION CENTRE IN POSTOJNA**

The centre is located in a village called *Veliki otok* (meaning Big Island) not far from Postojna, about 50 km from the capital on the way to Trieste (Italy), in western Slovenia.

The staff, consisting of police, has been running the centre in a professional way under the constant monitoring of national and international bodies. The national monitoring bodies are both internal, i.e. built into the management structure of the centre, and external, such as the Ombudsman. Staff members have put plenty of effort into improving their work performance through trainings and workshops, especially on topics dealing with detention. Staff members are young, aged mostly between 25 and 35, and they tend to be successful in their work. Their relationship with the NGOs is professional and there is a constant desire for improvement and collaboration.

Since the number of detainees is relatively small at the moment (the centre has a capacity for 220 people, but now there are approximately 50), things work better. The staff may adjust to the wishes of detainees, for example, when Muslims fast, or by changing food if there is a larger group of detainees from Asia. The staff members are well aware that the more they do to improve the well-being of detainees, the better the situation in the centre will be, as the detainees will be calmer and therefore easier to control.

The detainees complain mostly about the length of their stay in the centre and the slowness of the procedure dealing with their cases regarding asylum procedure or removal. They would like to receive more visits from NGOs so that they will not feel isolated and forgotten and also to break the monotony of life in the centre. One of the wishes they voiced was to have a place where they could be at peace, where they can retire to think, meditate and/or pray.

#### ***Type, description and administration of the premise***

The Centre for foreigners (or Aliens centre) is called Center za tujce in Slovenian. It is a detention premise which falls under the authority of the Police, who in turn form part of the Ministry of the Interior. It consists of two large buildings and surrounding outer space. The whole complex was once part of a military compound which was constructed in the seventies.

One building was renovated in line with international standards with the financial help of the EU, namely the PHARE programme. Detainees have been accommodated in the detention centre since September 2002. The outer space with the park was finished in 2005. The second building is currently empty, therefore, not in use. There are different proposals as to what to do with this second building. One scenario is to use it to enlarge the detention building if necessary or to use it as a gym. Its surface area is of 1100 square metres.

The new building has an 'administration' part and a 'detainees' part that is divided into four sections: one for men, one for vulnerable persons, one for unaccompanied minors, and one that is under stricter police surveillance.

The new building has a ground floor area of 1725 square metres, with an atrium within (an open air space surrounded by building) where the detainees may play. The detention part in the upper floors covers an area of 1355 square metres. The foreigners use 1537 square metres of the area where they are lodged, including the atrium (420 square metres), the dining hall (160 square metres) and the outer park. The outer space (park) can be used for playing, sitting, swinging, walking etc.

The detention centre has a maximum capacity of 220 beds, which are spread across the four sections: One section has 64 beds in 11 rooms; the second has 72 beds in 12 rooms, the third one has 24 beds in

four rooms and the last one has 48 beds in eight rooms. All sectors contain hygiene facilities (showers and bathrooms) in line with international standards.

The detention centre staff members work according to the Aliens Act (*Zakon o tujcih*). The 'house rules' are provided by the General Director of the Police, while the head of the detention centre can change the timetable of different activities within the centre. The house rules are as follows:

- Common wake-up between 7 and 7.30am
- Common breakfast between 7.30 and 9am
- Cleaning the rooms and changing clothes between 9 and 10am
- Psycho-social activities, meeting with the inspectors, medical visits, outside recreation between 10am and 12 noon
- Common lunch and rest afterwards between 12 noon and 2pm
- Activities in common rooms, meetings with inspectors, outdoor recreation, visits of friends and NGOs between 2 and 4pm
- Common dinner between 6 and 7pm
- Activities in common rooms, visits of NGOs, between 7 and 9pm
- Preparation for sleep between 9 and 10pm
- Silence and sleep after 10pm

In cases where a detainee breaks the law, commits an offence or a crime, only a judge can take the necessary measures. In this regard, detainees are treated in the same way as citizens of Slovenia who break the law.

As for the complaint mechanism, there is a collection box for complaints in the detention centre where detainees can make a complaint. The complaints are treated in due time and replied to in writing to the person in a language s/he understands.

The annual budget of the detention centre is about 668,000 Euros excluding the staff salaries. The detainee is obliged by law to pay his/her stay in the detention centre. The amount depends on his/her financial resources. If the person has no or little money, his/her stay is covered by the national budget.

The centre keeps records regarding the number, gender, age and nationality of detainees as well as the duration of their detention, release and any incidents that may take place.

### ***Staff***

The staff – at the moment there are 60 people – working in the detention centre is composed entirely of police, although not all wear police uniforms. For example, the post of social worker has its own uniform.

Regardless of the numbers of detainees, 40 guards work with the detainees 24 hours, 7 days per week. There are both men and women on the staff. At the moment there are more men than women and only a few female guards. The inspectors are also mostly men. At the moment, there is only one woman inspector who deals with detainees regarding their cases, documents etc.

Staff members have regular training (seminars, conferences) throughout the year. For example they deal with communications, or how to deal with stress or to resolve conflicts, or the procedure regarding the removal of detainees.

There is a code of conduct for police, which is public. It covers all topics relating to police work and behaviour in one's work with the people.

### ***Detainee population***

The categories of people detained in the detention centre in Postojna are asylum applicants and illegally staying third country nationals. They live in different sections of the centre. There are no prisoners in this centre.

The statistics of the centre in the table below shows a constant trend of diminishing numbers, except for the year 2005. There has been a large drop in numbers of people in 2006. The highest number of detainees is from countries of the former Yugoslavia or Balkan region. The majority of people in the centre from Serbia and Montenegro (before) and Serbia (now) came from Kosovo which is under UN protection.

Year	Persons
2002	3271
2003	1908
2004	1544
2005	1639
2006	1117

Year	Male	Female	Children	Unaccompanied minors
2002	2804	231	155	82
2003	1505	231	90	82
2004	1230	120	66	128
2005	1254	167	109	109
2006	872	93	86	66

### ***Accommodation***

Sanitary facilities are in line with international and Slovenian standards. There are enough showers and bathrooms in each section. People sleep in rooms with six beds. If there are less people in the centre, there may be less people in each room, possibly just two or three people sharing or even one person alone. It depends on availability at the centre at that given time.

As for indoor recreation, each section has a TV with local channels and programmes from Croatia. In the near future, a satellite TV will be installed to increase the potential number of channels and news available. In the common rooms, there are books on the shelves and some national and international newspapers, which are presented occasionally by embassies. The social workers also reprint local news from the internet if asked to do so by the detainees.

Every section has facilities to play table tennis, chess, and cards so that the time may pass more easily. In each section, the detainees can make coffee, tea or other warm drinks for babies; they can smoke cigarettes, watch TV, listen to the radio. One may buy cigarettes, phone cards and sweets in the centre. Religious feasts and obligations are observed, which means that Muslims get their food when their fasting time is up. There is also the option of a special diet or vegetarian food on the detainees' request.

As for recreation, there are two recreation spaces outside: one smaller area (atrium) which is surrounded by the buildings, as can be seen on the photo at the end of this report, and a bigger area (park). Families with children can play whenever they want in the park, while the rest are allowed to play only under police surveillance. Recreation time lasts at least two hours per day, depending on weather conditions and the willingness of the detainees.

Different categories of people are detained separately, while people from the same category are together. They can leave their rooms whenever they want and move freely on the floor (corridor) of the section they are in.

In the rooms, there are usually people - if possible - of the same nationality, language group or religion and region.

The basic rule about accommodation is as follows: everything possible is done to facilitate the detainees' well-being in the centre, if it is feasible according to house rules and Slovenian law. This way, people would create less tension or problems for staff so the situation would be calmer and easier to control. This is why families are allowed to go outside, and, if they want, to walk round the town (Postojna) with regular permission from the inspector. The children from the centre go to school so they will not have to skip a scholastic year and they may be accompanied by their mother/father without any problem. In the detention centre, there are no isolation cells.

### ***Contact with the outside world***

The detainees have contact with the outside world on a regular basis. They have no access to email/Internet, however they can send letters and make telephone calls. They may also receive calls from outside. They are allowed to receive friends and family members when and if they come in the hours allocated for visitors. The visit can last up to 30 minutes, but it can be prolonged if there are not

too many visitors. The detainee must undergo a check before s/he goes back to his /her own section of the centre.

Unfortunately, many detainees do not know anybody outside. For many, their only regular contact is with NGOs. Members of different NGOs come on a regular basis. For example JRS Slovenia visits twice a week and others go occasionally to the detention centre. The detainees would like to receive more such visits to break the monotony of life in detention. Their main desire is to get out of the centre as quickly as possible.

The lawyers come when they are needed or when they are asked to do so by detainees. If a detainee asks to be able to talk to a priest, somebody from the centre will contact a priest. No pastoral workers (for example, a priest or a mufti) come to say Mass or to hold religious services on a regular basis. What's more, there is no prayer space that meets detainees' spiritual needs outside their own room.

The centre is subject to internal (done by the Police) and external monitoring and national and international monitoring. External monitoring is done by NGOs, by the media, by ECRE, by the CPT, and by the Ombudsman. This year the Ombudsman has already visited the centre three times so far. At the last meeting, the staff and the detainees could meet and speak with him. The President of Slovenia, Janez Drnovšek, paid a visit to the centre in July 2006.

#### ***Activities for detainees***

The detainees can listen to the radio, watch TV (satellite will be installed in the near future), play soccer, basket ball, and volley ball, and play cards and read books. There are not many special events. In the past, some parties or concerts were organised by JRS Slovenia. The children participate in some events at school.

#### ***General services for detainees***

The detainees receive medical care, social services and psychological counselling. Medical care is offered seven days a week from 7am to 10pm. There are no pastoral services at their disposal; however, they are available on request.

#### ***Health care***

A doctor is available to see detainees during a two-hour period in the mornings from Monday to Friday. If there is an urgent need, the patient is immediately taken to the local hospital in Postojna. If the detainee displays any psychiatric problems, a doctor-psychiatrist is called to visit him/her. If the detainees require hospitalisation, s/he is sent to the psychiatric hospital. The centre covers the costs of medical treatment.

#### ***Protection of particularly vulnerable people***

It is known who the particularly vulnerable people are. They are protected in the same way as Slovenian citizens. As regards privileges or protection, the basic rule is: the centre will help him/her as much as possible for his/her optimal well-being within the existing rules and laws.

#### ***Information for detainees***

There is a leaflet with basic information in 17 languages about where they are, legal information, issues related to procedures etc. The documents related to detention are passed to the detainees in a language s/he understands. Often they do not understand so the information is explained orally. General issues like house rules are written in foreign languages and pasted on the wall in different sections of the centre.

#### ***De-facto duration of detention and release***

By the law (Aliens Act, articles 56 and 58), an illegally staying third-country national can be detained for six months and his detention may be prolonged for another six months. An asylum seeker (Asylum law, article 27) can be detained for three months and his detention may be prolonged for one month.

The duration of detention is the hardest thing to bear for all detainees. The average length is difficult to estimate because it varies from case to case. For some people it is hard to accept that they must go back. Because of the detention regime, detainees escape or/and collaborate to prove their identity in order to get out as quickly as possible. For some it is hard to prove their identity or to receive the necessary information and/or documents, especially from African countries. This means that such people feel they are 'blocked' in detention.

Some detainees (also families) spend a relatively long time in the detention centre and cannot be sent back immediately, so the detention centre gives them special permission to live outside. The Aliens Act

offers this possibility<sup>147</sup>. At least this makes detention in Slovenia a bit easier, although their desire to stay in Slovenia for good cannot be fulfilled.

### **Incidents**

There was only one serious negative incident. It was reported in the media that one man caused a fire in his room by setting his bed on fire.

### **Reports**

UNHCR draws up reports when they visit the centre. The Ombudsman has also written reports. Other organizations like ECRE do the same.

## **4 EXISTING CIVIL SOCIETY ACTIVITIES**

### **4.1. Organizations active in the field of administrative detention**

\* **Društvo Ključ** (Key Association) is a Slovenian NGO fighting against human trafficking. In the centre, this association assists victims of trafficking.

Web page: <http://drustvo-kljuc.si/>

\* **Mozaik**<sup>148</sup> (Mozaik Association) is an NGO working with children in the detention centre.

Web page: not available

\* **PIC** Pravno-informacijski center nevladnih organizacij, (Legal-information centre for NGOs - LIC), was founded in 1997. This NGO is active in three main areas: non-governmental organizations, human rights, and alternative conflict resolution. PIC offers legal help to asylum seekers and illegally staying third-country nationals in the detention centre.

Web page: <http://www.pic.si/>

\* **Slovenska karitas** (Slovenian Caritas) is a church organization which assists victims of trafficking in the detention centre.

Web page: <http://www.karitas.si/>

\* **Slovenska Filantropija** (Slovenian Philanthropy) was founded in 1992. The mission of this NGO is to encourage volunteering and works of charity among people. In the detention centre, they work with unaccompanied minors.

Web page: <http://www.filantropija.org/>

\* **IOM** (International Organization for Migration) is an inter-governmental organization which assists the voluntary return of detainees.

Web page: <http://www.iom.si/>

### **4.2. Civil society networking**

In Slovenia there is no council like the ‘Council for Refugees and Exiles’. There is a network of various NGOs, institutions and individuals (university professors) that works on issues – exchange of information, asking for help, lobbying for new laws – regarding refugees, the Asylum Home and the detention centre. This year, an important meeting of different actors (NGOs, different governmental institutions, the Ombudsman) was held regarding the detention of children in the centre. There is a sincere wish to find a better, alternative solution for children. The meeting was held in the detention centre and called by the head of the centre.

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<sup>147</sup> Article 56§4

<sup>148</sup> At the moment they are not active in the detention centre.

### **4.3. International links**

Civil society actors have international links. Some Slovenian NGOs participate in European projects, trainings, and seminars. Some are also representatives of international organization(s). For detention issues, PIC represents UNHCR in Slovenia.



# 2 ADMINISTRATIVE DETENTION IN THE CONTEXT OF THE EUROPEAN UNION

In 1992, after the fall of the Berlin wall and the Iron Curtain, the EU-15 Member States concluded the TREATY ON EUROPEAN UNION<sup>149</sup>, which entered into force in 1993. It changed the name of “The European Economic Community”<sup>150</sup> to simply “The European Community” and introduced new forms of co-operation between the EU Member State governments. By adding this inter-governmental co-operation to the existing “Community” system, it created a new political and economic structure. This is the “European Union” (EU).<sup>151</sup>

At EU level<sup>152</sup>, administrative detention of asylum seekers and illegally staying third-country nationals enforces the EU asylum and immigration policy<sup>153</sup>, which is part of the portfolio “Freedom, security and justice” (often also referred to as “Justice and Home Affairs”)<sup>154</sup>.

## 2.1 EU asylum and immigration law and policy

“EU policy” and “EU law” inter-relate. “EU law” distinguishes three types of law: primary law (treaties of the EU), secondary legislation (decisions, directives, recommendations and regulations) and decisions of the European Court of Justice and the Court of First Instance.<sup>155</sup>

Primary and secondary EU law are developed and adopted according to legislative procedures, which attribute specific powers to the EU Commission, the EU Council and the EU Parliament.<sup>156</sup> At the same time these three institutions shape “EU policy”: the set of decisions referring to the contents of what the EU wants to achieve and how the EU wants to achieve its own aims, within the context of the existing legal framework.

### EU policy

EU asylum policy covers the reception of asylum seekers<sup>157</sup> in open facilities/premises as well as in closed facilities/premises (administrative detention of asylum seekers).

EU immigration policy includes EU return policy concerning voluntary and forcible return of illegally staying third-country nationals<sup>158</sup>. Among the measures for implementing forcible return is the use of temporary custody for the purpose of removal (administrative detention of illegally staying third-country nationals).

As far as the 2004 EU enlargement is concerned, the 10 new EU Member States did not have much of a policy choice. Like any other new EU Member State, they had to accept the so-called Community or EU *acquis* before joining the European Union<sup>159</sup>. The EU *acquis* is the body of common rights and obligations which bind all the EU Member States together within the European Union. It is constantly evolving and comprises, inter alia,

- the content, principles and political objectives of the EU Treaties

<sup>149</sup> <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html> (last visit on 27 July 2007)

<sup>150</sup> [http://europa.eu/scadplus/treaties/eec\\_en.htm](http://europa.eu/scadplus/treaties/eec_en.htm) (last visit on 27 July 2007)

<sup>151</sup> Cf. [http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm) (last visit on 27 July 2007)

<sup>152</sup> If you wish to learn more about the entire global dimension, you may consult

<http://www.idcoalition.org/portal/index.php> (last visit on 27 July 2007)

<sup>153</sup> For a comprehensive overview you may consult <http://www.detention-in-europe.org/images/stories/2006%20eu%20policy%20and%20legislation.pdf> (last visit on 27 July 2007)

<sup>154</sup> Cf. [http://ec.europa.eu/justice\\_home/fsj/intro/fsj\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/intro/fsj_intro_en.htm) (last visit on 27 July 2007)

<sup>155</sup> Cf. [http://eur-lex.europa.eu/en/droit\\_communaire/droit\\_communaire.htm#1.3](http://eur-lex.europa.eu/en/droit_communaire/droit_communaire.htm#1.3) (last visit on 27 July 2007)

<sup>156</sup> Cf. [http://eur-lex.europa.eu/en/droit\\_communaire/droit\\_communaire.htm#1.3](http://eur-lex.europa.eu/en/droit_communaire/droit_communaire.htm#1.3) (last visit on 27 July 2007)

<sup>157</sup> Cf. [http://ec.europa.eu/justice\\_home/fsj/asylum/seekers/fsj\\_asylum\\_seekers\\_en.htm](http://ec.europa.eu/justice_home/fsj/asylum/seekers/fsj_asylum_seekers_en.htm) (last visit on 27 July 2007)

<sup>158</sup> Cf. [http://ec.europa.eu/justice\\_home/fsj/immigration/illegal/fsj\\_immigration\\_illegal\\_en.htm](http://ec.europa.eu/justice_home/fsj/immigration/illegal/fsj_immigration_illegal_en.htm) (last visit on 27 July 2007)

<sup>159</sup> Cf. [http://europa.eu/scadplus/glossary/accession\\_criteria\\_copenhagen\\_en.htm](http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm) (last visit on 27 July 2007); cf.

[http://europa.eu/scadplus/glossary/community\\_acquis\\_en.htm](http://europa.eu/scadplus/glossary/community_acquis_en.htm) (last visit on 27 July 2007)

- the legislation adopted in application of the Treaties and the case law of the European Court of Justice
- measures relating to justice and home affairs.<sup>160</sup>

EU pre-accession assistance helped the future 10 new EU Member States to satisfy the accession conditions, i.e. to adapt their institutions and standards in order to comply with the Community *acquis* and to be able to meet their obligations as future EU Member States.<sup>161</sup>

Concerning specifically administrative detention of asylum seekers and illegally staying third-country nationals, the so-called PHARE Programme<sup>162</sup>, one of the pre-accession instruments<sup>163</sup>, was of considerable importance. Between only 1997 and 2001, a total of 541 million € were allocated under the PHARE programme to various programmes in the Justice and Home Affairs domain<sup>164</sup>. Those programmes included financial means for constructing facilities/premises for the purpose of administrative detention, for example the closed Centre for Foreigners in Veliki otok/Postojna (Slovenia).

### The Treaty of Amsterdam (1999)

While accession negotiations with the future 10 new EU Member States and pre-accession assistance were underway, the TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS<sup>165</sup>, the so-called “Treaty of Amsterdam”, was signed by the old EU-15 Member States on 2 October 1997 and entered into force on 1 May 1999.

Inter alia, it expressed the EU-15 Member States’ commitment to “establish progressively an area of freedom, security and justice”, including provisions for visas, asylum, immigration and other policies related to free movement of persons.<sup>166</sup>

In particular, it set out the following aims<sup>167</sup>:

*The Council shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:*

- (1) *measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:*
  - (a) *criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,*
  - (b) *minimum standards on the reception of asylum seekers in Member States,*
  - (c) *(...)*
  - (d) *minimum standards on procedures in Member States for granting or withdrawing refugee status;*  
*(...)*
- (3) *measures on immigration policy within the following areas:*
  - (a) *(...)*
  - (b) *illegal immigration and illegal residence, including repatriation of illegal residents;*

Those aims were well timed. The Treaty of Amsterdam entered into force on 1 May 1999, and the deadline to be met for the accomplishment of the aims was fixed to *a period of five years after the entry into force of the Treaty of Amsterdam*, i.e. for 30 April 2004 - the day before the 10 new EU Member States would officially be full members of the European Union. To this extent the Treaty of Amsterdam intended to create *faits accomplis* before the full accession of the 10 countries and thus obliging them to accept, as EU *acquis*, all measures taken under the Amsterdam Treaty.

<sup>160</sup> If you wish to review the adoption of the Community *acquis* by country (including the area of freedom, security and justice/justice and home affairs), go to <http://europa.eu/scadplus/leg/en/s40016.htm> (last visit on 28 July 2007)

<sup>161</sup> [http://europa.eu/scadplus/glossary/preaccession\\_aid\\_en.htm](http://europa.eu/scadplus/glossary/preaccession_aid_en.htm) (last visit on 27 July 2007)

<sup>162</sup> Cf. <http://europa.eu/scadplus/leg/en/lvb/e50004.htm> (last visit on 27 July 2007)

<sup>163</sup> <http://europa.eu/scadplus/leg/en/s40016.htm> (last visit on 27 July 2007)

<sup>164</sup> Jörg Monar, Justice and Home Affairs after the 2004 Enlargement, *The International Spectator* 1/2003: <http://www.iai.it/pdf/articles/monar.pdf> (last visit on 27 July 2007)

<sup>165</sup> <http://www.eurotreaties.com/amsterdamtreaty.pdf> (last visit on 27 July 2007)

<sup>166</sup> Treaty of Amsterdam, TITLE IV

<sup>167</sup> Treaty of Amsterdam, TITLE III a, Article 76 k

## The Tampere Programme (1999 – 2004)

After the Treaty of Amsterdam had entered into force on 1 May 1999, the European Council held a special meeting entirely dedicated to the creation of an *area of freedom, security and justice in the European Union*, as set out by the Treaty of Amsterdam; this meeting took place in Tampere, Finland on 15 and 16 October 1999 and focused on operational conclusions from the Treaty of Amsterdam.

The outcomes of the Tampere EU Council were summarised in the Finnish EU Presidency Conclusions<sup>168</sup>, which confirmed the EU Council's determination to develop the European Union as an area of freedom, security and justice *by making full use of the possibilities offered by the Treaty of Amsterdam*.

Subsequently, a programme was adopted, which set out policy guidelines and practical objectives, with a timetable for their attainment. The European Commission, at the request of the European Council, drew up a scoreboard to review progress every six months.<sup>169</sup>

This so called Tampere Programme mentions the “newcomers” twice, but only in the context of border control<sup>170</sup>.

- *The European Council calls for closer co-operation and mutual technical assistance between the Member States' border control services (...) and for the rapid inclusion of the applicant States in this co-operation.*<sup>171</sup>
- *As a consequence of the integration of the Schengen acquis<sup>172</sup> into the Union, the Candidate Countries must accept in full that acquis and further measures building upon it. The European Council stresses the importance of the effective control of the Union's future external borders by specialised trained professionals.*<sup>173</sup>



Since 1 May 2004, all new EU Member States, except the EU landlocked Czech Republic, bear large-scale co-responsibility for external border control:

- Along the Baltic Sea, Estonia, Latvia and Lithuania constitute a large buffer between Sweden and Finland on one side and Russia and the Republic of Belarus on the other side. Together with Poland, Lithuania has to keep the border to Kaliningrad (Russia) under surveillance.
- Poland assumes responsibility at the border to Belarus and Ukraine.
- Slovakia must assure the control of its border to Ukraine, too.
- Hungary is responsible for controlling its borders with Ukraine, Serbia/Montenegro and Croatia.
- Slovenia must control the border to Croatia and its sea border at the Adriatic Coast.

<sup>168</sup> [http://europa.eu.int/council/off/conclu/oct99/oct99\\_en.htm](http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm) (last visit on 27 July 2007)

<sup>169</sup> Cf. [http://ec.europa.eu/justice\\_home/doc\\_centre/scoreboard\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/scoreboard_en.htm) (last visit on 27 July 2007)

<sup>170</sup> Tampere Presidency Conclusions, IV, Management of migration flows

<sup>171</sup> Tampere Presidency Conclusions, 24

<sup>172</sup> The Schengen system involves the abolition of border controls between participating States, together with a series of measures designed to strengthen external borders and address participants' security concerns.

<sup>173</sup> Tampere Presidency Conclusions, 25

- Malta and Cyprus are important outposts in the Mediterranean Sea.

After the terrorist attacks of 11 September 2001 and of 11 March 2004, external border control has become an even more sensitive and costly issue.<sup>174</sup>

## The Hague Programme (2004 – 2009)

Shortly before the Tampere Programme (1999 – 2004) was running out, the European Council endorsed a follow-up programme, the so-called Hague Programme, in November 2004, which fixed the priorities for an *area of freedom, security and justice* until 2009 and which was amended by a European Commission Action Plan on 10 May 2005.<sup>175</sup>

Neither the Hague Programme nor the Hague Action Plan mention administrative detention explicitly, nevertheless both were and remain relevant for administrative detention of asylum seekers and illegally staying third-country nationals, as the aims include the adoption of a *Asylum Procedures Directive* (2005)<sup>176</sup> and a European Commission *Proposal on return procedures* (2005)<sup>177</sup>, both dealing with detention.

## 2.2 EU law

As stated above, “EU law” is composed of EU legislation and the decisions of the European Court of Justice and the Court of First Instance.<sup>178</sup>

Concerning EU legislation referring to administrative detention, a distinction needs to be made between legislation, which is already adopted, and legislation, which is still in the making<sup>179</sup>: On the basis of the Treaty of Amsterdam, specified by the Tampere Programme and Hague Programme, the EU passed or plans to pass relevant legislation.

## Major adopted EU legislation

The EU adopted the following major legal instruments:

- the COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (“Dublin II Regulation”)
- the COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
- COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status

### **COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national**

The 2003 COUNCIL REGULATION (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (“Dublin II Regulation”)<sup>180</sup> is relevant for asylum procedures as well as removal. Although it mentions “detention” only once and although it does not contain any specific provision for administrative detention, its impact on detention is considerable. In

<sup>174</sup> Malta was the first (future) EU country to receive from the United States a special “border management tool”, the Personal Identification Secure Comparison and Evaluation System (PISCES), part of the US Department of State’s Terrorist Interdiction Programme; the whole package is estimated to be worth around 1.5 million US-\$ (The Malta Independent, 6 May 2004)

<sup>175</sup> Cf. [http://ec.europa.eu/justice\\_home/news/information\\_dossiers/the\\_hague\\_priorities/documents\\_en.htm](http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/documents_en.htm) (last visit on 27 July 2007)

<sup>176</sup> Hague Action Plan, 2.2.3.

<sup>177</sup> Hague Action Plan, 2.2.6.

<sup>178</sup> Cf. [http://eur-lex.europa.eu/en/droit\\_communaire/droit\\_communaire.htm#1.3](http://eur-lex.europa.eu/en/droit_communaire/droit_communaire.htm#1.3) (last visit on 27 July 2007)

<sup>179</sup> as of 27 July 2007

<sup>180</sup> [http://eur-](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Regulation&an_doc=2003&nu_doc=343)

[lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Regulation&an\\_doc=2003&nu\\_doc=343](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Regulation&an_doc=2003&nu_doc=343) (last visit on 27 July 2007)

March 2006, the European Council for Refugees and Exiles (ECRE)<sup>181</sup> and the European Legal Network on Asylum (ELENA)<sup>182</sup> published a joint REPORT ON THE APPLICATION OF THE DUBLIN II REGULATION IN EUROPE, which gives a comparative overview of the application of the “Dublin II Regulation” in 20 EU Member States. The report highlights that many EU Member States *are increasingly using detention in order to enforce transfer under the Dublin system.*<sup>183</sup>

ECRE and ELENA state:

*This practice is evident in Belgium, the Czech Republic, Finland, Austria, The Netherlands, United Kingdom and Luxembourg. Detention may also be imposed upon returnees in a number of Member States including Germany, the Czech Republic, Luxembourg, Belgium and Greece. Furthermore, applicants may also be detained if national legislation provides for criminal sanctions for illegal entry.*<sup>184</sup>

### **COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers**

The 2003 COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>185</sup> was supposed to be transposed into national law by February 2005<sup>186 187</sup>.

*It applies to all third-country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law*<sup>188</sup>.

There is a certain dissent among EU Member States concerning the applicability of this Directive to reception in closed facilities or premises. Some argue that this Directive does not apply to persons in administrative detention which means that detainees cannot claim the rights stated in this Directive; other States argue the opposite.<sup>189</sup>

The Directive defines “detention” as: *confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement*<sup>190</sup>, and states that EU Member States *may confine an applicant (for asylum) to a particular place in accordance with their national law, when it proves necessary, for example, for legal reasons or for reasons of public order*<sup>191</sup>.

As far as such a “place” is concerned, this Directive only defines “accommodation centre”, which means *any place used for collective housing of asylum seekers*<sup>192</sup>.

This means that a detention facility or premise may also be called “accommodation centre”, which is a notion that does not indicate whether the centre it is an open or closed one. Therefore officials sometimes say that there are no “detention centres” in their country, only “accommodation centres”. But if an “accommodation centre” is a closed centre, which detainees cannot leave, it is, in fact, a “detention centre”.

<sup>181</sup> <http://www.ecre.org/> (last visit on 27 July 2007)

<sup>182</sup> <http://www.ecre.org/about/elena.shtml> (last visit on 27 July 2007)

<sup>183</sup> ECRE/ELENA, REPORT ON THE APPLICATION OF THE DUBLIN II REGULATION IN EUROPE, page 4:

<http://www.ecre.org/files/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf> (last visit on 27 July 2007)

<sup>184</sup> ECRE/ELENA, REPORT ON THE APPLICATION OF THE DUBLIN II REGULATION IN EUROPE, page 162:

<http://www.ecre.org/files/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf> (last visit on 27 July 2007)

<sup>185</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_031/l\\_03120030206en00180025.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_031/l_03120030206en00180025.pdf) (last visit on 27 July 2007)

<sup>186</sup> COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 26

<sup>187</sup> Currently the ODYSSEUS legal academic network, commissioned by the European Commission, is studying the state of transposition: <http://www.ulb.ac.be/assoc/odysseus/index2.html> (last visit on 27 July 2007)

<sup>188</sup> 2003 COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 3

<sup>189</sup> Most likely the EU Commission will publish an overview on the positions and arguments of the EU Member States on the grounds of the research of the ODYSSEUS legal academic network

(<http://www.ulb.ac.be/assoc/odysseus/index2.html>, last visit on 27 July) by the end of 2007.

<sup>190</sup> COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 2 k

<sup>191</sup> COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 7

<sup>192</sup> COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 2 l

The Directive does not define the notion “reception centre”.

### **COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status**

The 2005 COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status<sup>193</sup> is supposed to be transposed into national law by December 2007<sup>194</sup>, and it applies *to all applications for asylum made in the territory, including at the border or in the transit zones of Member States*<sup>195</sup>.

Concerning “detention”, it only states, that *Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum*<sup>196</sup>.

Thus, if there are further reasons, like medical screening or identity checks, asylum applicants may be detained. Consequently, the national legislators of the EU Member States can freely provide for the detention of persons, who have made an application for asylum, as long as they do not provide for detention for the “sole” reason that a person has made an application for asylum. This includes those cases in which another EU Member State is responsible for the asylum application (“DUBLIN II cases”).

The Directive does not define “detention”<sup>197</sup>.

### **EU legislation in the making**

#### **Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third-country nationals (presented by the Commission), COM (2005) 391 final**

This Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third-country nationals (presented by the Commission), COM (2005) 391 final<sup>198</sup> is presently under negotiation at EU level<sup>199</sup>. Chapter IV deals with:

##### *TEMPORARY CUSTODY FOR THE PURPOSE OF REMOVAL*

###### Article 14 Temporary custody

1. *Where there are serious grounds to believe that there is a risk of absconding and where it would not be sufficient to apply less coercive measures, such as regular reporting to the authorities, the deposit of a financial guarantee, the handing over of documents, an obligation to stay at a designated place or other measures to prevent that risk, Member States shall keep under temporary custody a third-country national, who is or will be subject of a removal order or a return decision,*
2. *Temporary custody orders shall be issued by judicial authorities. In urgent cases they may be issued by administrative authorities, in which case the temporary custody order shall be confirmed by judicial authorities within 72 hours from the beginning of the temporary custody.*
3. *Temporary custody orders shall be subject to review by judicial authorities at least once a month.*

<sup>193</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_326/l\\_32620051213en00130034.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_326/l_32620051213en00130034.pdf) (last visit on 27 July)

<sup>194</sup> COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status, Article 43

<sup>195</sup> COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status, Article 3

<sup>196</sup> COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status, Article 18

<sup>197</sup> However, the previously adopted COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers provides for a definition: “Detention” means “confinement of an asylum seekers by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement” (Article 2 k).

<sup>198</sup> [http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0391en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0391en01.pdf) (last visit on 27 July 2007)

<sup>199</sup> If you wish to get updated information, you may go to [http://www.detention-in-europe.org/index.php?option=com\\_content&task=view&id=103&Itemid=132](http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=103&Itemid=132) (last visit on 27 July 2007)

4. *Temporary custody may be extended by judicial authorities to a maximum of six months.*

#### Article 15 Conditions of temporary custody

1. *Member States shall ensure that third-country nationals under temporary custody are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Upon request they shall be allowed without delay to establish contact with legal representatives, family members and competent consular authorities as well as with relevant international and non-governmental organisations.*
2. *Temporary custody shall be carried out in specialised temporary custody facilities. Where a Member State cannot provide accommodation in a specialised temporary custody facility and has to resort to prison accommodation, it shall ensure that third-country nationals under temporary custody are permanently physically separated from ordinary prisoners.*
3. *Particular attention shall be paid to the situation of vulnerable persons. Member States shall ensure that minors are not kept in temporary custody in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child's best interest not to do so.*
4. *Member States shall ensure that international and non-governmental organisations have the possibility to visit temporary custody facilities in order to assess the adequacy of the temporary custody conditions. Such visits may be subject to authorisation.*

### **The principle of proportionality**

As stated above, “EU law” is composed not only of EU legislation, but also of the decisions of the European Court of Justice and the Court of First Instance.<sup>200</sup>

The principle of proportionality is derived from German law, and it first affected EU law in the *Internationale Handelsgesellschaft* case in 1970<sup>201</sup>:

*A public authority may not impose obligations on a citizen except to the extent to which they are strictly necessary in the public interest to attain the purpose of the measure.*

Since then it has become one of the fundamental principles of the jurisprudence developed by the European Court of Justice.<sup>202</sup>

It is a safeguard against the unlimited use of legislative and administrative powers and considered to be something of a “rule of common sense”, according to which an administrative authority may only act to exactly the extent that is needed to achieve its objectives.

More specifically, the principle of proportionality means that any measure by a public authority that affects a basic human right must be:

- appropriate in order to achieve the objective, which is intended,
- necessary in order to achieve the objective, which is intended, i.e. there are no less severe means of achieving the objective, and
- reasonable, i.e. the person concerned can reasonably be expected to accept the measure in question.

Article 5 of the CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY<sup>203</sup> states: *Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.*

As regards the application of this principle in legislation concerning administrative detention and in detention practice, administration detention may consequently be considered only lawful if it is appropriate, necessary and reasonable.

<sup>200</sup> Cf. [http://eur-lex.europa.eu/en/droit\\_communaute/droit\\_communaute.htm#1.3](http://eur-lex.europa.eu/en/droit_communaute/droit_communaute.htm#1.3) (last visit on 27 July 2007)

<sup>201</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61970J0011:EN:HTML> (last visit on 27 July 2007)

<sup>202</sup> Cf. <http://www.jeanmonnetprogram.org/papers/97/97-01-3.html> (last visit on 27 July 2007); cf. James Barbour/Betty N. Morgan; Evolution in Subsidiarity, Proportionality, and the European Court of Justice: Implications for the Interactions Between the EU and the New Member States, 2004 ([http://irspm.bkae.hu/papers/barbour\\_morgan\\_paper.pdf](http://irspm.bkae.hu/papers/barbour_morgan_paper.pdf), last visit on 27 July)

<sup>203</sup> [http://europa.eu.int/eur-lex/en/treaties/dat/EC\\_consol.pdf](http://europa.eu.int/eur-lex/en/treaties/dat/EC_consol.pdf) (last visit on 27 July 2007)

The principle of proportionality is particularly relevant when pondering the financial cost of detention and the political efficiency of detention.<sup>204</sup>

## 2.2 Major international guidelines

By nature, international guidelines are not legally binding, but they reflect basic standards rooted in legal ethics. Among those guidelines<sup>205</sup> are

- the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers
- the 2005 Council of Europe Committee of Ministers Twenty Guidelines on Forced Return
- the Standards of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

### 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers

The 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers<sup>206</sup> are based on the principle that *as a general principle asylum-seekers should not be detained*<sup>207</sup> and list *Exceptional Grounds for Detention*<sup>208</sup> and *Alternatives to Detention*<sup>209</sup>.

They further deal with

- Procedural Safeguards<sup>210</sup>
- Detention of Persons under the Age of 18 years<sup>211</sup>
- Detention of Vulnerable People<sup>212</sup>
- Detention of Women<sup>213</sup>
- Detention of Stateless Persons<sup>214</sup>
- Conditions of Detention<sup>215</sup>

### 2005 Council of Europe Committee of Ministers Twenty Guidelines on Forced Return

The 2005 Council of Europe Committee of Ministers Twenty Guidelines on Forced Return<sup>216</sup> deal in Chapter III with "Detention pending removal" and outline a number of guidelines on

- Conditions under which detention may be ordered<sup>217</sup>
- Obligation to release where the removal arrangements are halted<sup>218</sup>
- Length of detention<sup>219</sup>

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<sup>204</sup> If you wish to know more about the financial cost of detention, you may go to [http://www.detention-in-europe.org/index.php?option=com\\_content&task=view&id=176&Itemid=210](http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=176&Itemid=210) (last visit on 27 July 2007)

<sup>205</sup> For those who wish to consult International Law, go to [http://www.detention-in-europe.org/index.php?option=com\\_content&task=view&id=93&Itemid=118](http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=93&Itemid=118) (last visit on 27 July 2007)

<sup>206</sup> <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (last visit on 27 July 2007)

<sup>207</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 2

<sup>208</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 3

<sup>209</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 4

<sup>210</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 5

<sup>211</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 6

<sup>212</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 7

<sup>213</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 8

<sup>214</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 9

<sup>215</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 10

<sup>216</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/foreigners\\_and\\_citizens/asylum\\_refugees\\_and\\_stateless\\_persons/texts\\_and\\_documents/2005/Twenty%20Guidelines%20on%20forced%20return%202005.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/foreigners_and_citizens/asylum_refugees_and_stateless_persons/texts_and_documents/2005/Twenty%20Guidelines%20on%20forced%20return%202005.pdf) (last visit on 27 July 2007)

<sup>217</sup> Council of Europe Committee of Ministers Twenty Guidelines on Forced Return, Guideline 6

<sup>218</sup> Council of Europe Committee of Ministers Twenty Guidelines on Forced Return, Guideline 7

<sup>219</sup> Council of Europe Committee of Ministers Twenty Guidelines on Forced Return, Guideline 8



- Judicial remedy against detention<sup>220</sup>
- Conditions of detention pending removal<sup>221</sup>
- Children and families<sup>222</sup>

## **Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>223</sup> was set up under the 1987 Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>224</sup>.

According to Article 1 of this Convention,  
*there shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (...) The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.*

All 10 new EU Member States, which acceded to the European Union on 1 May 2004, are signatories of the Convention.<sup>225</sup>

The CPT publishes regularly “CPT Standards”, which are composed of the “substantive” sections of annual CPT General Reports.<sup>226</sup>

*The Committee hopes in this way to give a clear advance indication to national authorities of its views regarding the manner in which persons deprived of their liberty ought to be treated and, more generally, to stimulate discussion on such matters.*<sup>227</sup>

They cover in particular

- Police custody<sup>228</sup>
- Foreign nationals detained under aliens legislation<sup>229</sup>
- Juveniles deprived of their liberty<sup>230</sup>
- Women deprived of their liberty<sup>231</sup>

<sup>220</sup> Council of Europe Committee of Ministers Twenty Guidelines on Forced Return, Guideline 9

<sup>221</sup> Council of Europe Committee of Ministers Twenty Guidelines on Forced Return, Guideline 10

<sup>222</sup> Council of Europe Committee of Ministers Twenty Guidelines on Forced Return, Guideline 11

<sup>223</sup> <http://www.cpt.coe.int/EN/about.htm> (last visit on 27 July 2007)

<sup>224</sup> <http://conventions.coe.int/Treaty/en/Treaties/Word/126.doc> (last visit on 27 July 2007)

<sup>225</sup> <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=126&CM=1&DF=&CL=ENG> (last visit on 27 July 2007)

<sup>226</sup> CPT Standards [CPT/Inf/E (2002) 1, Rev. 2006]: <http://www.cpt.coe.int/EN/docsstandards.htm> (last visit on 27 July 2007)

<sup>227</sup> <http://www.cpt.coe.int/EN/documents/eng-standards-scr.pdf> (last visit on 27 July 2007)

<sup>228</sup> CPT Standards [CPT/Inf/E (2002) 1, Rev. 2006], Chapter I

<sup>229</sup> CPT Standards [CPT/Inf/E (2002) 1, Rev. 2006], Chapter IV

<sup>230</sup> CPT Standards [CPT/Inf/E (2002) 1, Rev. 2006], Chapter VI

<sup>231</sup> CPT Standards [CPT/Inf/E (2002) 1, Rev. 2006], Chapter VII

# ADMINISTRATIVE DETENTION IN THE 10 NEW MEMBER STATES OF THE EU

All of the 10 new Member States of the EU implement some form of detention of illegally staying third country nationals and/or asylum seekers within their territory, although national contexts and laws, policies and practices differ considerably.

This section of the report starts by comparing national law as well as selected areas relating to policy and practice on administrative detention in the 10 new Member States of the EU. The analysis of existing practice identifies best practice in a number of areas related to conditions in detention. This section concludes with a number of recommendations.

## **3.1 Administrative detention in the 10 new EU Member States before and after EU membership**

In 1998, accession negotiations were started with Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia. In 1999, the European Commission recommended opening negotiations, with Latvia, Lithuania, Malta and Slovakia.

### **The use of administrative detention**

Research revealed three distinct traits at national level:

- States where policy and practice did not really change with accession to the EU (Cyprus);
- States where policy and practice did not change with (preparing for) EU membership, it was only “labelled” differently (Hungary<sup>232</sup>);
- States where policy and practice changed with EU accession negotiations and EU accession itself –this is true of all the other eight Member States.

In many cases these changes were also due to an increase of asylum applications and a growing number of illegally staying third-country nationals in the countries concerned<sup>233</sup>.

For the majority of countries researched, it can be stated as a general rule that the use of administrative detention of asylum seekers and illegally staying third-country nationals did not exist at all or not to the same extent as after EU accession.

In some countries, legislation provided for detention already before EU accession negotiations and EU accession itself (as, for example, in Malta), but there were significant changes in policy and practice following accession, some of them positive.

### **Administrative detention facilities/premises**

Of the 30 detention facilities/premises researched, a number already existed before EU accession negotiations and EU accession itself. These include:

- the police stations in Cyprus
- the closed reception space at the International Airport Ruzyne (Czech Republic), which was created in 1991
- the closed reception centre Vysni Lhoty (Czech Republic), which was opened in 1994 as an open facility for asylum seekers
- the premise in Olaine (Latvia), which was created in 1995

<sup>232</sup> <sup>232</sup> The legal maximum duration of detention in Hungary decreased from an indefinite time period to 18 months in 1999, then to 12 months in 2004 and then to 6 months in July 2007.

<sup>233</sup> Cf. statistics at [www.ecre.org/factfile/statistics.html](http://www.ecre.org/factfile/statistics.html) (last visit on 27 July 2007)

- the Pabradė Foreigners' Registration Centre (Lithuania), which was opened in 1997
- the Medved'ov Detention Centre for Foreigners (Slovakia), which was opened in 1997
- Ta' Kandja Detention Centre and Hermes Block at Lyster Detention Centre (Malta).

Others were only established during accession negotiations, such as

- the North Police Prefect Police Station (Estonia): the police cells were built during the years 1999/2000
- the Győr Border Guard Directorate premise (Hungary), which was turned into "alien policing jail" in 1999
- the Krosno Odrzańskie Boarder Guard Station (Poland), which was adopted for the purpose of removal in 2000
- one building of the detention centre in Postojna (Slovenia), which was established with the financial help of EU, namely the PHARE programme and which accommodates detainees since September 2002

Finally a number of other facilities/premises were opened only after full EU membership, for example

- Warehouse 1 and 2 at Safi Detention Centre (Malta) were constructed in 2004 for military use, but in 2005 they were converted into detention premises; C Block, at the same centre, was built between January and October 2005 and it was used for the first time in February 2006

### 3.2 Comparative observations on basic national legislation

This section of the report compares the legislative framework regulating selected aspects of administrative detention of illegally staying third country nationals and asylum seekers in the 10 new Member States. National laws and the structures they put in place are briefly examined in the light of principles established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the case law of the European Court of Human Rights and the requirements of relevant EU laws.

#### Legal grounds for ordering detention

Each of the 10 new Member States detains third country nationals subject to a removal order. This measure concerns migrants who do not have the right to stay on the territory of the State, namely: migrants who entered irregularly in the country, people whose permit to stay is not valid anymore, as well as persons whose application for asylum failed. To that extent, the legislation of the ten new Members States is in accordance with Article 5 (f) of ECHR, which authorises the *deprivation of liberty of a person against whom action is being taken with a view to deportation (...)*.

Regarding asylum seekers whose application is being processed, the law provides that they may be detained only in Estonia, Cyprus, Czech Republic and Slovenia. However, their detention is subject to conditions, in accordance with Article 18 (1) of the Procedure Directive, which states that *Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum*.

According to law, in Estonia, asylum seekers may be confined in reception centres for a period longer than 48 hours when: they do not cooperate with the identification process; they commit a serious criminal offence in a foreign State; they do not comply with the rules and procedures they are subject to and when it is necessary for national security and policy reasons<sup>234</sup>. In Cyprus, the detention of asylum seekers is permitted to establish their identity or nationality (compared to Estonia, there is no mention of an obligation to cooperate); in case they submit new elements after their application has been rejected on first or second instance; and when they enter the country illegally<sup>235</sup>. In the Czech Republic, asylum seekers may be detained: in transit zones at the international airport; for medical reasons; in application of the EU Dublin II Regulation<sup>236</sup>. Similarly, in Slovenia, asylum seekers may be held in custody under the Dublin II Regulation<sup>237</sup>.

Even though the legislation of the other new Member States does not expressly provide for detention of asylum seekers, they may in fact be detained under other legal grounds. For example, although the law of only two of the new Member States refers directly to the Dublin II Regulation (Czech Republic and

<sup>234</sup> Act on Granting International Protection to Aliens, Article 32. In practice, however, asylum seekers are not detained.

<sup>235</sup> Refugee Law, 6 January 2001, Article 7

<sup>236</sup> Asylum Act, Section 46 and 73

<sup>237</sup> Asylum Act, Article 40

Slovenia), it is likely that the other States<sup>238</sup> detain asylum seekers falling under the Dublin II procedure. In this case, detention may be justified by the fact that a removal order has been issued against them. Similarly, an asylum seeker, who – as is often the case – enters illegally into the territory of a new Member State, may be detained. As mentioned, the Cypriot law provides expressly for this. The law in Estonia<sup>239</sup>, Hungary<sup>240</sup>, Slovakia<sup>241</sup>, Malta<sup>242</sup>, Latvia<sup>243</sup> and Lithuania<sup>244</sup> stipulates that an ‘alien’ can be detained when he/she enters or is present the country without authorisation and/or when s/he is refused admission into national territory. Such a provision is in line with Article 5(1)(f) of the ECHR which states that someone may be detained *to prevent his effecting unauthorised entry into the country (...)*.

As already mentioned, Czech law provides for the detention of asylum seekers in the transit area of an international airport<sup>245</sup>. Hungarian law also authorises detention of asylum seekers in the transit area of the Ferihegy international airport if the foreigner submits his/her application at an international air traffic border crossing point prior to entry in the territory of the Republic of Hungary.<sup>246</sup> Cyprus<sup>247</sup> and Malta<sup>248</sup> authorise detention in transit centres of immigrants arriving at ports or airports.

The threat to “public order”, “public security” or “public policy” is a ground to detain a third country national that is found in the legislation of Latvia<sup>249</sup>, Lithuania<sup>250</sup>, Czech Republic<sup>251</sup> and Poland<sup>252</sup>. As already mentioned, Estonian law justifies the detention of asylum seekers on this ground. Regarding people seeking asylum, these national laws are in line with Article 7 of the Reception Directive which states: *When it proves necessary, for example for (...) reasons of public order, Member States may confine an [asylum] applicant to a particular place (...)*.

In the Czech Republic<sup>253</sup> and Lithuania<sup>254</sup>, the detention of asylum seekers or irregular migrants may be justified for medical reasons or to avoid the spread of dangerous diseases. Such legal grounds are in line with Article 5(1)(e) of ECHR, which provides the lawful detention of persons for the prevention of the spreading of infectious diseases (...). Maltese immigration law even provides for the detention of immigrants suffering from mental disorder or mental defectiveness<sup>255</sup>. Malta differs as well from the other new Member States in that it authorises the detention of migrants unable to maintain themselves or their dependants<sup>256</sup>. Such a provision widens the power of the authorities to detain immigrants, as many live in destitution when they arrive in Europe.

Finally, the risk of absconding in cases when a removal order has been issued against a third country national is mentioned in the legislation of Czech Republic<sup>257</sup> and Hungary<sup>258</sup> as a legal ground for detention.

## Legal grounds for the detention order

Regarding the detention order, the main question is to determine the authority competent to deliver it. In most states the initial detention order is issued by administrative authorities: the asylum department of the Ministry of Interior (Slovenia); Police officers (Czech Republic, Estonia, Latvia, Lithuania, Poland), border guards (Estonia, Hungary, Latvia and Poland); immigration officers (Cyprus and Hungary). Malta is a case apart. Maltese Law does not contain provision for the issuing of a detention

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<sup>238</sup> The Estonian rapporteur indicated that, although it is not specifically stated in the law, asylum seekers may be detained in terms of the Dublin II regulations until their removal can be effected.

<sup>239</sup> Obligation to Leave and Prohibition to Enter Act (OLPA), Article 23

<sup>240</sup> Act II of 2007 on the entry and stay of third country nationals

<sup>241</sup> Act No. 48/2002 on the Stay of Aliens, Article 62

<sup>242</sup> Immigration Act, Article 16

<sup>243</sup> Immigration Law of 31 October 2002, Article 51(1)

<sup>244</sup> Law on the Legal Status of Foreigners, Article 113

<sup>245</sup> Asylum Act, Section 73

<sup>246</sup> Act LXXX of 2007 on asylum, Section 72. The new act on asylum is to come into force January 1st 2008

<sup>247</sup> Aliens and Migration Act, Article 13 (1)

<sup>248</sup> Immigration Act, Article 10

<sup>249</sup> Immigration Law of 31 October 2002, Article 51(2)

<sup>250</sup> Law on the Legal Status of Foreigners, Article 113

<sup>251</sup> Act on the Residence of Foreigners, Article 124

<sup>252</sup> Act of 13 June 2003 on Grating Protection to Aliens within the Territory of the Republic of Poland, Article 41

<sup>253</sup> Asylum Act, Article 46

<sup>254</sup> Law on the Legal Status of Foreigners, Article 113

<sup>255</sup> Immigration Act, Article 14

<sup>256</sup> *Idem*

<sup>257</sup> Act on the Residence of Foreigners, Article 124

<sup>258</sup> Act II of 2007, Section 54 (1) a) and b)

order. Detention is the automatic consequence of a removal order or of a decision to refuse admission into national territory, both of which are administrative decisions.

In some countries, the authority competent to deliver the detention order may differ according to the situation or the persons concerned. In Estonia, Lithuania and Poland, Police officers or border guards may detain third country nationals for a period not exceeding 48 hours. Any extension of the duration of detention should be decided by a Court. Similarly, in Latvia, to detain a third-country national for more than 10 days, Border Guard officers should obtain a detention order from the regional judge. In Cyprus, a Court order is requested to detain asylum applicants while the Chief Immigration officer decides the detention of people against whom a removal order has been issued, as well as of persons who entered the country illegally or who entered legally but subsequently stayed illegally and then submitted an asylum application.

## Legal grounds for the right to challenge detention

In most States, third country nationals may appeal against the detention order issued against them. The national laws of the Member States concerned stipulate varying time-limits within which such appeals must be entered: two days in Latvia<sup>259</sup>, eight days in Slovenia<sup>260</sup>, three days in Malta<sup>261</sup>, 15 days in Slovakia<sup>262</sup>, seven days in Poland<sup>263</sup> and three days in Hungary<sup>264</sup>.

Some States also provide for a form of periodic review of detention. For example, in Hungary Act II of 2007 requires that the prolongation of the alien policing detention measure be reviewed every 30 days upon the reasoned motion of the Alien Policing Authority. In Estonia too the court may authorise detention for a period of up to 2 months which may only be extended by the court upon an application from the competent administrative authority. Some States, such as Malta, do not provide for any form of periodic review.

In addition, in the majority of the 10 new Member States, third country nationals held in custody can challenge their detention. It would therefore appear that, to some extent, national laws are in line with Article 5 (4) of ECHR, which states: *Everyone who is deprived of his liberty by (...) detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.* Concerning asylum seekers held in detention, Article 18 (2) of the Procedure Directive provides: *Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.* However, from the information collected, it was not clear whether the remedies provided are actually speedy or effective.

According to Czech law, only third country nationals detained for the purpose of removal have the right to challenge their detention<sup>265</sup>. People detained in the transit centres of international airports, and asylum seekers in closed reception centres, do not have a specific right to request a review of their detention. However, in such cases, detainees can challenge their detention under the Code of Administrative Procedure, which provides remedies against unlawful interference by an administrative authority into the rights of an individual. Asylum seekers detained under the Dublin II Regulation do not have the right to contest their detention.

In Malta, the law provides detained asylum seekers and irregular migrants with three possible remedies for challenging their detention. Foreigners to be returned may challenge their detention by appealing against their removal order<sup>266</sup>. In exceptional circumstances, detainees may apply for release while their asylum application is being examined or pending their removal from Malta<sup>267</sup>. People released thus should report at least once a week to the immigration authorities. Detainees may also challenge the lawfulness of their detention on the grounds of Article 34 of the Constitution of Malta and Article 5 of ECHR. However this remedy is definitely not speedy.

Such remedies are of course totally meaningless, unless detainees are informed about their right to contest the lawfulness of their detention. This is particularly true in those States where there is no form

<sup>259</sup> Immigration Law of 31 October 2002, Article 55(6)

<sup>260</sup> Aliens Act, Article 58

<sup>261</sup> Immigration Act, Article 25 A (5) – it should be noted, however, that this provision refers to appeals against removal rather than detention orders.

<sup>262</sup> Act No. 48/2002 on the Stay of Aliens, Article 62 (6)

<sup>263</sup> Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland, Article 106

<sup>264</sup> Act II of 2007 Section 57

<sup>265</sup> Act on the Residence of Foreigners, Section 124

<sup>266</sup> Immigration Act, Article 25 A (5)

<sup>267</sup> *Idem*, Article 25 A (9)

of review of the detention of third country nationals. Only the law in the Czech Republic<sup>268</sup>, Latvia<sup>269</sup>, Hungary<sup>270</sup> and Slovakia<sup>271</sup> stipulates that detained third country nationals should be informed about the possibility to contest the lawfulness of their detention in a language they understand. In the other countries, there is no specific provision obliging the authorities to inform detainees about their right to judicial review. Moreover, in a number of countries, such as Malta and Latvia, illegally staying third country nationals are not provided with legal assistance to make the required applications – thus the remedies available are made more inaccessible to them.

In the majority of the 10 new Member States, detained third country nationals can challenge their detention before a Court. This is in line with the mentioned Article 5 of ECHR and Article 18 of the Procedure Directive which both provide for a judicial review of the detention. In Slovenia third country nationals can appeal against their detention order before the Ministry of Interior. If the Ministry of Interior confirms the detention order, his decision can be challenged before the administrative court<sup>272</sup>. To that extent, the right to a judicial review of the detention is respected. In Malta however, appeals against removal orders and applications to challenge the reasonableness of an individual's detention are made before an administrative authority: the Immigration Appeals Board<sup>273</sup>.

### Legal grounds for legal maximum duration

European legal instruments (ECHR, Reception Directive, Procedure Directive) do not give any time limit for the detention of asylum seekers and third country nationals under a removal order. As a basic minimum they prescribe that, in every case, detention should be in accordance with a procedure prescribed by law (Article 5 ECHR) or *in accordance with [the Member State's] national law* (Article 7 (3) of the Reception Directive).

Nevertheless, the legislation of the majority of the 10 new Member States lays down a maximum duration of detention. Only one of them – Lithuania – does not provide any maximum duration; here the judge, who delivers the detention order, decides upon the duration of detention. In Malta although there is a maximum time limit on detention, it is not clearly established by national law.

The maximum duration varies from one country to another. Further, the time limit for the detention of asylum applicants differs from the time limit for the detention of third country nationals to be removed. In Slovakia,<sup>274</sup> as in Slovenia<sup>275</sup>, Hungary<sup>276</sup> and Czech Republic<sup>277</sup>, third country nationals to be removed cannot be held in custody for more than six months. This period may be extended in certain cases. In the Czech Republic however, this time limit is brought down to 90 days where minors are concerned<sup>278</sup>. Asylum applicants held in transit centres must be transferred if an initial decision in for a duration exceeding five days. Their stay can be extended to 45 days if their asylum application is refused at first instance and an appeal is pending before the court; if the court does not decide within 45 days they must be released<sup>279</sup>. In Poland, detention cannot exceed three months<sup>280</sup>. This duration can however be prolonged up to one year, until removal or release takes place. In Estonia, the situation is very similar – the law<sup>281</sup> stipulates that the court may order detention for up to 2 months, which may however be prolonged until removal upon the request of the competent authority.

Malta has the longest legal time limit for detention of third country nationals. The maximum duration is one year for asylum seekers and one year and half for people to be removed. On the contrary, Cypriot law limits the duration of the detention of asylum applicants to 32 days<sup>282</sup>. More generally, the Prison Law in Cyprus prohibits the detention of a person for a period exceeding 15 days<sup>283</sup>. In Latvia, the maximum duration of detention of third-country nationals is two months. Any subsequent extension

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<sup>268</sup> Act on the Residence of Foreigners, Section 126

<sup>269</sup> Immigration Law of 31 October 2002, Article 56(1)

<sup>270</sup> Act II of 2007 Section 60

<sup>271</sup> Act No. 48/2002 on the Stay of Aliens, Article 63 (a)

<sup>272</sup> Aliens Act, Article 58

<sup>273</sup> Immigration Act, Article 25 A (5) and (9)

<sup>274</sup> Act No. 48/2002 on the Stay of Aliens, Article 62 (3)

<sup>275</sup> Aliens Act, Article 56

<sup>276</sup> Aliens Act II of 2007, Section 5(4): After the expiration of maximum duration of detention, third country nationals can be sent to "compulsory places of residence"

<sup>277</sup> Act on the Residence of Foreigners, Section 125

<sup>278</sup> *Idem*

<sup>279</sup> Asylum Act, Section 73

<sup>280</sup> Act of 13 June 2003 on Grating Protection to Aliens within the Territory of the Republic of Poland, Article 106

<sup>281</sup> Obligation to Leave and Prohibition to Enter Act (OLPA), Article 23

<sup>282</sup> Refugee Law, Article 7 (6)

<sup>283</sup> Prison Law N. 62(I)/96

must be issued by the judge to prolong the foreigner's detention up to a maximum of 20 months.<sup>284</sup> However, in practice detention periods are longer. The Cypriot Ombudswoman recently suggested fixing the maximum duration of detention at three months<sup>285</sup>.

## Legal grounds for contact with the outside world

The notion of "contact with the outside world" is vast. It includes several rights, which all allow detained third-country nationals to receive visits, assistance from outside, as well to maintain contact with people of their choice.

The first right, perhaps the most important one, is the right to have access to legal assistance. As concerns asylum applicants, the Procedure Directive guarantees it. Article 16 (2) of the Directive states: *Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant.* As regards third country nationals to be removed, Article 5 (4) of ECHR ensures a right to speedy judicial review, as already mentioned. The European Court of Human Rights recalled in its *Amuur* Judgment<sup>286</sup> that to be *effective* the right to judicial review implies that a number of procedural rights have to be granted to detained foreigners. Among those rights is the right to legal aid.

The majority of the 10 new Member States provides detained third country nationals with the right to obtain legal assistance, but such assistance is not always provided free of charge. In Latvia, the cost of legal assistance is borne by the detainees.<sup>287</sup> In Malta, only asylum seekers are provided with free legal assistance and this is limited to the appeal procedures of the refugee status determination process. They are not provided with free legal assistance to challenge their detention.

The right to contact with the outside world is usually guaranteed by law. In Malta there is no legal provision guaranteeing any contact with the outside world, however, the information booklet distributed to detainees<sup>288</sup> refers to a right *to maintain reasonable contact, through telephone and/or by written correspondence, with family, friends or others without hindrance (...)*, but this right has no legal basis. Moreover, only asylum seekers have the right to legal assistance and to contact UNHCR<sup>289</sup>.

In the other countries, the right to be visited by a legal counsellor, be it a lawyer or a specialised organisation, is not restricted. On the contrary, visits from family or friends are always limited. An authorisation from the detention centre authorities is needed in Lithuania<sup>290</sup>. Up to four visitors are allowed once a week in detention centres in Czech Republic<sup>291</sup>. In Slovakia, visits are limited to two persons every three weeks, for a duration of 30 minutes<sup>292</sup>. There are also visiting hours in Slovenian and Hungarian<sup>293</sup> detention centres.

In Poland<sup>294</sup>, Lithuania<sup>295</sup>, Malta, Hungary<sup>296</sup> and Slovenia, the law provides UNHCR with access to asylum seekers held in custody. This access is without restriction. It is in line with Article 21 (a) of the Procedure Directive, which enjoins Member States *to allow the UNHCR to have access to applicants for asylum, including those in detention and in airport and port transit zones.*

Visits by NGOs are authorised in Poland<sup>297</sup>, Cyprus<sup>298</sup>, Latvia<sup>299</sup>, Slovenia and Malta<sup>300</sup>, although in the case of the latter this is only guaranteed by law in the case of asylum seekers. Poland<sup>301</sup> and Cyprus<sup>302</sup>

<sup>284</sup> Immigration Law of 31 October 2002, Article 54

<sup>285</sup> Meeting of the Parliamentary Commission on Human Rights, 27 February 2007

<sup>286</sup> *Mahad Lahima, Lahima, Abdelkader and Mohamed Amuur v. France*, Judgment of the European Court of Human Rights No 17/1995/523/609 of 25 June 1996

<sup>287</sup> Immigration Law of 31 October 2002, Article 59

<sup>288</sup> Paragraph 19 of the booklet

<sup>289</sup> Refugees Act, 2000, Chapter 420 of the Laws of Malta, article 8

<sup>290</sup> Decree of the Lithuanian Government on 29 January 2001, N. 103, Article 17

<sup>291</sup> Act on the Residence of Foreigners, Section 144

<sup>292</sup> Act No. 48/2002 on the Stay of Aliens, Article 72 (3)

<sup>293</sup> See page 53 of the present report with the governing house rules of the Budapest Border Guard Directorate

<sup>294</sup> Act of 13 June 2003 on Grating Protection to Aliens within the Territory of the Republic of Poland, Article 43 (1)

<sup>295</sup> Decree of the Lithuanian Government on 29 January 2001, N. 103, Article 18

<sup>296</sup> Section 5 (1) d) of the Act LXXX of 2007 on asylum prescribes that the asylum seeker is entitled to establish and maintain contact with the UNHCR and other non-governmental organisations during the term of the asylum procedure

<sup>297</sup> Act of 13 June 2003 on Grating Protection to Aliens within the Territory of the Republic of Poland, Article 117

<sup>298</sup> Law N. 163(I)/2005, article 15 (1) (b)

<sup>299</sup> Immigration Law of 31 October 2002, Article 59

are the only new Member States to provide specifically in national legislation that detained third country nationals may contact the diplomatic representatives of their countries of origin.

In Lithuania<sup>303</sup> and Slovakia<sup>304</sup>, the law authorises third country nationals held in detention to send and receive letters, to receive newspapers and magazines and to receive money. In Hungary, detainees can receive packages and conduct correspondence.<sup>305</sup> In Cyprus too, detained third country nationals can receive letters however this right is restricted. Except for letters sent by lawyers, the European Court of Human Rights, the Cypriot Attorney General, the Ombudsman and human rights organisations, correspondence can be checked by the personnel of the detention centre<sup>306</sup>.

## Legal grounds for health care

Each of the 10 new Member States guarantees access to health care to third country nationals detained on its territory, ranging from the necessary medical screenings to treatment.

The law in Poland<sup>307</sup>, the Czech Republic<sup>308</sup>, Hungary<sup>309</sup>, Latvia<sup>310</sup> and Slovakia<sup>311</sup> provides for the necessary medical examinations, including diagnostic and laboratory tests, vaccinations and preventive measures, upon the arrival of third country nationals in detention centres. As regards asylum applicants, Article 9 of the Reception Directive provides indeed that Member States may require medical screening for applicants on public health grounds.

During detention, third country nationals can also benefit from medical assistance. In Hungary, health care provided to detained foreigners ranges from basic medical assistance to emergency care and care during pregnancy and childbirth.<sup>312</sup> On the contrary, legislation in Lithuania<sup>313</sup> and Slovenia specifies that medical assistance should be limited to *primary health care or emergency health care (i.e. emergency ambulance and emergency dental care), essential treatment of disease and medical care for women*. In Malta<sup>314</sup>, the law guarantees the right to health care only to asylum applicants held in detention, however in practice all detainees are provided with equal access to healthcare regardless of legal status. To that extent, these countries are in line with Article 15 (1) of the Reception Directive which states: *Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness*.

In case the required medical treatment cannot be provided in the detention centre, the legislation in Hungary<sup>315</sup>, Poland<sup>316</sup> and Slovakia<sup>317</sup> authorises the transfer of the third country national to an appropriate public medical centre. The law in Lithuania<sup>318</sup> and Czech Republic<sup>319</sup> provides special treatment, including hospitalisation and isolation, in case of dangerous diseases or infections endangering public health. In Latvia, the personnel in charge of medical examinations in the centre may decide to place a detainee in a specially designed room.<sup>320</sup> Lithuania<sup>321</sup> and Estonia provide psychological care for victims of torture, rape, as well as for minors, single women and elderly people held in custody.

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<sup>300</sup> Refugees Act, 2000, Article 10 and Reception of Asylum Seekers (Minimum Standards) Regulations, 2005, (Reception Regulations), Regulation 12 guarantee asylum seekers' access to healthcare. In practice all detainees have the same access to healthcare, regardless of their status.

<sup>301</sup> Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland, Article 117

<sup>302</sup> Law N. 163(I)/2005, article 15 (1)

<sup>303</sup> Decree of the Lithuanian Government on 29 January 2001, N. 103, Article 17

<sup>304</sup> Act No. 48/2002 on the Stay of Aliens, Article 71-73

<sup>305</sup> Act II of 2007, Section 61 (3) c)

<sup>306</sup> *Idem*

<sup>307</sup> Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland, Article 113 (1)

<sup>308</sup> Act on the Residence of Foreigners, Section 134

<sup>309</sup> Gov. Decree No. 114/2007 (V.24.) Sections 138-140

<sup>310</sup> Immigration Law of 31 October 2002, Article 59

<sup>311</sup> Act No. 48/2002 on the Stay of Aliens, Article 68 (1)

<sup>312</sup> Gov. Decree No. 114/2007 (V.24.) Section 138

<sup>313</sup> Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre (29)

<sup>314</sup> Refugee Act, Article 10 and Reception of Asylum Seekers (Minimum Standards) Regulations, 2005, (Reception Regulations), Regulation 12

<sup>315</sup> Gov. Decree 114/2007 (V.24.) Section 138-140

<sup>316</sup> Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland, Article 117 (4)

<sup>317</sup> Act No. 48/2002 on the Stay of Aliens, Article 68 (2)

<sup>318</sup> Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre (33)

<sup>319</sup> Asylum Act, Section 88

<sup>320</sup> Immigration Law of 31 October 2002, Article 59

<sup>321</sup> Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre (35)



The cost of health care is borne differently in the 10 New Member States. In the Czech Republic, medical assistance is free for all detainees however, while asylum seekers benefit from the public healthcare system in terms of law, the cost of medical care for non-asylum seekers is paid directly by the ARF, i.e. the organization responsible for the administration of the centres. In Hungary, health care services are free of charge if they are ordered by the doctor performing basic medical care or by the specialised doctor of the outpatient services or inpatient health care institution.<sup>322</sup> In Cyprus<sup>323</sup>, detainees pay if they want to see a doctor of their choice or if they need medication which is not provided free of charge in terms of ‘Schedule 5’. In Slovakia<sup>324</sup>, detained third country nationals pay for medical treatments if they damaged their health. Finally, in Malta<sup>325</sup>, asylum seekers may be requested to cover the costs of medical care if they have sufficient means or if they have been working for a reasonable period of time, but this does not happen in practice.

## Legal grounds for the protection of particularly vulnerable people

At EU level, the Reception Directive is the only instrument which gives legal grounds for the protection of vulnerable persons applying for asylum, either they are in detention or not. Article 17 (1) of the Directive states: *Member States shall take into account the specific situation of vulnerable persons, such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence (...)*

Regarding minors, it is worth noting that Article 5 (1) (d) of ECHR provides for the detention of minors *only for the purpose of educational supervision or (...) for the purpose of bringing him before the competent legal authority*. In Cyprus<sup>326</sup>, the detention of minor asylum seekers is prohibited. On the contrary, in Slovakia, minor third-country nationals to be removed may be held in custody but they should be accommodated separately from adults<sup>327</sup>. In Hungary, foreign minors may be placed in compulsory places of residence when they are subject to an alien policing measure involving the deprivation of liberty.<sup>328</sup> In Czech Republic, minors held in detention centres and who have been declared incompetent to perform legal acts should be placed with a close family member<sup>329</sup>. In Lithuania, they should be provided with psychological care<sup>330</sup>. In Malta, the law is vague. It only guarantees that the situation of minor asylum seekers is taken into account<sup>331</sup>.

Article 19 (2) (c) of the Reception Directive provides that unaccompanied minors who apply for asylum shall be placed in accommodation centres with special provisions for minors. In Estonia<sup>332</sup> and Hungary<sup>333</sup>, unaccompanied minor asylum seekers cannot be detained. In Poland<sup>334</sup> and Czech Republic<sup>335</sup>, detained unaccompanied minors should be accommodated separately. In Malta, the law stipulates that the specific situation of unaccompanied minor asylum seekers in detention should be taken into account<sup>336</sup>.

In Slovakia<sup>337</sup>, Poland<sup>338</sup>, Hungary<sup>339</sup>, Latvia<sup>340</sup> and Czech Republic<sup>341</sup>, female detainees should be separated from men. In Cyprus, women should be provided with the necessary means for personal hygiene, free of charge<sup>342</sup>. In Lithuania, single women should be provided with psychological care<sup>343</sup>. As concerns pregnant women held in detention, Cypriot law<sup>344</sup> guarantees that the necessary

<sup>322</sup> Gov. Decree No. 114/2007 (V.24.) Section 139-140

<sup>323</sup> Law N. 163(I)/2005, article 23 (1)

<sup>324</sup> Act No. 48/2002 on the Stay of Aliens, Article 68 (3)

<sup>325</sup> Reception of Asylum seekers Regulations, Article 11

<sup>326</sup> Law N. 163(I)/2005, article 20

<sup>327</sup> Act No. 48/2002 on the Stay of Aliens, Article 67 (3)

<sup>328</sup> Aliens Act II of 2007, Section 62(1)

<sup>329</sup> Act on the Residence of Foreigners, Section 142 (3)

<sup>330</sup> Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre (35)

<sup>331</sup> Reception Regulations, Regulation 14 (1)

<sup>332</sup> Act on Granting International Protection to Aliens, Article 35

<sup>333</sup> Act II of 2007 Section 56 (1)

<sup>334</sup> Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland, Article 115

<sup>335</sup> Act on the Residence of Foreigners, Section 142 (2) (a)

<sup>336</sup> Reception Regulations, Regulation 14 (1)

<sup>337</sup> Act No. 48/2002 on the Stay of Aliens, Article 67 (3)

<sup>338</sup> Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland, Article 115

<sup>339</sup> Aliens Act II of 2007, Section 61(2)

<sup>340</sup> Immigration Law of 31 October 2002, Article 59

<sup>341</sup> Act on the Residence of Foreigners, Section 142 (2) (b)

<sup>342</sup> Law N. 163(I)/2005, article 22 (b)

<sup>343</sup> Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre (35)

<sup>344</sup> Law N. 163(I)/2005, article 22 (a) et (c)

arrangements are made to allow them to breastfeed in a private space. At their own cost, they can also remain with the child in their cell. More generally, any necessary arrangement should be made so that the pregnancy is not affected by the conditions of detention. In Malta, the law provides only that the pregnant asylum applicants' needs are taken into account<sup>345</sup>.

Regarding families, Article 8 of the Reception Directive ensures that *Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing<sup>346</sup> by the Member State concerned*. In addition, Article 8 of ECHR states that the right to *family life* should be respected. Latvia<sup>347</sup> and Slovakia<sup>348</sup> are the only new Member States to guarantee in their legislation that family members held in detention are accommodated together. In Latvia, if the detained foreigner has a child that has not been detained, that child can be placed in the residence centre by the request of the detained foreigner together with his/her parent.<sup>349</sup> In Hungary the new provision on the detention of families allows the authorities to designate a compulsory place of residence for the family instead of ordering detention if the parent should be placed under detention and as a consequence his/her minor child would be left unattended.<sup>350</sup>

Article 20 of the Reception Directive states: *Member States shall ensure that, if necessary, persons who have been subjected to torture, rape, or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts*. In line with EU legislation, the law in Lithuania<sup>351</sup> and Poland<sup>352</sup> provides for psychological assistance for detainees who are victims of violence, including torture and sexual gender based violence.

As regards people suffering from mental troubles or insufficiency, Cypriot law stipulates that an appropriate counsellor be contacted by the staff responsible for the centre<sup>353</sup>. In Poland, the law guarantees psychological accompaniment for people with mental problems.

Finally, Lithuania is the only new Member State, which provides elderly persons held in detention with psychological care<sup>354</sup>.

## Legal grounds providing for release

Most of the 10 new Member States provide legal grounds for releasing third country nationals held in detention centres. Estonia does not have specific legal provisions in this regard; release is subject to the decision of the administrative Court. Maltese law only provides specifically for the release of persons granted refugee status<sup>355</sup>; as a rule, the release of all other categories is implemented by the immigration authorities in terms of existing policy. The only exceptions are the few cases where release is the result of a legal challenge of detention. Similar to Estonia, a Court in Czech Republic<sup>356</sup>, Lithuania<sup>357</sup> and Slovakia<sup>358</sup> may decide upon the release of detained third country nationals. In Poland<sup>359</sup>, it is the immigration authorities who are in charge of deciding upon release.

The grounds for release are various. The most common one among new Member States is the disappearance of the reasons which justified the detention. This ground can be found in Lithuania<sup>360</sup>, Slovakia<sup>361</sup>, Czech Republic<sup>362</sup>, Hungary<sup>363</sup>, Latvia<sup>364</sup>, Slovenia<sup>365</sup> and Estonia. In Lithuania<sup>366</sup>,

<sup>345</sup> Reception of Asylum seekers Regulations, Article 14 (1)

<sup>346</sup> According to Article 14 (1) (b) of the Directive, "housing" includes "accommodation centres which guarantee an adequate standard of living."

<sup>347</sup> Immigration Law of 31 October 2002, Article 59

<sup>348</sup> Act No. 48/2002 on the Stay of Aliens, Article 67 (4)

<sup>349</sup> Immigration Law of 31 October 2002, Article 59

<sup>350</sup> Act II of 2007 Section 62 (1) c). This provision of the new act can be considered as a progressive step forward to avoid the detention of families with their children, however, the act does not require the designation of a compulsory place of residence, but only allows this alternative

<sup>351</sup> Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre (35)

<sup>352</sup> Act of 13 June 2003 on Grating Protection to Aliens within the Territory of the Republic of Poland, Article 54

<sup>353</sup> Law N. 163(I)/2005, article 5 (2)

<sup>354</sup> Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre (35)

<sup>355</sup> Refugees Act, 2000, Chapter 420 of the Laws of Malta, Article 10

<sup>356</sup> Act on the Residence of Foreigners, Article 127 (1) (b)

<sup>357</sup> Law on the Legal Status of Foreigners, Article 119 (1)

<sup>358</sup> Act No. 48/2002 on the Stay of Aliens, Article 63 (f) (2)

<sup>359</sup> Act on Protection to Aliens, Article 44

<sup>360</sup> Law on the Legal Status of Foreigners, Article 119 (1)

<sup>361</sup> Act No. 48/2002 on the Stay of Aliens, Article 63 (f) (1)

<sup>362</sup> Act on the Residence of Foreigners, Article 127 (1) (a)

<sup>363</sup> Act II of 2007 Section 56 (2)

<sup>364</sup> Immigration Law of 31 October 2002, Article 59

Hungary<sup>367</sup> and Slovakia<sup>368</sup>, release is possible as well when the period of detention expires. This is also the case in Malta, although it is not specifically stipulated in the law. In Poland<sup>369</sup>, Malta<sup>370</sup> and Czech Republic<sup>371</sup>, release is automatic when third country nationals are granted refugee status. Similarly, in Czech Republic, those who obtain subsidiary protection or a long-term residence permit for the purpose of protection are released<sup>372</sup>. In Hungary and Slovenia, detention should also cease when it becomes obvious that the expulsion order cannot be implemented.<sup>373</sup> Furthermore, according to the Hungarian regulation, the detention terminates immediately when the conditions for carrying out the expulsion of the foreigner are secured.<sup>374</sup> Finally, in Slovenia, an ‘alien’ can be released from detention when *the Police establish that the conditions for alternative measures are met.*<sup>375</sup>

### Legal grounds for any other rights

The other rights granted to third country nationals held in detention are related to living conditions. As concerns asylum applicants, Article 13 (2) of the Reception Directive states indeed: *Member States shall ensure that an adequate standard of living is met in the specific situation (...) of persons who are in detention.* In Czech Republic, detained asylum seekers should be provided with basic hygienic standards, food free of charge, a bed, a locker for personal belongings and continuous eight-hour sleep<sup>376</sup>. Third country nationals should be given a bed, a chair, a cabinet for personal belongings, food and basic hygiene products.<sup>377</sup> Slovak law, like Czech law, ensures that detained third country nationals have continuous eight-hour sleep<sup>378</sup>. In addition, they should have a daily walk in a determined area of at least one hour<sup>379</sup>. In Hungary, accommodation with bed and locker, three meals a day free of charge, basic medical care are also provided for detained foreigners as well as the possibility of the practice of religion, the use of educational and cultural facilities of the institution and spending one hour each day outdoor.<sup>380</sup>

Moreover, in Malta, asylum seekers should have access to the labour market after the lapse of one year from the date of their application for protection<sup>381</sup>.

### 3.3 Detention conditions: comparative analysis and best practice

The research covered 30 detention facilities/premises, distributed among the 10 new Member States (see map below) as follows: two in Estonia, one in Latvia and one in Lithuania, six in Poland, two in Slovakia, four in Hungary and one in Slovenia, five in Cyprus, three in Malta and five in the Czech Republic.

These states share a number of characteristics, apart from the date of their accession to the EU. Foremost among them is the fact that all, except the Czech Republic, are at the borders of the EU and therefore share joint responsibility for policing part of its external borders. As a result of EU accession, the control of illegal immigration in and through their territory became an increasingly important issue on the national agenda. Some experienced an increase in the number of illegally staying third country nationals and/or asylum applications within their territory in recent years and few had the necessary structures in place to deal with this new reality.

However, there are a number of significant differences in the national context in each of these states. These are due in part to the geographical location and specific characteristics of the different Member

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<sup>365</sup> Aliens Act, Article 63 (1)

<sup>366</sup> Law on the Legal Status of Foreigners, Article 119 (2)

<sup>367</sup> Act II of 2007 Section 54 (4) c) prescribes that the detention terminates immediately and automatically if six months has passed since the ordering of the detention

<sup>368</sup> Act No. 48/2002 on the Stay of Aliens, Article 63 (f) (3)

<sup>369</sup> Act on Protection to Aliens, Article 44

<sup>370</sup> Refugees Act, 2000, Chapter 420 of the Laws of Malta, Article 10

<sup>371</sup> Act on the Residence of Foreigners, Article 127 (1) (c)

<sup>372</sup> *Idem*, Article 127 (1) (d)

<sup>373</sup> Aliens Act, Section 46(8)

<sup>374</sup> Act II of 2007 Section 54 (4) a)

<sup>375</sup> Aliens Act, Article 63 (3)

<sup>376</sup> Asylum act, Article 31 (1) (a), (b), (c) and (g)

<sup>377</sup> Act on the Residence of Foreigners, Article 134 (1) (a)

<sup>378</sup> Act No. 48/2002 on the Stay of Aliens, Article 70

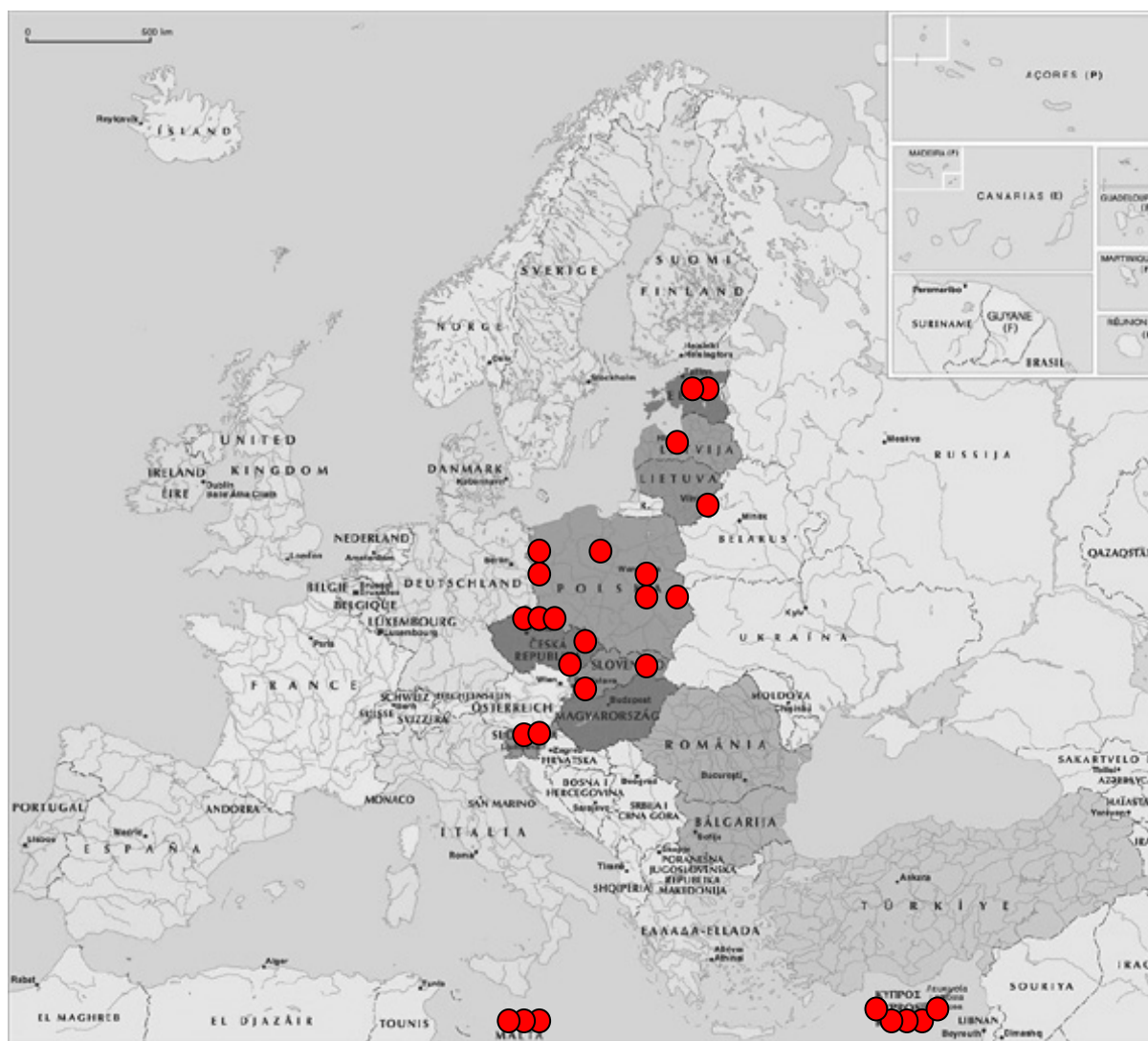
<sup>379</sup> *Idem*

<sup>380</sup> Act II of 2007 Section 61(3), regulating the rights of the detainee

<sup>381</sup> Reception Regulations, Article 10

States, as well as to the nature of the migratory flows they experience, and to the national laws, policies and practices regulating immigration and detention.

This section focuses on the situation on the ground in the 10 new Member States, giving an overview of existing realities as well as identifying best practice.



## Overview of selected aspects

Two important considerations, which must be taken into account when comparing conditions in the different centres studied, are the number of people the centre accommodates and the length of time for which people are held. This section starts with an overview of these two aspects followed by information regarding the administration and budget of the different centres.

### *Detainee population and maximum capacity*

Of all the 25 centres for which information regarding maximum capacity is available, the two with the largest capacity are Safi and Lyster Detention Centres in Malta, which have a maximum capacity of approximately 6-700 people, followed by Vysni Lhoty Reception Centre in the Czech Republic, which can accommodate up to 580. The smallest centres are Lakatamia Police Station in Cyprus, which can take 10 people, and Budapest Border Guard Directorate in Hungary, which takes 24.

Overall, nine of the 25 centres can accommodate up to 55 people<sup>382</sup>, four can take between 55 and 100 people<sup>383</sup>, two between 100 and 150 people<sup>384</sup>, four between 150 and 200 people<sup>385</sup>, one between 200 and 250<sup>386</sup>, one between 250 and 300<sup>387</sup> and another between 300 and 350<sup>388</sup>.

At the time when the research was conducted, out of 19 centres for which information is available, the centres accommodating the largest numbers of detainees were Safi and Lyster Barracks in Malta (which respectively housed approximately 440 and 330 people on 9 March 2007). The smallest numbers were in Lakatamia Centre in Cyprus (four people), Olaine Internment Camp for Illegal Immigrants in Latvia (eight people) and the Vājasaatmiskeskus Centre falling under the Citizenship and Migration Removal Board in Estonia (10 detainees). Of the remaining centres, 10 held between 10 and 50 people<sup>389</sup>, two between 50 and 100<sup>390</sup> and two between 100 and 155<sup>391</sup>.

Out of the 16 facilities/premises for which information is available, two were nearly full<sup>392</sup>, while the rest housed less than the maximum number of immigrants they are capable of accommodating<sup>393</sup>. Of these, five housed considerably less than half their full capacity<sup>394</sup>. In two countries, a consistent drop in the annual number of detainees held was noted<sup>395</sup>.

The ethnic/national origin of the detainee population in the countries on the Eastern borders of the Union differs significantly from that in the countries in the South. Whereas the former consists predominantly of people from Asia, ex-USSR, ex-Yugoslavia and the Middle East, the detainee population in Cyprus consists largely of people from the Middle East, Turkey, ex-USSR and Greek Pontians, and that in Malta consists almost exclusively of people of African origin, mostly East, West and North Africa.

### *De facto duration of detention*

The length of time for which people are held is largely determined by national legislation, outlined in each national report and compared above. The following is an outline of some indications regarding the de-facto duration of detention which emerged from the national reports.

- In Cyprus, there are indications that detainees have been held for up to five months in Larnaca and Limassol Police Stations, while at Lakatamia Police Station, there were reports that people were held for up to three months, and at Nicosia Police Detention Centre Block 10, at least one person was held for 30 months. At Larnaca International Airport, people are normally held for a few days.
- In the Czech Republic, there are significant differences between detention in closed reception centres for asylum seekers, where asylum seekers are held for the purposes of

<sup>382</sup> Lakatamia Police Station, Larnaca Police Station, Limassol Police Station, Cyprus; International Airport Ruzyně, Czech Republic; Budapest Border Guard Directorate, Győr Border Guard Directorate, Hungary; Lublin Police Station, Okęcie International Airport, Szczecin Border Police Station, Poland.

<sup>383</sup> Nicosia Central Prison Block 10, Cyprus; North Police Prefect Police Station, Estonia; Ta' Kandja Detention Centre, Malta; Krosno Odrzańskie Border Police Station, Poland

<sup>384</sup> Detention Centre Velke Prilepy, Czech Republic; Lesznowola Guarded Centre for Foreigners, Poland

<sup>385</sup> Detention Centre Postorna, Czech Republic; Nyírbátor Border Guard Directorate, Hungary; Medved'ov Police Detention Centre for Foreigners, Sečovce Police Detention Centre for Foreigners, Slovakia.

<sup>386</sup> Detention Centre Postojna, Slovenia

<sup>387</sup> Pabradė Foreigners' Registration Centre, Lithuania

<sup>388</sup> Detention Centre Bela-Jezova

<sup>389</sup> Detention Centre Postojna, Detention Centre Velke Prilepy, International Airport Ruzyně, Czech Republic; Nyírbátor Border Guard Directorate, Győr Border Guard Directorate, Hungary; Pabradė Foreigners' Registration Centre, Lithuania; Krosno Odrzańskie Border Police Station, Lublin Police Station, Szczecin Border Police Station, Poland; Veliki otok/Postojna Centre for Foreigners, Slovenia

<sup>390</sup> North Police Prefect Police Station, Estonia; Ta' Kandja Detention Centre, Malta

<sup>391</sup> Lesznowola Guarded Centre for Foreigners, Poland; Medved'ov Police Detention Centre for Foreigners, Slovakia

<sup>392</sup> North Prefect Police Station, Estonia; Lesznowola Guarded Centre and Szczecin Border Police Station, Poland, were almost full.

<sup>393</sup> Detention Centres Postorna, Detention Centre Velke Prilepy and Closed Reception Space International Airport Ruzyně, Czech Republic; Nyirbator Border Guard Directorate and Győr Border Guard Directorate in Hungary; Pabrade Foreigners Registration Centre, Lithuania; Krosno Odranskie Border Police Station and Lublin Police Station, Poland; and Lakatamia Police Station, Cyprus.

<sup>394</sup> Czech Republic: Detention Centre Postorna – 36 out of 164 places; Detention Centre Velke Prilepy – 30 out of 115 places; Nyirbator Border Guard Directorate, Hungary – 19 out of 169 places; Pabrade Foreigners Registration Centre, Lithuania 22 out of 265 places; Veliki otok/Postojna Centre for Foreigners – 50 out of 220 places..

<sup>395</sup> From 3272 in 2002 to 1117 in 206 in Veliki otok/Postojna Detention Centre, Slovenia and from 2005 in 1997 to 115 in 2006 in Olaine Internment Camp for Illegal Immigrants, Latvia.

medical and identity screening, and administrative detention in other centres. The maximum duration of administrative detention is six months. Although there is no clear time limit on the detention of asylum seekers in closed reception centres, in Vysni Lhoty Closed Reception Centre asylum seekers are normally held for 3-4 weeks and at Ruzyně Closed Reception Centre detainees are usually held for some 62-70 days. In the latter centre, however, at the time the research was conducted there were a number of people who had been detained there for eight months.

- At the Väljasaatmiskeskus Removal Centre which falls under the Citizenship and Migration Board in Estonia, the average time of detention is three months. At North Prefect Police Station detainees are usually held for approximately seven days.
- In Hungary, the maximum time duration of detention is six months, reduced from 12 in July 2007. In practice, at Ferihegy International Airport, detainees are held for a maximum of eight days. At the time of research, detainees could spend up to 12 months at Budapest, Nyirbátor and Győr Border Guard Directorates. However, where illegal entrants caught by the border guards apply for asylum right away, they are transferred to an open reception centre. If they apply after their detention has been ordered they will be held until their application is finally determined. It was reported that people do not normally spend more than a few days detained at Budapest Border Guard Directorate.
- In Latvia the maximum duration of detention is two months. On average detainees spend around two months in the camp, although on occasion some have stayed for 11 months.
- In Lithuania there is no maximum legal time limit on detention. Illegally staying third country nationals were detained for an average of 58 days in 2005 and 78 days in 2006. The detainees interviewed for this study had been there for an average of two and a half months.
- In Malta asylum seekers may be detained for up to 12 months. Illegally staying third country nationals are detained for 18 months. Vulnerable asylum seekers are released after their case is assessed and accommodation is found in the community, which may take weeks.
- In Poland, the maximum duration of detention is three months, which may however be extended in certain circumstances. Some of the detainees interviewed had been held for longer: one detainee at Krosno Odrzańskie Border Police Station had been held for over 10 months; another, at Lesznów Guarded Centre for Foreigners was held for five; and another detainee, held at Szczecin Border Police Station, had been held for almost a year.
- In Slovakia the legal maximum duration of detention is six months; there is no information on de facto duration of detention.
- In Slovenia the legal maximum duration of detention is six months; there is no information on de facto duration of detention.

### ***Authority responsible***

In most of the countries researched<sup>396</sup> the centres fall within the responsibility of the Ministry charged with handling internal affairs.

There is some variation among the Member States, however, when it comes to the authorities responsible for the administration and management of the centres.

In most countries, the Police are responsible for the administration and management of the detention centres in use. In some cases it is the Border Police or Border Guards who are responsible, e.g. Poland (Krosno Odrzańskie Border Police Station, Okęcie International Airport/Warsaw detention space, Szczecin Border Police Station), Slovakia (Medveďov Police Detention Centre for Foreigners), Latvia, Lithuania. In others it is the Municipal or Provincial Police e.g. Estonia (North Prefect Police Station)

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<sup>396</sup> In Cyprus it is the Ministry of Justice and Public Order, in Estonia, Hungary, Lithuania, Poland and Slovenia it is the Ministry of Interior, and in Malta it is the Ministry for Justice and Home Affairs.

and Poland (Lesznowola Guarded Centre for Foreigners, Lublin Police Station, Wloklawek Police Station).

In Hungary the Border Guard, a military organization, runs the detention centres; the organization is scheduled to merge with the Police from January 2008.

The main exceptions are Malta and the Czech Republic. In Malta, the detention centres are administered by a civilian service, known as the Detention Service. It should be noted however that this agency is headed by an Army officer and its staff is made up almost exclusively of present and retired members of the security forces (army and police). In the Czech Republic, all detention centres are run by the Administration of Refugee Facilities (ARF), however the police are still responsible for outside security and a private security company is contracted for inside security. The rapporteur<sup>397</sup> noted improvements in the administration of the detention centres and in detention conditions since responsibility for the centres was transferred from the Police to the ARF in January 2006.

### ***Financial cost***

The information available on the financial cost of running the detention centres researched is rather limited.

The research showed that insight into financial cost largely depends on various factors:

- information provided the administration of the facility/premise (or not)
- information provided by private individuals
- public accountability

### **Budget**

Some information was obtained about the budget of 12 of the centres researched; not all of it is official data and it is unclear whether the information provided represents a true picture of all the costs involved in the running of the centres.

No information is available on the budget of the other 18 centres – this clearly implies that such information is not publicly available.

The following is an outline of the information provided:

- In Nicosia Central Prison Block 10, Cyprus, the daily cost for each detainee, including food, salaries of guards, utility bills, etc, is 55 CYP pounds (approximately 32 €). This means that, on an average of 50 detainees every day, the annual budget of Block 10 is just over one million CYP pounds (approximately 1.724,138 €).
- North Police Prefect Police Station, Estonia, has a budget of 75.000,00 € for food and of 7.500,00 € for medication per annum. Other expenses, like electricity, water etc., is in the main budget of the North Tallinn Police Department.
- Regarding Olaine Internment Camp for Illegal Immigrants, Latvia, although there are no official data available, it was reported that the costs amount to 8.60€ per person per day.
- Pabradė Foreigners' Registration Centre, Lithuania, in 2005, had an annual budget of 903.000,00 €. In 2006 the annual budget of that centre increased to 967.000,00 €.
- No official data are available for the 6 detention centres researched in Poland, but the total financial cost of detention per day is calculated as 18,23 PLN per detainee which amounts to around 4,60 € per day; in this amount the daily cost of food is 4,50 PLN per day which is 1,15 € for 3 meals.
- Medved'ov Police Detention Centre for Foreigners, Slovakia, has an annual budget of more than 45 million SK.

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<sup>397</sup> CCR

- Detention Centre Postojna, Slovenia, has an annual budget of about 668.000,00 €; excluding staff salaries.

From the information available it appears that a number of facilities either do not have their own budget or have part of the costs covered from the budget of another agency or entity. Some examples include:

- The Väljasaatmiskeskus Removal Centre in Estonia, which is a structural entity of the Citizenship and Migration Board (CMB), and does not have a separate budget.
- North Prefect Police Station, Estonia, has a budget for food and medication, but other expenses like water and electricity are in the main budget of the North Tallinn Police Department.
- Olaine Internment Camp for Illegal Immigrants, Latvia, does not have its own separate budget; its expenses are covered by the Department of Riga of the State Border Guard.
- An undetermined part of the costs incurred to run the three detention centres in Malta (Safi, Lsyter and Ta' Kandja) are covered by the Armed Forces of Malta and the Malta Police Force, which also provide services in kind.

### **Financial contribution by detainees**

In most centres it appears that detainees do not have to cover any of the costs of their detention. The only exceptions are the following:

- In Bela-Jezova Detention Centre, Postorna Detention Centre and Velke Prilepy Detention Centre in the Czech Republic detainees have to cover the cost of their stay which is 112 CZK (approx €4) for meals and 130 CZK (approx €4.50) for accommodation costs. This information is usually provided orally and they sign document in Czech proving that they were informed.
- At Medved'ov Police Detention Centre for Foreigners, Slovakia, detainees are supposed to pay something.
- At Detention Centre Postojna, Slovenia, detainees are obliged by law to finance their stay at the detention centre. The amount depends on their financial resources. If the person has no or little money, their stay is paid by the national budget.
- In Estonia, illegally staying third country nationals and/or the persons who invited them to meet the bills covering the costs of their expulsion if they are apprehended in Estonia after their visa expires.

This overview does not include cost for medical care.<sup>398</sup>

## **Detention Conditions: best practice**

This section examines selected aspects of detention conditions in the different centres studied and highlights best practice in each of the areas identified.

### ***Custodial settings and accommodation***

In this context, the terms *custodial setting* and *accommodation* refer to the physical characteristics of the premises and facilities used to detain asylum seekers and illegally staying third country nationals, and includes also the living conditions within the centres.

### **Best practice standards**

The CPT has held that:

*29. In the view of the CPT, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres*

<sup>398</sup> This aspect is covered in the section **Health care by country and facility/premise researched**



*specifically designed for that purpose, offering material conditions... appropriate to their legal situation... Obviously, such centres should provide accommodation which is adequately-furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment.*

The CoE Guidelines on Forced Return, published on 20 May 2005, say much the same thing, in Guideline 10.

Furthermore, the CPT stressed that:

*28. On occasion, CPT delegations have found immigration detainees held in prisons. Even if the actual conditions of detention for these persons in the establishments concerned are adequate -which has not always been the case - the CPT considers such an approach to be fundamentally flawed. A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence.*

### **Overview of current practice**

From the research conducted it emerged that the types of premises/facilities in which detainees are held vary widely across the 10 new Member States.

In a number of states, detention centres are located within police stations<sup>399</sup> or inside prisons<sup>400</sup>. In other cases detainees are held in facilities built or converted to use as a detention centres.

Researchers noted that many centres have a very-prison like environment. This could be due to various reasons, in additions to the fact that some of them are inside a prison, for example: the strictness of the regime, for example, detainees are confined to their cells for much of the time or not allowed access to open air<sup>401</sup>; the way the buildings are designed, with glass partitions to separate detainees from visitors<sup>402</sup>, with few windows<sup>403</sup> or no windows<sup>404</sup>, or windows with bars<sup>405</sup>, or opaque glass<sup>406</sup>, and with limited outer space and high walls topped with barbed wire or other security mechanisms<sup>407</sup>.

The facilities provided vary. In some centres the amenities are extremely basic: in one centre detainees are housed in tents pitched in a dusty stony field<sup>408</sup>; in others, accommodation consists mostly of dormitories with hardly any internal recreation space<sup>409</sup>. A number of centres researched, particularly, but not only, those in airport transit zones<sup>410</sup>, have little or no outside recreation space<sup>411</sup>. Other centres, however, provide better conditions, with clean, well-lit and adequately furnished rooms and various facilities, including a recreation area, rooms where detainees can meet visitors and lawyers<sup>412</sup>, and outer space with trees, grass and sports facilities<sup>413</sup> (see examples of best practice below).

Overnight accommodation provided varies – in most centres the cells or dormitories accommodate less than 10 people. In these centres the rate of occupancy ranges from 1-2 people in some centres to 6-10 in others. In some cases detainees are accommodated in larger dormitories housing 15 – 45 people<sup>414</sup>.

<sup>399</sup> Lakatamia, Lamaca and Limassol Police Stations, Cyprus; North Prefect Police Station, Estonia; Krosno Odrzanskie Border Police Station, Poland, Szczecin Border Police Station, Poland

<sup>400</sup> Nicosia Police Detention Centre, Cyprus; Lublin Police Station and Wloclawek Police Station, Poland

<sup>401</sup> See section on **Activities and services**

<sup>402</sup> Nyirbátor Border Guard Directorate, Hungary

<sup>403</sup> Lakatamia and Larnaca Police Stations in Cyprus

<sup>404</sup> International Airport Ruzyně, Czech Republic

<sup>405</sup> Lublin Police Station, Szczecin Border Police Station, Wloclawek Police Station, Poland; Detention Centre Postojna, Slovenia

<sup>406</sup> Ferihegy International Airport, Hungary

<sup>407</sup> Nyirbator Border Guard Directorate, Hungary; Krosno Odrzańskie Border Police Station, Wloclawek Police Station, Poland.

<sup>408</sup> Tent Compound, Lyster Detention Centre, Malta

<sup>409</sup> North Prefect Police Station, Estonia; Hermes Block, Ta' Kandja, Safi Barracks, Malta

<sup>410</sup> Closed reception Space International Airport Ruzyně, Czech Republic; Ferihegy International Airport Hungary; Okecie International Airport Warsaw Detention Space, Ljubljana-Brnik International Airport Detention Space.

<sup>411</sup> Other examples are the North Prefect Police Station, Lublin and Wloclawek Police Stations in Poland and Larnaca Police Station

<sup>412</sup> For example: Detention centre Postojna, International Airport Ruzyně, Czech Republic; Citizenship and Migration Board Removal Centre Väljasaatmiskeskus, Estonia

<sup>413</sup> Detention Centre Bela-Jezova, Czech Republic; Szczecin Border Police Station, Poland

<sup>414</sup> Closed Reception Centre Vysni Lhoty, Czech Republic (some rooms accommodate 15 people); Lyster, Safi and Ta' Kandja Detention Centres, Malta

In some centres the sleeping quarters are furnished with tables, chairs and a wardrobe or locker to store personal possessions<sup>415</sup>. A few centres also have facilities for washing clothes (washing machine/dryer)<sup>416</sup>. In other centres researchers noted that the furniture provided was inadequate, particularly for storage<sup>417</sup>, or that there was no furniture at all apart from the beds, so detainees had to store their personal possessions in cardboard boxes under the beds or hanging from nails on the wall<sup>418</sup>.

A couple of centres provide families with a room with bathroom attached<sup>419</sup>, but in most centres sanitary facilities are shared. In some centres researchers described the facilities as insufficient in quantity for the number of people held in the centre, e.g. in one centre 50 detainees must share two toilets and one shower<sup>420</sup>, and in another three toilets, showers and basins are shared by between 50-80 people<sup>421</sup>.

In most cases women and men have separate facilities, but in some four centres facilities are shared and do not make adequate provision for privacy and protection from harassment and abuse<sup>422</sup>, e.g. no locks on the doors or shower curtains<sup>423</sup>.

Most centres have a recreation or common room where detainees can watch television or play games and some have a separate dining-room or cafeteria<sup>424</sup> where detainees can eat their meals. In a number of centres, however, detainees eat and sleep in the same room<sup>425</sup> or are confined to their cells all day<sup>426</sup>. Some centres have a kitchen where detainees can prepare simple meals or food for children<sup>427</sup>, but in most centres detainees must eat the food provided. In many centres there were no complaints about the food, but in others it was noted that detainees are given only 'dried food' and that no dinner is provided<sup>428</sup> or that detainees complained about the quality of the food.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Small, clean, adequately furnished rooms containing at least a chair, table and wardrobe or locker in addition to the bed**
- **Windows are neither barred nor consisting of opaque glass**
- **Adequately-sized well-furnished internal recreation spaces with**
  - **TV with satellite and VCR/DVD**
  - **Equipment for indoor sports and exercise**
  - **Books, craft materials, games**
- **Surrounding outer space with trees, containing sport facilities**
- **Sufficient, clean and well maintained sanitary facilities providing adequate privacy**
- **Separate showers for women and men**
- **Families accommodated in room with adjoining bathroom**

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<sup>415</sup> For example: Detention centre Postojna, International Airport Ruzyne, Czech Republic; Budapest Border Guard Directorate and Nyirbátor Border Guard Directorate, Hungary; Internment Camp for Illegal Immigrants in Olaine, Latvia  
<sup>416</sup> Detention Centre Bela-Jezova, Detention Centre Velke Prilepy, Closed Reception Centre Vysni Lhoty, Czech Republic; Citizenship and Migration Board Removal Centre Vājasaatmiskeskus, Estonia; Pabradė Foreigners' Registration Centre, Lithuania.

<sup>417</sup> Lesznawola Guarded Centre for Foreigners, Szczecin Border Police Station and Włocławek Police Station, Poland

<sup>418</sup> Lyster, Safi Detention Centres, Malta

<sup>419</sup> Detention Centre Bela-Jezova, Closed Reception Centre Vysni Lhoty, Czech Republic

<sup>420</sup> Nicosia Central Prison Block 10, Cyprus

<sup>421</sup> Lyster Detention Centre, Malta

<sup>422</sup> Lublin Police Station, Okęcie International Airport, Szczecin Border Police Station, Poland; Hermes Block, Lyster Detention Centre, Malta.

<sup>423</sup> Lyster and Safi Detention Centres, Malta

<sup>424</sup> For example: Detention Centre Postojna, Detention Centre Velke Prilepy, Czech Republic; Nyirbátor Border Guard Directorate, Hungary

<sup>425</sup> For example: Ta' Kandja Detention Centre, Malta; Lublin Police Station Szczecin Border Police Station, Poland

<sup>426</sup> See section on **Activities and services**

<sup>427</sup> Internment Camp for Illegal Immigrants in Olaine, Latvia; Medved'ov Police Detention Centre for Foreigners, Slovakia; Detention Centre Postojna, Slovenia; Closed Reception Centre Vysni Lhoty, Czech Republic

<sup>428</sup> Limassol Police Station, Cyprus

- **Detainees have access to a kitchen for preparing food**
- **Food can be consumed in a separate area – dining room or cafeteria**
- **Washing machines and dryers available**

### ***Accommodation arrangements***

This section focuses on the accommodation arrangements for detainees, i.e. how people are accommodated within the centres, and how and if different categories of detainees are accommodated separately.

### **Best practice standards**

With regard to the practice of detaining immigrants with prisoners, the CPT has stated that:

*28. A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence... such detainees should be held quite separately from prisoners, whether on remand or convicted.*

Moreover in paragraph 24 the CPT highlights the importance of providing separate accommodation for men and women.

These basic standards are reiterated by UNHCR in the 1999 Guidelines on the Detention of Asylum Seekers, which call for separate accommodation for asylum seekers in Guideline 10(iii). With particular reference to the situation of female detainees Guideline 10 states that, where asylum seekers are detained:

*The following points in particular should be emphasised:*

- (ii) *the segregation within facilities of men and women; children from adults (unless these are relatives)*

Moreover, Guideline 8 stresses that:

*Women asylum-seekers and adolescent girls, especially those who arrive unaccompanied, are particularly at risk when compelled to remain in detention centres... Where women asylum-seekers are detained they should be accommodated separately from male asylum-seekers, unless these are close family relatives. In order to respect cultural values and improve the physical protection of women in detention centres, the use of female staff is recommended.*

With regard to the detention of minors, the CPT too stresses the need to detain children with the adults responsible for their care, but warns against detaining children with adults who are not related to them.

*25. The Committee accepts that there may be exceptional situations (e.g. children and parents being held as immigration detainees) in which it is plainly in the best interests of juveniles not to be separated from particular adults. However, to accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination and exploitation.*

With regard to the detention of families the CoE Guidelines on Forced Return state that, even with illegally staying third country nationals awaiting removal:

*The principle of the unity of the family should be respected and families should therefore be accommodated accordingly... provided with separate accommodation guaranteeing adequate privacy. (Guidelines 10 and 11)*

### **Overview of current practice**

In some centres asylum seekers and illegally staying third country nationals are held in prisons or police stations<sup>429</sup>, and on occasion they are housed in the same accommodation as prisoners, people convicted or accused of a criminal offence<sup>430</sup>.

Most facilities/premises researched accommodate both asylum seekers and illegally staying third country nationals, including rejected asylum seekers. One centre houses only asylum seekers<sup>431</sup> and five accommodate only illegally staying third country nationals<sup>432</sup>. Detention Centre Postojna, Slovenia

<sup>429</sup> See previous section

<sup>430</sup> For example: Lakatamia and Limassol Police Stations, Cyprus; North Prefect Police Station, Estonia

<sup>431</sup> Closed Reception Centre Vysni Lhoty, Czech Republic

<sup>432</sup> Ferhigy International Airport, the Budapest Border Guard Directorate, Hungary; Pabrade Foreigners Registration Centre, Lithuania; the Citizenship and Migration Board Removal Centre Kodakundus, Estonia and Okecie International Airport, Poland

accommodates both asylum seekers and illegally staying third country nationals in two separate premises.

In most centres researched women are detained separately from men; however there are four centres where this is not always the case<sup>433</sup>. In one of these centres<sup>434</sup>, which is used for long-term detention, women are always housed with men and they share the same accommodation and sanitary facilities.

From the information available it appears that, as a rule, where families are detained, children are detained with their parents and family unity is respected. However, as a result of the conditions in which they are held, respect for privacy and family life is not always guaranteed<sup>435</sup>. It is not clear if this applies to couples in all countries. In some countries couples are detained together<sup>436</sup> or not detained because the accommodation facilities are inadequate to house couples<sup>437</sup>. However, in one other country, the researcher noted that couples are at times placed in separate facilities and visits are allowed if detainees 'behave', but always at the discretion of the guards<sup>438</sup>. In Hungary the meeting of family members detained in the same facility can be extremely restricted whilst women may be confined to total isolation due to the fact that very few women are put in detention.<sup>439</sup>

In most centres, if circumstances allow, detainees are accommodated with people of their linguistic, ethnic or national groups, particularly if they request to be allowed to do so.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Asylum seekers are accommodated separately from illegally staying third country nationals**
- **Neither asylum seekers nor illegally staying third country nationals are detained with people suspected or convicted of a criminal offence**
- **Women and men are accommodated separately**
- **Families and couples are not detained where accommodation facilities are not appropriate, and if they are, they are accommodated together, in a separate accommodation for each family unit**
- **Detainees are accommodated according to language groups or nationalities, either as a general rule or upon request, wherever possible**

### ***Contact with the outside world***

The notion of *contact with the outside world* includes several rights, which all allow detained third-country nationals to receive visits and assistance from outside, as well to maintain contact with people of their choice.

### **Best practice standards**

The CPT standards, which are applicable to all categories of foreigners detained under immigration or asylum legislation, state that:

*31. The right of access to a lawyer should apply throughout the detention period and include both the right to speak with the lawyer in private and to have him present during interviews with the authorities concerned... More generally, immigration detainees should be entitled to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations.*

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<sup>433</sup> Lakatamia Police Station, Cyprus, meant for women, has occasionally housed men; Hermes Block at Lyster Detention Centre, Malta are always detained together; at Okecie International Airport, Poland female detainees are housed in a separate room and at International Airport Ruzyně, Czech Republic single women are detained with families.

<sup>434</sup> Hermes Block at Lyster Detention Centre, Malta

<sup>435</sup> Cf., for example, report on living conditions in Hermes Block, Lyster Detention Centre, Malta

<sup>436</sup> Malta

<sup>437</sup> Lithuania

<sup>438</sup> Cyprus

<sup>439</sup> Nyírbátor Border Guard Directorate Hungary

Guideline 10 of the 1999 UNHCR Guidelines on Detention of Asylum Seekers states that detained should be allowed:

*(iv) the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary;*

In addition Guideline 5 refers to detainees' right to contact and be contacted by the local UNHCR office available refugee bodies or other agencies.

The Guidelines on Forced Removal to stress that:

*10. National authorities should ensure that the persons detained in these facilities have access to lawyers, doctors, NGOs, members of their families and the UNHCR and that they are able to communicate with the outside world, in accordance with the relevant national legislation*

With regard to contacting a lawyer, the guidelines assert that detainees should be given the immediate possibility of contacting a lawyer (Guideline 6), Moreover Guideline 10 says that not only should detainees be informed of their entitlement to contact a lawyer of their choice, international organizations such as the UNHCR and IOM, and non-governmental organizations, but also that assistance should be provided in this regard.

In addition access to phone, the CPT standards also state that detainees should have access to "radio/television and newspapers/magazines" (29 Part IV).

### **Overview of current practice**

In most centres, detainees are allowed to contact and meet their lawyers. The only exception is Cyprus where, the Ombudswoman reported that there continue to be problems with access to lawyers in all centres. As a rule, however, the only obstacles to this access are those imposed by the practical circumstances in which they find themselves. In some countries legal assistance is not provided free of charge to all categories of detainees; they have a right to obtain legal assistance but they have to pay for the service<sup>440</sup>.

Access to legal assistance is definitely facilitated in those centres where legal assistance is provided free of charge by NGOs who visit the centres regularly<sup>441</sup>. In one centre where no service is provided, the researcher noted that detainees were unable to obtain legal advice and assistance although they not prevented from doing so either by law or by the authorities running the centre.

As a rule, visits from families and friends are more limited, however, there is a very wide margin of difference between the centres in a number of areas, including: the frequency of visits, the manner in which they are conducted and the clarity of the rules regarding visitors' access.

There are rules regarding visits from family and friends in the 26 centres for which information was available<sup>442</sup>. The only exceptions are two centres in Malta<sup>443</sup> and one centre in Cyprus<sup>444</sup> which do not have clear rules on visitor's access.

Regarding frequency of visits, there is a whole range of arrangements in place, ranging from one centre for asylum seekers, which does not place any limits on visits from friends and family<sup>445</sup>, to another centre where visits are only allowed once every three weeks<sup>446</sup>. In the centres in Hungary, Latvia, Lithuania and three centres in Poland<sup>447</sup> visits are allowed on a daily basis for varying lengths of time, while elsewhere detainees may receive visitors once<sup>448</sup> or twice a week<sup>449</sup>.

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<sup>440</sup> For example, in Malta detainees are only provided with legal assistance free of charge at appeal stage of the asylum procedures; in Slovenia too, an asylum seeker is granted a lawyer free of charge to challenge his detention before the Administrative Court and the Court of Appeal, if necessary, but an illegally staying third country national is not.

<sup>441</sup> Czech Republic, Hungary, Malta and Slovakia.

<sup>442</sup> Out of a total of 30 centres researched, 1 was empty when the research was conducted and no information was available for 3 centres in Cyprus: Lakatamia Police Station, Larnaca International Airport and Nicosia Police Detention Block 10

<sup>443</sup> Safi and Ta' Kandja Detention Centres

<sup>444</sup> Limassol Police Station

<sup>445</sup> Closed Reception Centre Vysni Lhoty, Czech Republic; Detention Centre Postojna, Slovenia

<sup>446</sup> Medved'ov Police Detention Centre, Slovakia

<sup>447</sup> Krosno Odrzańskie Border Police Station, Lesznowola Guarded Centre for Foreigners, Okęcie International Airport and Szczecin Border Police Station

<sup>448</sup> All centres in the Czech Republic apart from Vysni Lhoty Reception Centre

In some cases the authorities running the centre have a wide margin of discretion when deciding whether or not to allow visits. This is particularly true in centres where there are no clear rules on visitors' access. For example, in one centre in Estonia, persons awaiting removal may only receive visits from persons approved by the Head of the Centre.

In most centres visits are conducted in a room set aside for this purpose<sup>450</sup>, however in two centres the room contains a glass screen which does not allow for direct contact between detainees and visitors<sup>451</sup>.

Regular visits by religious ministers take place in only five of the centres researched<sup>452</sup>, however this seems to be due to lack of availability on the part of pastoral workers, or lack of interest on the part of the detainees, rather than a prohibition on access to the centres concerned.

In most centres detainees can receive mail and packages<sup>453</sup>, however they will usually be checked by detention centre staff. Moreover, in most centres detainees are allowed regular access to the telephone, however, as a rule they must pay for their calls. In some centres detainees are provided with a pre-paid phone card to make calls<sup>454</sup>.

There are a number of centres where detainees do not have free access to the phone<sup>455</sup>; in some cases they must request the guards to allow them to use the phone while in others there is a stipulated time for use of the telephone. Where there is a fixed schedule the frequency varies: for example, in one centre detainees have access to the phone on a daily basis for three or four hours<sup>456</sup>, while in another the 50+ detainees in a particular unit have access to the phone once or twice a week for an hour<sup>457</sup>. Detainees in two centres are allowed to use their mobile phone<sup>458</sup>.

Most centres are equipped with at least one TV. However at times this is shared by many people, up to 220 in some cases. In some centres detainees only have access to local language broadcasts<sup>459</sup>, while others are equipped with satellite<sup>460</sup>, cable<sup>461</sup> or VCR<sup>462</sup>.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Friends and family are allowed free access to the detention centres**
- **Visits from family and friends allowed on a daily basis during working hours (0800-1700)**
- **Visits are conducted in visiting room, where detainees can have direct contact with their visitors**
- **Detainees can receive mail and packages.**
- **Visits of lawyers are allowed at any time (on working days) upon request**
- **NGO lawyers visit the centres on a regular basis to provide free legal assistance**
- **Religious ministers of different faiths and denominations visit the centres regularly or upon request**

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<sup>449</sup> Citizenship and Migration Board Removal Centre Väljasaatmiskeskus, Estonia; Lublin Police Station and Włocławek Police Station, Poland

<sup>450</sup> Detention Centre Velke Prilepy and Closed Reception Centre Vysni Lhoty, Czech Republic; Poland; Medved'ov Police Detention Centre, Slovakia; Detention Centre Postojna, Slovenia

<sup>451</sup> Detention Centre Bela-Jezova, Czech Republic and Nyírbátor Border Guard Directorate, Hungary

<sup>452</sup> Detention Centre Postorna and Closed Reception Centre Vysni Lhoty, Czech Republic; and all 3 centres in Malta

<sup>453</sup> Czech Republic; Malta (most centres); Poland; Slovakia; and Hungary; Slovenia

<sup>454</sup> Czech Republic (apart from airport) and Malta

<sup>455</sup> Both centres in Estonia; Ferihegy International Airport, Hungary; Internment Camp for Illegal Immigrants in Olaine, Latvia; and Hermes Block at Lyster Barracks, Malta.

<sup>456</sup> Internment Camp for Illegal Immigrants in Olaine, Latvia;

<sup>457</sup> Hermes Block at Lyster Barracks, Detention Centre – the situation improved in the months after the research

<sup>458</sup> Ferihegy International Airport, Hungary and Closed Reception Centre Vysni Lhoty, Czech Republic V

<sup>459</sup> Slovenia; Malta; Latvia; Lithuania, and Nyírbátor Border Guard Directorate, Hungary

<sup>460</sup> All 5 centres in the Czech Republic; some centres in Poland; Medved'ov Police Detention Centre, Slovakia and Győr Border Guard Directorate, Hungary (Chinese TV); Detention Centre Postojna, Slovenia

<sup>461</sup> Citizenship and Migration Board Removal Centre Väljasaatmiskeskus, Estonia; Slovenia

<sup>462</sup> Detention centre Postojna, Slovenia; Czech Republic

- Detainees are allowed unlimited contact with NGOs and relevant international organizations by phone, face-to-face, or in written form as frequently as they wish.
- NGOs who are permitted to enter the centre have unhindered access to the detainees
- Detainees have unrestricted access to a payphone and are provided with a prepaid phone card at regular intervals (every two months)
- Detainees are allowed to use cell phones at their own expense
- Detainees are provided with cable/satellite TV in languages they can understand, fresh newspapers

### *Activities and services for detainees*

This section describes the activities available to detainees in the various centres as well as the services provided.

### **Best practice standards**

All of the guidelines stress the importance of having an organized regime of activities, particularly where detention is prolonged.

The CPT Standards state that: *As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.* (CPT Standards IV 29)

Moreover they observe that: *Point of entry holding facilities have often been found to be inadequate, in particular for extended stays... It is axiomatic that such persons should be ... allowed to exercise in the open air on a daily basis.* (CPT Standards IV 26)

The UNHCR emphasises the importance of providing detainees with:

*(vi) the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities;*

*(vii) the opportunity to continue further education or vocational training;*

*(viii) the opportunity to exercise their religion and to receive a diet in keeping with their religion.*

(UNHCR Guideline 10)

### **Overview of current practice**

From an overview of the information collected, it is clear that in many centres the activities available to detainees are indeed very limited.

In seven of the centres studied, detainees have free access to open air at least during the day time, so they can exercise and, in some cases, practise sports<sup>463</sup>. In many other centres, however, detainees' freedom of movement is far more restricted.

In a total of six centres, detainees spend most of the day confined in their cell<sup>464</sup>. Usually they are allowed out at stipulated times, for meals, to wash, to smoke, to watch TV in the evening, to receive visitors<sup>465</sup> or go outside for some fresh air<sup>466</sup>. In one of these centres, the detainees (all of whom are female) are allowed out of their cell in the morning, only to be locked in another room where they

<sup>463</sup> Detention Centre Bela-Jezova, Detention Centre Postorna; Detention Centre Velke Prilepy; Closed Reception Centre Vysni Lhoty, Czech Republic; Lithuania; Tent Compound, Lyster Detention Centre; Safi Detention Centre, Malta.

<sup>464</sup> Limassol Police Station, Cyprus; North Prefect Police Station, Estonia; Ferihegy International Airport, Nyírbátor Border Guard Directorate, Hungary; Krosno Odrzańskie Border Police Station (males), Okęcie International Airport, Poland.

<sup>465</sup> Nyírbátor Border Guard Directorate, Hungary

<sup>466</sup> Limassol Police Station, Cyprus; North Prefect Police Station, Estonia; Ferihegy International Airport, Nyírbátor Border Guard Directorate, Hungary; Krosno Odrzańskie Border Police Station (men) Poland

spend the day ‘socialising’, i.e. playing cards or other games and watching television. If they need to use the toilet, they have to call the guards to unlock the door and let them out and they never have any access to open air<sup>467</sup>. In another, a short-term airport facility, detainees are only allowed to go out under escort to use the telephone or to purchase things they need<sup>468</sup>.

In other centres, detainees are confined to an assigned area, which may be an area of a building, for example, a corridor and number of rooms<sup>469</sup> or just one large room<sup>470</sup>. In almost all these centres they are let out for fresh air; this may happen a number of times each day<sup>471</sup>, once a day<sup>472</sup>, a couple of times each week, or whenever the authorities allow<sup>473</sup>, which could mean nothing at all or very little. In one of them, however, detainees are not allowed access to open air at all<sup>474</sup>. On occasion, the area to which they are confined is extremely small or crowded, with very little internal recreation space<sup>475</sup>.

One thing which is striking, beyond the range of different regimes in place, is the fact that on occasion rules on access to open air differ among centres within the same country. In a couple of cases, two compounds within the same centre have different rules regulating access to open air, although they are administered by the same authority and the legal status of the detainees is identical<sup>476</sup>.

Regarding other activities, the only one available to detainees almost across the board, is watching television – although, as already mentioned, in many centres there is only one television which has to be shared by a large number of detainees.

Other activities include: playing cards or board games, listening to the radio<sup>477</sup>; reading; indoor sports such as table tennis<sup>478</sup>, body building/gym<sup>479</sup>; use of a prayer room<sup>480</sup>; language classes<sup>481</sup>; art workshops and handicrafts<sup>482</sup>. However these are not available in all centres. In most, detainees are left to occupy themselves; some researchers noted that detainees on some centres organise activities such as prayer meetings<sup>483</sup>, language classes and fashion shows<sup>484</sup> among themselves. This is not always possible, however, particularly where detainees are confined to their cells for most of the time.

In most centres in the Czech Republic social workers employed at the centre organize activities, including cultural activities, language classes and art workshops for detainees. The researcher noted that their work is much appreciated by the detainees.

In some centres a number of services are offered to detainees (in addition to healthcare and services for vulnerable detainees, which are outlined later). The services offered include: social work services<sup>485</sup>,

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<sup>467</sup> Lakatamia Police Station, Cyprus

<sup>468</sup> Ferihegy International Airport, Hungary

<sup>469</sup> Nicosia Central Prison Block 10, Cyprus; Citizenship and Migration Board Removal Centre Väljasaatmiskeskus, Estonia; Slovakia; Lyster Detention Centre, Malta; Budapest and Győr Border Guard Directorates, Hungary; Krosno Odrzańskie Border Police Station, Szczecin Border Police Station, Lublin Police Station, Lesznawola Guarded Centre for Foreigners, Poland; Detention Centre Postojna, Slovenia.

<sup>470</sup> Ta' Kandja Detention Centre, Malta

<sup>471</sup> Citizenship and Migration Board Removal Centre Väljasaatmiskeskus, Estonia. Lesznawola Guarded Centre for Foreigners, Poland (3 times daily); Latvia (2 times daily)

<sup>472</sup> Slovakia; Krosno Odrzańskie Border Police Station (men), Szczecin Border Police Station, Lublin Police Station, Poland; Nicosia Central Prison Block 10, Cyprus; Budapest, Nyírbátor and Győr Border Guard Directorates, Hungary

<sup>473</sup> Nicosia Central Prison Block 10, Cyprus

<sup>474</sup> Larnaca Police Station, Cyprus

<sup>475</sup> Lyster Detention Centre, Malta (Long-term detention facility); Ferihegy International Airport, Hungary (short term detention facility)

<sup>476</sup> At Lyster Detention Centre, Malta, detainees at one compound, the Tent Compound, have unlimited access to open air, while those at Hermes Block are only allowed out a couple of times a week. At Safi Barracks too, detainees in the Warehouses have unlimited access to the yard, while those in C Block have access to open air from morning to evening. The other centre in Malta has yet another system in place – detainees have access to open air once a day for a couple of hours.

<sup>477</sup> Available in most centres though not all, e.g. Larnaca Police Station, Cyprus; Nyírbátor Border Guard Directorate, Hungary

<sup>478</sup> Most centres in the Czech Republic, though apparently not the airport facility; North Prefect Police Station, Estonia; Lithuania; Tent Compound, Lyster Barracks, Malta; Krosno Odrzańskie Border Police Station, Lublin Police Station, Szczecin Border Police Station, Wrocław Police Station, Poland; Detention Centre Postojna, Slovenia

<sup>479</sup> Latvia

<sup>480</sup> Slovakia

<sup>481</sup> Closed Reception Centre Vysni Lhoty

<sup>482</sup> Some centres in the Czech Republic

<sup>483</sup> Malta

<sup>484</sup> Okęcie International Airport and Krosno Odrzańskie Border Police Station, Poland

<sup>485</sup> Czech Republic; Citizenship and Migration Board Removal Centre Väljasaatmiskeskus, Estonia; all centres in Poland, at least when necessary; Slovenia



provision of psychological support where needed<sup>486</sup>, translation<sup>487</sup> (however, there were complaints that the translation provided was of poor quality<sup>488</sup>) and pastoral care, if requested. In some centres special food is provided where necessary for reasons of health or religion.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Unlimited access to radio and TV, with satellite or cable, in well-sized adequately furnished rooms**
- **Proper facilities for outdoor sports and the possibility to use them on a daily basis**
- **Unrestricted movement both inside the premise and outside within the precincts of the compound, at least from morning to evening**
- **Regular permission for families to walk around in the town**
- **Social workers responsible for organizing regular (daily) activities and providing individual social work services**
- **Provision of services of interpreters/translation**
- **Provision for religious needs, including space to pray and special diet in line with religious requirements**

### ***Health care***

This section covers the scope of health care provision for detainees, both within the centre and at medical facilities outside.

### **Best practice standards**

In terms of the CPT standards,

*31. All detention facilities for immigration detainees should provide access to medical care. Particular attention should be paid to the physical and psychological state of asylum seekers, some of whom may have been tortured or otherwise ill-treated in the countries from which they have come. The right of access to a doctor should include the right - if a detainee so wishes - to be examined by a doctor of his choice; however, the detainee might be expected to cover the cost of such a second examination.*

As with the other areas covered earlier, the UNHCR Guidelines make almost identical recommendations stressing that detainees should have: *the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate.* (Guideline 10(v))

### **Overview of current practice**

Information was obtained regarding healthcare provision in 25 centres<sup>489</sup>. In almost all the centres, some form of primary medical care is provided in on site and detainees are taken to hospital for more specialised medical care or inpatient treatment. The only exception is Larnaca Police Station in Cyprus, where is no medical personnel on site, so staff will call a doctor to examine a detainee who is unwell, but this can take weeks.

The type of medical care provided at the centres varies from one to another. In some centres a doctor and nurse are present every day on weekdays<sup>490</sup>. As a rule the doctor is present only in the mornings, but in Lithuania medical care is provided from 8am to 5pm. In other centres the doctor is present twice a week or more<sup>491</sup> or else is available on call<sup>492</sup>. Two centres have a nurse on site at all times<sup>493</sup>.

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<sup>486</sup> Czech Republic except airport facility; most centres in Poland, at least when necessary; Slovenia

<sup>487</sup> Czech Republic; Lithuania; Poland; Slovakia; Slovenia

<sup>488</sup> Poland

<sup>489</sup> Information regarding healthcare provided in Lakatamia Police Station, Larnaca International Airport, Limassol Police Station and Nicosia Central Prison Block 10 in Cyprus and Closed Reception Centre Vysni Lhoty, Czech Republic is not available

<sup>490</sup> Detention Centre Bela-Jezova, Detention Centre Postorna, Czech Republic; Budapest Border Guard Directorate, Nyírbátor Border Guard Directorate, Hungary; Lyster and Safi Barracks, Malta; Poland; Slovenia

<sup>491</sup> Detention Centre Velke Prilepy, Czech Republic (3 to 4 times weekly); Citizenship and Migration Board Removal Centre Väljasaatmiskeskus (twice weekly)

In two of the largest centres researched<sup>494</sup>, which housed between 450 and 600 at the time when the research was carried out, detainees complained that, in spite of the fact that the doctor is present in the centre five mornings a week, for about four hours, they still had problems getting to see him/her and receiving follow-up care, medication prescribed and outpatient treatment at the general hospital.

In all centres, in case of emergency, an ambulance is called to take the detainee to hospital. At times, when going to hospital for emergency care or other specialised treatment detainees are taken without an interpreter, which effectively serves to block their access to medical treatment<sup>495</sup>. Detainees complained to researchers in Czech Republic and Malta about the widespread use of handcuffs when escorting detainees to hospital for outpatient care.

In some countries detainees are subjected to medical tests on arrival at the centre<sup>496</sup>. These can range from a medical test to verify fitness to be detained, to testing for TB, HIV, Hepatitis and Syphilis.

Psychological care is available on request in the centres in Poland and at one centre in Estonia<sup>497</sup>. However, detainees in Poland do not use this service and they expressed concerns about both its objectiveness and the effectiveness. Psychiatric care is also usually available, however the researcher from Hungary pointed out that in many cases, after a time of inpatient treatment the individual concerned is sent back to detention where his/her situation degenerates again.

From the information available it seems that detainees are not required to pay anything for medical service; the only exception was Larnaca Police Station, where detainees may have to pay for medication if it is not one of a list provided free of charge.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Medical practitioner and nurse available daily on site and service is offered throughout the day**
- **Medical service offered on site for the entire day, not just the morning**
- **In case of need, detainees are brought to external hospitals, specialised doctors, etc. and not handcuffed**
- **State medical treatment is provided is free of charge.**
- **Psychological care is provided free of charge**

### ***Special provisions for particularly vulnerable persons***

This section is concerned with the treatment vulnerable people receive when and if they are detained. For the purposes of this report the term vulnerable person includes: minors, whether accompanied or unaccompanied; pregnant women and lactating mothers; elderly people; victims of trauma and torture and people with a physical or mental disability.

### **Best practice standards**

The international standards containing most reference to vulnerable asylum seekers are those found in the 1999 UNHCR Guidelines on the Detention of Asylum Seekers. The Guidelines state that the following should not be detained: children and unaccompanied minors (Guideline 6), pregnant women in the final stages of pregnancy and nursing mothers (Guideline 8), unaccompanied elderly people, victims of trauma and torture and persons with a mental or physical disability (Guideline 7).

Moreover they stress that where vulnerable people are detained, then they should be held in conditions that make adequate provision for their needs. With specific reference to children, this implies that:

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<sup>492</sup> Győr Border Guard Directorate, Hungary

<sup>493</sup> North Prefect Police Station, Estonia and International Airport Ruzyně, Czech Republic

<sup>494</sup> Lyster and Safi Detention Centres, Malta

<sup>495</sup> Malta

<sup>496</sup> For example: Poland, Estonia, Malta (when people arrive by boat) and Hungary

<sup>497</sup> Väljasaatmiskeskus Removal Centre, Estonia

*If children who are asylum-seekers are detained at airports, immigration-holding centres or prisons, they must not be held under prison-like conditions... special arrangements must be made for living quarters which are suitable for children and their families.*

*During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play which is essential to a child's mental development and will alleviate stress and trauma.*

The Guidelines on Forced Return too emphasize that: *Children, whether in detention facilities or not, have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education could be subject to the length of their stay. (Guideline 11)*

In the case of other categories of vulnerable people, the UNHCR stresses that, *In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation, medication counselling etc. should it become necessary. (Guideline 7)*

The Guidelines also stress the importance of separate accommodation for women and men, children and adults, unless they are close relatives, because of the risk of exploitation and abuse.

In addition, Guideline 10 reiterates the importance of:

*(i) the initial screening of all asylum seekers at the outset of detention to identify trauma or torture victims, for treatment in accordance with Guideline 7.*

*(v) the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate.*

The Guidelines on Forced Return and the CPT standards make very similar recommendations regarding the conditions in which vulnerable people, particularly children, should be held if they are detained.

Moreover, article 17 (1) of the Directive on Minimum Standards for the Reception of Asylum Seekers states that:

*Member States shall take into account the specific situation of vulnerable persons, such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence (...)*

### **Overview of current practice**

Vulnerable people may be held in detention for some time in all of the states where this research was carried out.

In Malta, current government policy stipulates that vulnerable people should not be detained; they are therefore detained only until their case is assessed, release is ordered and alternative accommodation is found in the community. This may take days or weeks, but on occasion it has taken months, particularly in cases where a person's vulnerability is not immediately obvious or may be disputed. In practice, the cases where most difficulty is faced include those concerning people suffering from mental health problems and victims of trauma and torture.

In Lithuania, in practice, as a rule minors and families are not detained.

Minors are detained, at least for a while, in a number of countries. In some centres specific provision is made for their care, e.g. in Detention Centre Postojna, Slovenia, children are allowed to go to school outside the centre and families with children are allowed more freedom. In other countries<sup>498</sup> however, no specific provision is made and the centres are not in any way adapted to the needs of children.

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<sup>498</sup> Hermes Block, Lyster Barracks, Malta; Leznowola Guarded Centre for Foreigners, Poland

There is quite a wide variety in the quality of care offered to vulnerable people while they are in detention. In some centres little or no provision is made to cater for the needs of vulnerable persons<sup>499</sup>. Others, many of which are specially designated for this purpose, provide a more supportive and protected environment for vulnerable persons<sup>500</sup>, as some effort was made to equip the centre to provide the required care and services.

The range of services provided to vulnerable detainees in the different centres researched include: social work services and/or psychological support<sup>501</sup>; placement in more protected accommodation, separated from other detainees<sup>502</sup>; more appropriate diet or supplementary food if necessary<sup>503</sup>; medical care and follow-up, either on site or at outside medical facilities<sup>504</sup>.

A number of national reports<sup>505</sup> highlight the lack of special provision for traumatised people within the centres.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Specific policy providing that vulnerable people shall not be detained**

Where vulnerable people are detained – a highly questionable practice – the following are examples of best practice:

- **Accommodation of vulnerable people in specially designated centres or particular zones within centres, providing adequate protection and support, including separate accommodation, social work services and psychological support**
- **Families with children are allowed to leave the detention centre and go for a walk in the town**
- **Children attend the local school (outside the centre) and may be accompanied by their mother or father**

### ***House rules, sanctions, and complaints mechanisms***

This section deals with the rules regulating the daily regime within the centres; the rules regulating the administration and maintenance of discipline, the manner in which they are implemented and the sanctions imposed; and the mechanisms in place to receive and examine complaints from detainees regarding the treatment they receive within the centres.

### **Best practice standards**

The Guidelines on Forced Return, state in Guideline 10 that:

*Detainees should be systematically provided with information which explains the rules applied in the facility and the procedure applicable to them and sets out their rights and obligations.*

Moreover they require that detainees are able *to file complaints for alleged instances of ill-treatment or for failure to protect them from violence by other detainees. Complainants and witnesses shall be protected against any ill-treatment or intimidation arising as a result of their complaint or of the evidence given to support it.*

The importance of having a complaints mechanism, operating on the basis of clear and publicly available rules, is stressed by UNHCR in Guideline 10 of the 1999 UNHCR Guidelines, which states

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<sup>499</sup> Larnaca Police Station, Cyprus; Lyster and Safi Detention Centres, Malta; Leznowola Guarded Centre for Foreigners, Okęcie International Airport, Poland, the latter has occasionally been used to detain families for up to 45 days; Latvia.

<sup>500</sup> For example, Detention Centre Bela-Jezova and Closed Reception Centre Vysni Lhoty, Czech Republic; Citizenship and Migration Board Removal Centre Vājasaatmiskeskus, Estonia

<sup>501</sup> Detention Centre Bela-Jezova, Closed Reception Centre Vysni Lhoty, Czech Republic; Citizenship and Migration Board Removal Centre Vājasaatmiskeskus, Estonia (where they get their own room); Lithuania; Lesznowola Guarded Centre for Foreigners, Poland

<sup>502</sup> Closed Reception Centre Vysni Lhoty, Czech Republic; Citizenship and Migration Board Removal Centre Vājasaatmiskeskus and North Prefect Police Station, Estonia; Hungary; Latvia; Medved'ov Police Detention Centre for Foreigners, Slovakia; Slovenia.

<sup>503</sup> Citizenship and Migration Board Removal Centre Vājasaatmiskeskus, Estonia; Ferihegy International Airport, Hungary

<sup>504</sup> Nyírbátor Border Guard Directorate, Győr Border Guard Directorate, Hungary

<sup>505</sup> Including: Hungary, Poland and Malta

that detained asylum seekers should have *access to a complaints mechanism, (grievance procedures) where complaints may be submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.*

When talking about the treatment of prisoners, as opposed to people detained simply because of breaches of immigration law, the CPT standards emphasize the importance of having *clear disciplinary procedures... both formally established and applied in practice as any grey zones in this area involve the risk of seeing unofficial (and uncontrolled) systems developing.*

They require that, where other procedures exist alongside formal disciplinary procedures, such as the possibility of separating a prisoner from the others for disciplinary or security related reasons, they should be accompanied by effective safeguards. Moreover *the prisoner should be informed of the reasons for the measure taken against him and be given an opportunity to present his views on the matter, and be able to contest the measure before an appropriate authority*<sup>506</sup>.

With regard to the treatment of prisoners, they stipulate that *all prisoners without exception (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily*<sup>507</sup>. Moreover, they stress that:

*49. Ready access to toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment. In this connection the CPT must state that it does not like the practice... of prisoners discharging human waste in buckets in their cells (which are subsequently "slopped out" at appointed times). Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night). Further, prisoners should have adequate access to shower or bathing facilities. It is also desirable for running water to be available within cellular accommodation.*

### **Overview of current practice**

In most cases there are some form of **house rules**, usually regulating the daily timetable of detainees<sup>508</sup>, but in a few cases<sup>509</sup> the rules relate more to rights and obligations while in detention<sup>510</sup>.

Regarding administration of discipline, it is clear from the national reports, and perfectly legitimate, that staff in the centres feels the need to sanction offenders to ensure the rules are respected and some sort of discipline is maintained. However, once again, there is considerable disparity when it comes to the regulation of disciplinary procedures.

In some cases, the rules regulating the administration of discipline are formal and are clearly laid down by law<sup>511</sup> or government decree<sup>512</sup>. In most centres, however, although there may be a number of basic rules in place, the arrangement appears to be far more informal. In at least four countries<sup>513</sup> there are no publicly available rules in place for the administration of discipline.

In most cases, discipline seems to be administered by the Director or other person in charge of the centre, who has a wide margin of discretion in determining fault and administering punishment. None of the reports mentioned that detainees have a right to challenge a decision taken by the Director of the centre imposing punishment, whatever the nature of the punishment imposed.

The sanctions imposed may be quite serious and include seclusion or confinement<sup>514</sup>; imposition of a strict regime for up to 30 days<sup>515</sup>; isolation; and use of means of restraint including straitjackets<sup>516</sup>. In other cases the sanctions involve the withdrawal or restriction of basic rights or privileges as a sanction,

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<sup>506</sup> Paragraph 55, Section II, Imprisonment, Extract from the 2<sup>nd</sup> General Report [CPT/Inf (92) 3], The CPT Standards

<sup>507</sup> Paragraph 48, Section II, Imprisonment, Extract from the 2<sup>nd</sup> General Report [CPT/Inf (92) 3], The CPT Standards

<sup>508</sup> Cyprus, Czech Republic, Latvia, Lithuania; Slovenia

<sup>509</sup> The 3 centres in Malta do not have a fixed daily regime, apart from the rules regulating access to open air in some centres; the rules are more about detainees' rights and obligations.

<sup>510</sup> For more details on how the information is passed on to detainees, please see the following section

<sup>511</sup> Estonia

<sup>512</sup> Lithuania

<sup>513</sup> Cyprus, Czech Republic, Hungary, Malta, Poland

<sup>514</sup> Nicosia Central Prison Block 10, Cyprus; Malta; Slovakia and Latvia; it should be noted that the latter has a room for this purpose but according to the researcher it is hardly ever used

<sup>515</sup> Detention Centre Bela-Jezova and Detention Centre Velke Prilepy, Czech Republic

<sup>516</sup> Estonian Law provides for the use of both isolation and strait jackets

for example, access to the telephone, access to open air or possibility to receive visits<sup>517</sup>, prohibition of the use of personal assets, restriction of freedom of movement<sup>518</sup>, denial of access to getting shopping done<sup>519</sup>.

Given the nature of the sanctions used, it is imperative that the system in place for the administration of discipline is as transparent as possible, in order to avoid any risk of arbitrariness.

In three centres<sup>520</sup> there were reports of allegations that, on occasion, staff used violence against detainees who were accused of breaching the rules of the centre. In two centres, there were reports of ill-treatment of detainees placed in confinement or seclusion, including the fact that conditions in the cell used were extremely poor<sup>521</sup>.

Most centres do not have an effective and independent complaints mechanism in place. In many centres, at most complaints are examined by the Director of the centre. In Estonia detainees may appeal to the Chancellor of Justice, who visits the centre once a year; a complaint is made by means of a letter forwarded through the Director of the centre or directly by post. In Cyprus detainees have the possibility of appealing to the Ombudsman.

In most cases, it was not possible to assess the effectiveness of the different complaints mechanisms in place. In one case, that of the Czech Republic, detainees said they considered the measure in place, which involves addressing complaints to the social workers at the centre, sufficient and effective - a clear indication that the detainees respect and trust them. In one country<sup>522</sup> where detainees have the possibility of complaining were able to complain to an independent authority (the Ombudsman) there is the problem of accessibility as detainees are often unable to send the complaint even if they know about the procedures.

#### **Examples of best practice**

It was felt that in this area there are few practices which can be regarded as ‘best practice’; the only one which comes close is the following:

- **Clearly established disciplinary rules**

#### ***Information provided to detainees***

This section examines the content of the information provided to detainees as well as the manner in which it is passed on to them.

#### **Best practice standards**

The standards speak both about the content of such information and also about the manner in which such information should be provided, stressing the importance of prompt and systematic provision of information in language the detainees understand.

The CPT Standards state that detainees:

*30.... should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them... In order to overcome... difficulties, immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned. (CPT Standards IV 30)*

The 1999 UNHCR Guidelines on the Detention of Asylum Seekers and the Guidelines on Forced Return lay down much the same requirements.

The Guidelines on Forced Return provide that, in addition to prompt information *in a language which he/she understands* about the legal and factual reasons for his/her detention, and the possible

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<sup>517</sup> Nicosia Central Prison Block 10; Hermes Block, Lyster Detention Centre, Malta (denial of access to open air and to the telephone)

<sup>518</sup> Estonia

<sup>519</sup> Some centres in Poland

<sup>520</sup> Nicosia Central Prison Block 10, Cyprus; Nyírbátor Border Guard Directorate, Hungary; Safi and Lyster Detention Centres

<sup>521</sup> Nicosia Central Prison Block 10, Cyprus and Lyster Detention Centre, Malta

<sup>522</sup> Cyprus

*remedies* (Guideline 6), *detainees should be systematically provided with information which explains... the procedure applicable to them and sets out their rights and obligations* (Guideline 10) and *information which explains the rules applied in the facility and the procedure applicable to them and sets out their rights and obligations.* (Guideline 10)

All the guidelines repeatedly stress that *the information should be available in the languages most commonly used by those concerned and, if necessary, recourse should be made to the services of an interpreter.* (CoE Guideline 10)

### **Overview of current practice**

As was mentioned in the previous section, in most centres there is some form of house rules. From the information in the national reports, it seems that detainees are usually provided with information about the applicable **house rules**, where these exist, and their **rights and obligations** while in detention. Such information is either transmitted in written form, through leaflets and/or posters on the walls<sup>523</sup>, or verbally.

Moreover, in most cases state authorities provide detainees with an amount of information regarding their **immigration status and the reasons for their detention**.

However, information about the **remedies available to challenge detention** is not provided in all the countries studied<sup>524</sup> – in Malta, one centre in Czech Republic and in Poland such information is provided only by NGOs or lawyers. In another centre in the Czech Republic, such information is not provided, however in this centre it is not legally possible to challenge detention<sup>525</sup>.

Information about applying for **asylum** is not provided systematically in all countries. Moreover, there are significant variations between the centres researched regarding in manner in which such information is transmitted to the detainee.

In Poland no information is provided by the authorities concerned; any information needed must be requested from NGOs. In Malta, the authorities provide very little information on applying for asylum before asylum seekers are called for their interview with the Office of the Refugee Commissioner<sup>526</sup>. This is usually months after arrival and after the applicant has filled the initial application or Preliminary Questionnaire. As in Poland, any information required before this stage must be obtained from NGOs. In Hungary detained asylum seekers receive basic information on alien policing detention<sup>527</sup> but they are not provided with information on the asylum procedures by the authorities in charge of detention, however in most centres there are information boards and/or leaflets containing information prepared by UNHCR and NGOs regarding the asylum procedure<sup>528</sup>.

In Czech Republic, by contrast, detainees are informed about the possibility of applying for asylum upon being placed in custody and then again, in writing and orally, within the first seven days of detention. Moreover further information about the asylum procedure is provided once detainees apply for asylum. In Lithuania detainees are provided with such information in their native language both orally and in writing.

In general, it would seem that most information, particularly that regarding immigration status, is provided to detainees **immediately upon arrest or as soon as they are placed in detention**; not really the ideal time to give detainees information they will need to remember.

At least three researchers<sup>529</sup> noted that a number of the detainees interviewed did not seem to have fully understood all of what had been explained to them.

In some centres, there is a system in place to ensure provision of information at various stages. In some cases there are official structures in place to do this, as in Czech Republic, outlined above, and in

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<sup>523</sup> Czech Republic, Slovenia, Hungary, Malta

<sup>524</sup> International Airport Ruzyně

<sup>525</sup> Closed Reception Centre Vysni Lhoty

<sup>526</sup> National authority responsible for the determination of applications for refugee status in terms of the Refugees Act, 2000

<sup>527</sup> Authorities obligation to provide information on the rights and obligations of the detainee is prescribed by Act II of 2007 Section 60 (1)

<sup>528</sup> Ferihegy International Airport, Nyirbátor Border Guard Directorate, Budapest Border Guard Directorate, Győr Border Guard Directorate, Hungary

<sup>529</sup> Poland, Slovenia and Czech Republic

Lithuania, where detainees are systematically provided with information about the identification and return process in their regard. In other centres it could be done informally, for example, researchers noted that in one centre in Malta<sup>530</sup> staff follow up requests for information from detainees where possible, however it seems that this is more in relation to requests about the status of their individual case than the asylum procedure in general.

In most cases, however, there is no formal structure in place to provide detainees with further information on a consistent and systematic basis or answer their questions during the period of their detention. Moreover, as a rule, the guards are not really trained to answer questions regarding legal status.

In many cases a considerable amount of information is provided **in writing**, rather than simply passed on orally. Moreover, in a considerable number of countries the information provided is **translated** into a number of languages. In some cases the translated information is provided in writing, while in other cases it is provided orally, if the necessary language skills are available.

Some researchers<sup>531</sup> noted that detention centre staff and/or immigration officials often do not have the language skills necessary to communicate adequately with the detainees; it is clearly possible that this is true of more than just these countries. This is hardly surprising given that many centres house detainees from a wide variety of countries and ethnic backgrounds.

In some countries<sup>532</sup>, the law requires the presence of an **interpreter** in some instances; this goes some way towards ensuring that detainees are able to understand the information provided.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Systematic provision of information on asylum and immigration status and other related matters both on apprehension and one week later, by social workers or staff at the centre**
- **Follow up of requests for information by staff**
- **Provision of basic information in writing in different languages**
- **Presence of interpreter guaranteed by law**
- **Information published by other agencies (NGOs and UNHCR) providing information about detainees' rights, the asylum procedure, etc. are made available and/or displayed in centres**

### ***Staff***

This section brings together various issues relating to the staffing of detention centres highlighted in the national reports. It covers staff training, staff-detainee ratio and staff-detainee relations.

### **Best practice standards**

The CPT standards state that detainees *should be accommodated in centres specifically designed for that purpose, (...) staffed by suitably-qualified personnel (...)* *The staff of centres for immigration detainees have a particularly onerous task. (...) The CPT places a premium upon the supervisory staff in such centres being carefully selected (...)* *As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should (...) recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.* (CPT Standards IV 29)

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<sup>530</sup> Ta' Kandja Detention Centre, Malta

<sup>531</sup> Malta and Hungary

<sup>532</sup> For example, Czech Republic, Slovakia and Hungary



The Guidelines on Forced Return lay down almost identical requirements, and encourage Member States to provide the staff concerned, as far as possible, with training that would not only equip them with interpersonal communication skills but also familiarise them with the different cultures of the detainees. It also recommends that when necessary, staff should also be able to draw on outside support, in particular medical and social support. (Guideline 10)

In relation to treatment of prisoners, the CPT Standards recommend the promotion of *constructive as opposed to confrontational relations between prisoners and staff*, as this serves to lessen the tension and by the same token significantly reduce the likelihood of violent incidents and associate ill-treatment. They suggest that when a *spirit of communication and care* accompanies measures of control and containment security is not undermined but enhanced.

### **Overview of current practice**

Most of the detention centres studied are staffed by police or border guards; from the information available it appears that some are staffed exclusively by police/border guards<sup>533</sup>, while others are staffed by police and other agencies, usually private security companies and/or members of the civil service<sup>534</sup>. In one country, the centres are at least nominally administered by a civilian service, the Detention Service (DS), which, however, is headed by an army officer and staffed almost exclusively by present and past members of the security forces<sup>535</sup>.

The main exceptions are the detention centres in the Czech Republic, which are run by the Administration of Refugee Facilities (ARF), a civilian agency responsible for the daily management of the centres and the welfare of detainees, although the police and a private security company fulfil various functions in some of the centres.

The national reports noted that staff at 18 of the centres studied receives some kind of training<sup>536</sup>. In some cases the reports specifically mentioned that training is provided on a regular basis<sup>537</sup>, and in others that it is provided on a more occasional basis<sup>538</sup>. In one country training is not compulsory<sup>539</sup>. No information was obtained regarding the other 12 centres.

Training is provided on various topics, including: health issues and First Aid; communication and conflict management, including mediation and conflict resolution; cultural differences and communication; working with people in situation of psychological tension; interviewing techniques; legal issues, such as migration and refugee law, human rights; data protection; language training; assessing identity; mutual thinking and teamwork.

The information obtained regarding detainee-staff ratio is rather limited: information was obtained about 12 centres, but the data is not really comparable. However, even from the somewhat scant information available it is easy to see that there is great disparity among the different centres, even within the same country. For example, in one centre housing 10 people, there were 10 officials and 5 security personnel<sup>540</sup>. Another, with a maximum capacity of 265, which accommodated some 35 detainees since the beginning of 2007, 183 in 2006 and 193 in 2005, employs 91 people, including 40 guards, 9 officers and 35 civil servants<sup>541</sup>. By contrast, another centre which has a maximum capacity of 620 people and which accommodated some 406 at the time the research was conducted employs a more or less equivalent number of staff<sup>542</sup>.

From the figures available it is not really possible to work out the staff-detainee ratio for all the centres, as from the information available for most centres it is not really clear how many members of staff are involved in administrative work and how many work in direct contact with the detainees. Information about guard-detainee ratio was obtained for only 9 centres<sup>543</sup>. However, once again the difference

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<sup>533</sup> All the centres in Cyprus, Hungary, Latvia, Poland and Slovenia

<sup>534</sup> The centres in Estonia, Lithuania and Slovakia

<sup>535</sup> Malta

<sup>536</sup> Both centres in Estonia; Ferihegy International Airport, Nyírbátor Border Guard Directorate and Győr Border Guard Directorate, Hungary; Latvia; Lithuania; Malta; Krosno Odrzańskie Border Police Station, Lesznowola Guarded Centre for Foreigners, Lublin Police Station, Szczecin Border Police Station and Włocławek Police Station in Poland; Slovakia and Slovenia

<sup>537</sup> Ferihegy International Airport, Győr Border Guard Directorate, and Nyírbátor Border Guard Directorate, Hungary; Lithuania; Malta; Slovakia; Slovenia

<sup>538</sup> North Prefect Police Station, Estonia; Poland

<sup>539</sup> Latvia

<sup>540</sup> Citizenship and Migration Board Removal Centre Väljasaatmiskeskus, Estonia

<sup>541</sup> Pabradė Foreigners' Registration Centre, Lithuania

<sup>542</sup> Safi Detention Centre, Malta

<sup>543</sup> Safi and Ta' Kandja Detention Centres in Malta and all the centres in Poland

between the centres is striking: the ratio ranges from 1 guard to 6 detainees at one centre<sup>544</sup> to 1 guard to 25 detainees at another<sup>545</sup>. The staff to detainee ratio in the other centres was: 1:7; 1:9; 1:11; 1:15; 1:23<sup>546</sup>.

One of the consequences of having a small staff-detainee ratio is that it becomes far more difficult for staff to communicate effectively with detainees and identify their individual needs. The report on Malta noted the difference between staff-detainee relations in the larger centres, which can house up to 700 people in two or more separate compounds<sup>547</sup>, and those in the smaller centre, which houses a maximum of 80 people<sup>548</sup>, where staff is able to respond more effectively to individual needs.

The importance of developing positive relations between staff and detainees and focusing on welfare in addition to security is highlighted in the reports on Slovenia and the Czech Republic. The latter, in particular, noted the improvement in conditions within the centres since the ARF took over the administration of detention centres from the police.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Regular obligatory training on a range of different issues including legal issues and human rights, intercultural communication, conflict resolution and language training for detention centre staff;**
- **Large ratio of staff to detainees in order to foster better staff-detainee relations;**
- **Centres administered by non-security agencies, to allow for a greater focus on welfare as opposed to security.**

### ***Monitoring***

In the context of this report, monitoring and reporting refer to the different structures and mechanisms in place to monitor and report on conditions in the centres, as well as to the monitoring visits that have actually been carried out.

### **Best practice standards**

The Guidelines on Forced Removal state that *the functioning of these facilities should be regularly monitored, including by recognized independent human rights monitors.*(Guideline 10)

### **Overview of current practice**

The national reports describe a number of very different structures and mechanisms in place to monitor conditions in each of the 10 new Member States.

Some are officially established independent mechanisms: for example in some countries<sup>549</sup> the Ombudsman, a parliamentary office mandated to ensure that the rights of all, particularly the most vulnerable, are safeguarded and to monitor the situation of all detained persons, visits and reports on conditions in the centres. In Cyprus, the Ombudsman has successfully highlighted several shortcomings of the Police in the management of asylum seekers and illegally staying third country nationals. In other countries the court has the right to monitor the conditions in the centres, a function which they carry out in some centres in Poland.

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<sup>544</sup> Ta' Kandja Detention Centre, Poland

<sup>545</sup> Lesznowola Guarded Centre for Foreigners, Poland

<sup>546</sup> Włocławek Police Station, Poland; Szczecin Border Police Station, Poland; Okęcie International Airport, Poland; Krosno Odrzańskie Border Police Station, Poland; Safi Detention Centre, Malta respectively. It should be noted that in Safi Detention Centre the staff-detainee ratio in the different premises within the centre at the time of research was as follows: Warehouse 1 and 2: 1:19 and C Block: 1:35.

<sup>547</sup> Safi and Lyster Detention Centres

<sup>548</sup> Ta' Kandja Detention Centre

<sup>549</sup> Larnaca Police Station, Cyprus; Czech Republic; Slovenia

In some countries<sup>550</sup> there are also internal monitoring mechanisms; administrative bodies charged with monitoring the conditions in one or more centres. It is not really possible to assess the independence or otherwise of these internal monitoring mechanisms.

An amount of monitoring is also carried out by NGOs, particularly in Slovenia, Poland and Hungary<sup>551</sup> ..

Some monitoring is also carried out by external monitoring mechanisms, such as the CPT, the LIBE Committee of the European Parliament and the Council of Europe Human Rights Commissioner.

Most of this monitoring is carried out on an occasional basis. Notable exceptions are: the monitoring by the courts in Poland, the visit by the Chancellor of Justice to Väljasaatmiskeskus Centre in Estonia, and the internal monitoring in Poland, all of which take place once a year.

### **Examples of best practice**

The following practices were identified as best practice in this area:

- **Regular periodical monitoring by the courts at least once per year**
- **Monitoring by the Ombudsman, an independent parliamentary office**
- **Monitoring and reporting by civil society actors**
- **Existence of a formal agreement between public authorities and NGOs to monitor conditions in the centres**
- **Internal mechanisms for monitoring**

### **Detention: the detainees' perspective (includes information on incidents occurring within the centres)**

While it is no doubt useful to compare and discuss factual information on the existing realities within the different centres, such descriptions often fail to convey the true extent of the impact of detention on detainees' physical and psychological well-being.

We firmly believe that the human cost of detention cannot be ignored. The voices of the detainees, the persons whose lives are most profoundly affected by our laws and policies on administrative detention, must be listened to and taken into account. This section of the report summarises their main points which emerged in the course of the research, in order that they may guide our recommendations.

The overall picture that emerges from many of the national reports which commented on the atmosphere within the centres, especially Poland, Lithuania, Latvia, Slovenia, Malta and Cyprus, is one of a general feeling of apathy, isolation, discontent and, at times, even despair, among the detainees. This was attributed to a number of factors including the poor conditions of detention, the length of detention, the restricted regime imposed on detainees, including the inability to go outdoors, and the lack of activities to occupy the time.

Many detainees are relatively young and the prolonged period of inactivity is particularly hard to endure, as one detainee said *I want to work... doing nothing all day is driving me mad!*

However, beyond all these issues, the thing that detainees find most difficult to deal with is the deprivation of liberty. All detainees yearn for freedom; in the words of one detainee from Slovakia: *My greatest wish is to be on the other side of the fence.* Detainees often perceive the prolonged deprivation of liberty to which they are subjected as a great injustice, and feel they have not done anything to deserve this fate. One detainee from Slovenia echoed the question repeatedly asked by hundreds of other detainees: *Why I am here? I am not a criminal!*

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<sup>550</sup> Detention Centre Postojna, Slovenia; Krosno Odrzańskie Border Police Station, Szczecin Border Police Station, Włocławek Police Station, Poland.

<sup>551</sup> In the latter, as the result of a very progressive and outstanding tripartite cooperation agreement concerning border monitoring, monitors have access to all the detainees and official files in the framework of the monitoring activity.

This is perhaps particularly true in the case of asylum seekers, who have arrive seeking protection and spend months in detention awaiting the outcome of their asylum application. In the words of one refugee from Malta: *It was horrible having to wait so long for a decision. When I think back it was like torture; every day seemed to be as long as a year.*

Detainees feel humiliated by the conditions in which they are forced to live - *Look how we have become... we are like animals in a cage* – and the uncertainty they must live with is especially hard to bear. A detainee from Slovenia complained that: *Nobody tells me how long I will stay here... If I stay more than a month I will go crazy...*

The researchers reported a number of incidents that occurred in the centres. There are a number of common traits among the incidents identified however it was not possible to ascertain whether these were the only incidents which in fact occurred within the centres.

In the ultimate analysis, identifying incidents largely depends on various factors including:

- information provided the administration of the facility/premise (or not)
- information provided by private individuals and NGOs who have access to the centres
- public media coverage

One thing which seems clear, however, is that some incidents were linked to, if not directly the result of, the feelings of discontent, anger, frustration and despair experienced by detainees. The incidents reported include:

- **suicide attempts** at Nicosia Central Prison Block 10 (Cyprus), Pabradė Foreigners' Registration Centre (Lithuania) and Szczecin Border Police Station (Poland);
- **hunger strikes** at Lublin Police Station (Poland), Okęcie International Airport/Warsaw detention space (Poland), Lyster and Safi Detention Centres (Malta); Nyírbátor Border Guard Directorate (Hungary)
- **setting fire** to objects within the centre in Limassol Police Station (Cyprus), Nicosia Central Prison Block 10 (Cyprus) and Detention Centre Postojna (Slovenia);
- **escapes** from Szczecin Border Police Station (Poland) and Lyster and Safi Detention Centres (Malta); Väljasaatmiskeskus, Estonia
- **vandalism** was reported in Nicosia Central Prison Block 10 (Cyprus);
- **physical fights** between detainees at Okęcie International Airport/Warsaw detention space (Poland); and Cyprus Block 10
- **general protests** at Lyster and Safi Detention Centres (Malta) and Krosno Odrzańskie Boarder Police Station (Poland)

For 20 out of the 30 detention facilities/premises researched no incidents are recorded. In 1 case, North Police Prefect Police Station (Estonia) this is because in fact no incidents took place there since EU accession. In another five cases the researchers stated that no incidents were reported. No information was provided for the other 14 centres, either because it was not available or because it was not recorded by the researcher.

### 3.4 Conclusions and recommendations

**In conclusion, it is clear that, in spite of the fact that there are a number of examples of good practice, the situation of migrants in detention in the 10 new Member States remains one of extreme hardship, particularly where detention is prolonged, conditions are poor and the restrictions imposed upon personal liberty (even within the centre) are severe.**

**Possibly the hardest thing for detainees to bear is the total deprivation of liberty which detention imposes.**

**We therefore urge states:**

- **not resort to detention, particularly of asylum seekers, unless all other non-custodial measures have failed;**
- **to ensure that detention is not resorted to where it can serve no legitimate purpose; e.g. the facilitation of removal;**
- **to create alternatives to detention.**

**Finally, we call upon states to ensure that, where detention is used, conditions are in line with international standards of best-practice.**

# CREATING AND STRENGTHENING A SUSTAINABLE NETWORK OF CIVIL SOCIETY ACTORS

This comprehensive report is an essential element of a project<sup>552</sup> whose core objective is, according to the EU Commission, the “support of civil society in the Member States, which acceded to the EU on 1<sup>st</sup> May 2004”<sup>553</sup>.

*NGO and other civil society actors play an important role in promoting and protecting fundamental rights throughout the European Union and in helping people to get to know their rights and to exercise them fully. Supporting civil society and promoting networking is therefore essential.*<sup>554</sup>

The project intends to contribute to the above mentioned EU Commission’s objective by “creating and strengthening a sustainable network of civil society actors concerning asylum seekers and illegally staying third-country nationals in administrative detention across the 10 new EU Member States”<sup>555</sup>.

## 4.1 Civil society

There is no clear consensus on which role “civil society” should and shall play in the building of the European Union. The following is an outline of the views of various European institutions on the role and function of civil society in the liberal democracies of Europe.

### The European Economic and Social Committee (EESC)

In 1999, the European Economic and Social Committee (EESC), an assembly of representatives of all EU Member States which defines itself as a *bridge between Europe and organised civil society* and whose role is to issue opinions<sup>556</sup>, published such an “opinion” on *The role and contribution of civil society organisations in the building of Europe*<sup>557</sup>. This document gives a historical overview on the concept of civil society, stating that:

*the concept of civil society in Western political thought has undergone differing interpretations throughout its history. It is important to transcend these now by providing an all-embracing definition.*<sup>558</sup>

Against that background, this EESC document attempted to define “civil society” by listing *some components*:

- Pluralism
- Autonomy
- Solidarity
- Public awareness
- Participation
- Education
- Responsibility
- Subsidiarity

According to the EESC, *a new interpretation of modern civil society, inspired by Tocqueville, Durkheim and Weber, is emerging, based on four principles*:

<sup>552</sup> If you wish to consult the project website, go to [http://www.detention-in-europe.org/index.php?option=com\\_content&task=view&id=75&Itemid=88](http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=75&Itemid=88)

<sup>553</sup> Cf. [http://ec.europa.eu/justice\\_home/funding/2004\\_2007/support\\_ngo/funding\\_support\\_en.htm](http://ec.europa.eu/justice_home/funding/2004_2007/support_ngo/funding_support_en.htm) (last visit on 29 July 2007)

<sup>554</sup> [http://ec.europa.eu/justice\\_home/funding/2004\\_2007/support\\_ngo/funding\\_support\\_en.htm](http://ec.europa.eu/justice_home/funding/2004_2007/support_ngo/funding_support_en.htm) (last visit on 29 July 2007)

<sup>555</sup> title of the project

<sup>556</sup> Cf. <http://eesc.europa.eu> (last visit on 29 July 2007)

<sup>557</sup> Opinion of the Economic and Social Committee on “The role and contribution of civil society organisations in the building of Europe” (1999/C 329/10): <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:51999IE0851:EN:HTML> (last visit on 29 July 2007)

<sup>558</sup> 3.1 *ibid*

- *Civil society is typified by more or less formalised institutions: this institutional network forms an autonomous social sphere that is distinct from both the state and from family and domestic life in the strict sense. These institutions have many functions (not just economic, but also religious, cultural, social, etc.) and are crucial to social integration;*<sup>559</sup>
- *Individuals are free to choose whether to belong to civil society institutions: they are never forced to join any of the associations, businesses or groups which make up civil society, either through a political commitment or supposedly 'natural' allegiance to a particular group;*<sup>560</sup>
- *The framework of civil society is the rule of law: the democratic principles of respect for private life, freedom of expression and freedom of association provide the normative framework of civil society. Although civil society is independent of the state, it is certainly not an area outside the law;*<sup>561</sup>
- *Civil society is the place where collective goals are set and citizens are represented: civil society organisations play an important role as 'intermediaries' between the individual and the state. The democratic process could not take place without their mediatory role.*<sup>562</sup>
- *Civil society introduces the dimension of subsidiarity, a concept derived from Christian doctrine, which opens up the possibility of establishing levels of authority which are independent of the state but recognised by it.*<sup>563</sup>

From the EESC point of view,  
*civil society organisations can be defined in abstract terms as the sum of all organisational structures whose members have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens. Their effectiveness is crucially dependent on the extent to which their players are prepared to help achieve consensus through public and democratic debate and to accept the outcome of a democratic policy-making process.*<sup>564</sup>

*Civil society organisations include:*

- *the so-called labour-market players, i.e. the social partners;*
- *organisations representing social and economic players, which are not social partners in the strict sense of the term;*
- *NGOs (non-governmental organisations) which bring people together in a common cause, such as (...) human rights organisations, (...) charitable organisations, educational and training organisations, etc.;*
- *CBOs (community-based organisations, i.e. organisations set up within society at grassroots level which pursue member-oriented objectives), e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life;*
- *religious communities.*<sup>565</sup>

## **The European Parliament**

In 2003, the European Commission stated that the European Parliament  
*was particularly keen not to grant civil society organisations a role which, either wholly or in part, was that of those holding political responsibility and who were elected by universal suffrage.*<sup>566</sup>

## **The European Commission**

According to the European Commission, *civil society organisations play an important role as facilitators of a broad policy dialogue (...). Belonging to an association provides an opportunity for citizens to participate actively in addition to involvement in political parties or through elections.*<sup>567</sup>

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<sup>559</sup> 3.7 ibid

<sup>560</sup> ibid

<sup>561</sup> ibid

<sup>562</sup> ibid

<sup>563</sup> ibid

<sup>564</sup> 7.1 ibid

<sup>565</sup> 8.1 ibid

<sup>566</sup> REPORT FROM THE COMMISSION OF THE EUROPEAN COMMUNITIES ON EUROPEAN GOVERNANCE, © European Communities, 2003: [http://ec.europa.eu/governance/docs/comm\\_rapport\\_en.pdf](http://ec.europa.eu/governance/docs/comm_rapport_en.pdf) (last visit on 29 July 2007)

<sup>567</sup> COMMUNICATION FROM THE COMMISSION, Consultation document: Towards a reinforced culture of consultation and dialogue - Proposal for general principles and minimum standards for consultation of interested parties

Furthermore, *the organisations, which make up civil society mobilise people and support, for instance, those suffering from exclusion or discrimination (...). They often act as an early warning system for the direction of political debate.*<sup>568</sup>

They fulfil this role in particular by providing new information or by highlighting existing information. Civil society represents also *a chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest.*<sup>569</sup>

Finally, as the EU Commission states, *Churches and religious communities have a particular contribution to make.*<sup>570</sup>

## The European Council

The Tampere Programme (1999 – 2004)<sup>571</sup>, entirely dedicated to the creation of an *area of freedom, security and justice in the European Union*, including asylum and immigration affairs, stated: *We must develop an open dialogue with civil society.*<sup>572</sup>

Similarly, the Hague Programme (2004 – 2009)<sup>573</sup> *encourages the Union's institutions, within the framework of their competences, to maintain an open, transparent and regular dialogue with representative associations and civil society and to promote and facilitate citizens' participation in public life.*

## 4.2 Transparency

In 2006, the European Commission issued a Green Paper<sup>574</sup> on the “European Transparency Initiative”<sup>575 576</sup>.

According to the Green Paper, this initiative *is intended to build on a series of transparency-related measures already put in place by the Commission, in particular those taken as part of the overall reforms being implemented since 1999 and in the White Paper on European Governance.*<sup>577</sup>

The European Commission believes that *high standards of transparency are part of the legitimacy of any modern administration*<sup>578</sup> and that the European Union should be *open to public scrutiny and accountable for its work.*<sup>579</sup>

The European Transparency Initiative (ETI) is of outstanding importance for this project because public authorities either did not cooperate at all or only to a limited extent in the research part of the project.

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by the Commission, Brussels, 5.6.2002, COM (2002) 277 final: <http://www.thecre.com/eu-oira/pdf/propose.pdf> (last visit on 29 July 2007)

<sup>568</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, EUROPEAN GOVERNANCE, A WHITE PAPER, Brussels, 25.7.2001, COM (2001) 428: [http://ec.europa.eu/governance/white\\_paper/en.pdf](http://ec.europa.eu/governance/white_paper/en.pdf) (last visit on 29 July 2007)

<sup>569</sup> *ibid*

<sup>570</sup> *ibid*

<sup>571</sup> Cf. “EU policy” in this report

<sup>572</sup> [http://europa.eu.int/council/off/conclu/oct99/oct99\\_en.htm](http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm) (last visit on 27 July 2007)

<sup>573</sup> Cf. [http://ec.europa.eu/justice\\_home/news/information\\_dossiers/the\\_hague\\_priorities/documents\\_en.htm](http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/documents_en.htm) (last visit on 27 July 2007)

<sup>574</sup> Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward: [http://europa.eu/scadplus/glossary/green\\_paper\\_en.htm](http://europa.eu/scadplus/glossary/green_paper_en.htm) (last visit on 29 July 2007)

<sup>575</sup> COM (2006) 194: [http://ec.europa.eu/commission\\_barroso/kallas/doc/com2006\\_0194\\_4\\_en.pdf](http://ec.europa.eu/commission_barroso/kallas/doc/com2006_0194_4_en.pdf) (last visit on 29 July 2007)

<sup>576</sup> If you wish to follow up, go to: [http://ec.europa.eu/civil\\_society/index\\_en.htm](http://ec.europa.eu/civil_society/index_en.htm) (last visit on 29 July 2007)

<sup>577</sup> Introduction, COM (2006) 194: [http://ec.europa.eu/commission\\_barroso/kallas/doc/com2006\\_0194\\_4\\_en.pdf](http://ec.europa.eu/commission_barroso/kallas/doc/com2006_0194_4_en.pdf) (last visit on 29 July 2007)

<sup>578</sup> *ibid*

<sup>579</sup> *ibid*



### **4.3 Civil society activities relating to administrative detention of asylum seekers and illegally staying third-country nationals**

#### **Existing civil society activities**

##### *Access to administrative detention facilities/premises*

Access of civil society actors to detention facilities/premises varies; it is largely determined by existing law and/or policy and by the availability civil society actors who are committed to be present in the facilities/premises:

- In Cyprus, no NGO (including SYMFILIOSI) is guaranteed access inside police detention centres. Such access is granted only at the discretion of the police authorities and has never, to the knowledge of the conducted research been granted to NGOs. Access to detention centres is only granted to the
  - Ombudswoman
  - the Law Commissioner
  - specific priests who visit detainees for their confession and
  - the European Committee for the Prevention of Torture (CPT).
- In all remaining countries, civil society institutions and/or religious communities have access to the facilities/premises and make use of it.

##### *Main activities pursued*

The activities include

- visits, for example, in
  - the Detention Centre Bela-Jezova (Czech Republic)
  - the Citizenship and Migration Board Removal Centre Väljasaatmiskeskus (Estonia)
  - the Budapest Border Guard Directorate (Hungary)
  - the Lithuania Pabradė Foreigners' Registration Centre (Lithuania)
  - the Lyster Detention Centre (Malta)
  - the Krosno Odrzańskie Boarder Guard Station (Poland)
  - the Medveďov Detention Centre for Foreigners (Slovakia)
  - the Detention Centre Postojna (Slovenia)
- Counselling, like in
  - the Detention Centre Bela-Jezova (Czech Republic)
  - the Ferihegy International Airport detention spaces (Hungary)
  - the Lyster, Safi and Ta' Kandja Detention Centres (Malta)
  - the Lesznawola Guarded Centre for Foreigners (Poland)
  - the Detention Centre Postojna, Slovenia
- Social services, as in
  - the closed reception space International Airport Ruzyně (Czech Republic)
  - the Lithuania Pabradė Foreigners' Registration Centre (Lithuania)
  - the Lyster and Safi Detention Centres (Malta)
  - the Detention Centre Postojna (Slovenia)

#### **Networking among civil society actors at local and/or national level**

The research showed that there is no networking, neither at local nor at regional level, in

- Cyprus
- Czech Republic
- Estonia
- Latvia
- Lithuania
- Poland
- Slovakia

Some networking takes place in Hungary, Malta and Slovenia, as outlined below:

## Hungary

An informal network of NGOs assisting refugees and migrants has recently been set up in early 2007. Most participating NGOs provide direct assistance to refugees and migrants; some members are refugee/migrant community organisations. The network is aimed at

- exchanging information
- providing mutual support
- possible joint advocacy activities, projects and events.

## Malta

Although there is no formal NGO platform or association, most refugee-assisting NGOs collaborate on an occasional basis. This collaboration is usually linked to a particular issue or activity.

## Slovenia

In Slovenia there is a network of various NGOs, institutes and individuals working together through

- exchanging information
- asking for reciprocal help and
- lobbying for new laws.

## Formalised European and/or global linkages and patterns by country

Only some civil society actors cooperate at European and global level, either through internal or/and external networks.

### No linkages

There is no networking at all

- in Cyprus
- in Estonia

### Internal linkages by country

Internal linkages exist predominantly within the frame of the Catholic Church and human rights organisations/networks.

- **Czech Republic**
  - *Caritas Czech Republic* is a member of
    - *Caritas Europa*, which is a region of the global *Caritas Internationalis* confederation<sup>580</sup>.
- **Hungary**
  - *Hungarian Helsinki Committee* belongs to the community of the *International Helsinki Federation for Human Rights*<sup>581</sup>
- **Latvia**
  - *Caritas Latvia* is a member of
    - *Caritas Europa*, which is a region of the global *Caritas Internationalis* confederation<sup>582</sup>
- **Lithuania**
  - *Caritas of Vilnius Archdiocese* is a member of
    - *Caritas Europa*, which is a region of the global *Caritas Internationalis* confederation<sup>583</sup>
  - *Lithuanian Red Cross Society* is linked to the
    - *International Committee of the Red Cross (ICRC)*<sup>584</sup>.
- **Malta**
  - *Jehovah Witnesses* are part of the global
    - *Jehovah Witness network*<sup>585</sup>.
  - *Jesuit Refugee Service (JRS) – Malta* is part of the
    - *Jesuit Refugee Service (JRS) - Europe*<sup>586</sup>, which is a region of the global *Jesuit Refugee Service (JRS) International*<sup>587</sup>

<sup>580</sup> Cf. <http://www.caritas-europa.org/code/EN/abou.asp?Page=4&menuPage=4> (last visit on 30 July 2007)

<sup>581</sup> Cf. <http://www.ihf-hr.org/index.php> (last visit on 30 July 2007)

<sup>582</sup> Cf. <http://www.caritas-europa.org/code/EN/abou.asp?Page=4&menuPage=4> (last visit on 30 July 2007)

<sup>583</sup> Cf. <http://www.caritas-europa.org/code/EN/abou.asp?Page=4&menuPage=4> (last visit on 30 July 2007)

<sup>584</sup> Cf. <http://www.icrc.org/> (last visit on 30 July 2007)

<sup>585</sup> Cf. <http://www.watchtower.org/> (last visit on 30 July 2007)

<sup>586</sup> Cf. <http://www.jrseurope.org/> (last visit on 30 July 2007)

- *Legion of Mary* is part of the global
  - *Legion of Mary network*<sup>588</sup>.
- *Malta Society of the Red Cross* is linked to the
  - *International Committee of the Red Cross (ICRC)*<sup>589</sup>.
- **Poland**
  - *Caritas Poland* is a member of
    - *Caritas Europa*, which is a region of the global *Caritas Internationalis* confederation<sup>590</sup>.
  - *Helsinki Foundation of Human Rights* belongs to the community of the
    - *International Helsinki Federation for Human Rights*<sup>591</sup>.
- **Slovakia**
  - *Caritas Slovakia* is a member of
    - *Caritas Europa*, which is a region of the global *Caritas Internationalis* confederation<sup>592</sup>.
- **Slovenia**
  - *Caritas Slovenia* is a member of
    - *Caritas Europa*, which is a region of the global *Caritas Internationalis* confederation<sup>593</sup>.
  - *Jesuit Refugee Service (JRS) - Slovenia* is part of the
    - *Jesuit Refugee Service (JRS) - Europe*<sup>594</sup>, which is a region of the global *Jesuit Refugee Service (JRS) International*<sup>595</sup>.

### **External linkages by country**

In Cyprus, Estonia and Latvia, there are no external linkages at all.

In the other countries, to some extent, external linkages exist with the *European Council on Refugees and Exiles (ECRE)*<sup>596</sup> and the *International Detention Coalition (IDC)*<sup>597</sup>.

There are no linkages with the *Platform for International Cooperation on Undocumented Migrants (PICUM)*<sup>598</sup>.

- **Czech Republic**
  - *Counselling Centre for Refugees (CCR)* is a member of
    - *European Council on Refugees and Exiles (ECRE)*<sup>599</sup>.
  - *Organisation for Aid to Refugees (OPU)* is a member of
    - *European Council on Refugees and Exiles (ECRE)*<sup>600</sup>
    - *International Detention Coalition (IDC)*<sup>601</sup>.
  - *Association of citizens interested in migrants (SOZE)* is a member of
    - *European Council on Refugees and Exiles (ECRE)*<sup>602</sup>.
- **Hungary**
  - *Hungarian Helsinki Committee* is a member of
    - *European Council on Refugees and Exiles (ECRE)*<sup>603</sup>
    - *International Detention Coalition (IDC)*<sup>604</sup>.
- **Lithuania**
  - *Lithuanian Red Cross Society* is a member of
    - *European Council on Refugees and Exiles (ECRE)*<sup>605</sup>

<sup>587</sup> Cf. <http://www.jrs.net/home.php> (last visit on 30 July 2007)

<sup>588</sup> Cf. <http://www.legionofmary.org/lom.html> (last visit on 30 July 2007)

<sup>589</sup> Cf. <http://www.icrc.org/> (last visit on 30 July 2007)

<sup>590</sup> Cf. <http://www.caritas-europa.org/code/EN/about.asp?Page=4&menuPage=4> (last visit on 30 July 2007)

<sup>591</sup> Cf. <http://www.ihf-hr.org/index.php> (last visit on 30 July 2007)

<sup>592</sup> Cf. <http://www.caritas-europa.org/code/EN/about.asp?Page=4&menuPage=4> (last visit on 30 July 2007)

<sup>593</sup> Cf. <http://www.caritas-europa.org/code/EN/about.asp?Page=4&menuPage=4> (last visit on 30 July 2007)

<sup>594</sup> Cf. <http://www.jrseurope.org/> (last visit on 30 July 2007)

<sup>595</sup> Cf. <http://www.jrs.net/home.php> (last visit on 30 July 2007)

<sup>596</sup> Cf. <http://www.ecre.org/> (last visit on 30 July 2007)

<sup>597</sup> Cf. <http://idcoalition.org/> (last visit on 30 July 2007)

<sup>598</sup> Cf. <http://www.picum.org/> (last visit on 30 July 2007)

<sup>599</sup> Cf. <http://www.ecre.org/files/ECRE%20Member%20Agencies%20Jan%202007.pdf> (last visit on 30 July 2007)

<sup>600</sup> Cf. <http://www.ecre.org/files/ECRE%20Member%20Agencies%20Jan%202007.pdf> (last visit on 30 July 2007)

<sup>601</sup> Cf. <http://idcoalition.org/portal/content/view/31/108/> (last visit on 30 July 2007)

<sup>602</sup> Cf. <http://www.ecre.org/files/ECRE%20Member%20Agencies%20Jan%202007.pdf> (last visit on 30 July 2007)

<sup>603</sup> Cf. <http://www.ecre.org/files/ECRE%20Member%20Agencies%20Jan%202007.pdf> (last visit on 30 July 2007)

<sup>604</sup> Cf. <http://idcoalition.org/portal/content/view/31/108/> (last visit on 30 July 2007)

- **Malta**
  - Jesuit Refugee Service (JRS) – Malta is a member of
    - *International Detention Coalition (IDC)*<sup>606</sup>.
- **Poland**
  - *Polish Humanitarian Organisation* is a member of
    - *European Council on Refugees and Exiles (ECRE)*<sup>607</sup>
- **Slovakia**
  - *Slovak Humanitarian Council* is a member of
    - *European Council on Refugees and Exiles (ECRE)*<sup>608</sup>

#### 4.4 Recommendations for creating and strengthening a sustainable network of civil society actors

After comparative analysis and reflection, the Steering Sub-Committee of the project elaborated the following recommendations:

- **In general, the scope of regular and occasional activities (services for detainees) should be increased.**
  - Where national legislation is a basic obstacle, like in Cyprus, advocacy should aim at more permissive legislation.
  - Where administrative measures hinder more civil society involvement, specific attention should be given to promoting constructive cooperation between civil society actors and public authorities.
- **Civil society actors should look for specific information and training on opportunities and mechanisms for funding staff and their work.**
- **At local and national level, in a spirit of completion, civil society actors which are already active in the field of administrative detention should develop**
  - **fitting patterns for networking, for example:**
    - periodically meeting multilateral round tables
    - occasional multilateral round tables according to issues
    - bilateral cooperation on selected matters
  - **structured reciprocal written information, for example through**
    - common newsletters
    - mailing lists for sporadic information
  - **contacts to other civil society actors which are not yet active in the field of administrative detention and engage in awareness raising**
  - **establish/foster appropriate contacts with UNHCR and IOM**
- **The research partners in this project should regularly update the information in their national report.**
- **At European and global level, those actors which are not yet internationally linked, should be a member of at least one internal and/or external network/association/organisation.**

<sup>605</sup> Cf. <http://www.ecre.org/files/ECRE%20Member%20Agencies%20Jan%202007.pdf> (last visit on 30 July 2007)

<sup>606</sup> Cf. <http://idcoalition.org/portal/content/view/31/108/> (last visit on 30 July 2007)

<sup>607</sup> Cf. <http://www.ecre.org/files/ECRE%20Member%20Agencies%20Jan%202007.pdf> (last visit on 30 July 2007)

<sup>608</sup> Cf. <http://www.ecre.org/files/ECRE%20Member%20Agencies%20Jan%202007.pdf> (last visit on 30 July 2007)

# GLOSSARY

## A

<b>(An) act</b>	any law which is a national law having been adopted by the competent national legislative authorities
<b>Administrative detainee</b>	a person who is deprived of personal liberty <u>except</u> as a result of conviction for a violation of law <sup>609</sup>
<b>Administrative detention (cf. “detention”)</b>	a situation of “deprivation of liberty” <sup>610</sup> , not merely a “restriction upon liberty” <sup>611</sup> ; an administrative measure and not a measure of the penal system, although its use takes on characteristics of criminal incarceration. Thus it is neither pre-trial detention on remand nor imprisonment after a court trial.
<b>Administrative detention centre</b>	an administrative detention premise or an administrative detention facility exclusively for asylum seekers or persons who are at an external border of a EU Member State and who want to make an application for asylum at the border or illegally staying third-country nationals and where a large number of persons is accommodated
<b>Administrative detention facility</b>	consists of only buildings
<b>Administrative detention premise</b>	consists of buildings and surrounding outer space, for example, a garden, park, back yard
<b>(To) amend a law</b>	modify, change a law
<b>Asylum applicant (or asylum seeker)</b>	a third-country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken” <sup>612</sup>
<b>Asylum procedure detention</b>	detention during the asylum procedure; if the asylum procedure takes place at a border, asylum procedure detention is at the same time pre-admission detention; if the asylum procedure takes place on the territory, asylum procedure detention is at the same time inland detention
<b>Asylum seeker (or asylum applicant)</b>	a third-country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken” <sup>613</sup>

## D

<b>(To) detain</b>	to deprive someone of her/his liberty <u>except</u> as a result of conviction for a violation of law” <sup>614</sup>
<b>Detainee</b>	cf. “Administrative detainee”

<sup>609</sup> Cf. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, 76th plenary meeting

<sup>610</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 5 (1)

<sup>611</sup> Mahad Lahima, Lahima, Abdelkader and Mohamed Amuur v. France, Judgment of the European Court of Human Rights No 17/1995/523/609 of 25 June 1996

<sup>612</sup> COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Directive), Art. 2 (c); COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status (Asylum Procedures Directive), Art. 2 (c)

<sup>613</sup> COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Directive), Art. 2 (c); COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States granting and withdrawing refugee status (Asylum Procedures Directive), Art. 2 (c)

<sup>614</sup> Cf. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, 76th plenary meeting

<b>Detention</b> (cf. “Administrative detention”)	At EU level “detention” of asylum seekers is legally defined as the “confinement (...) by a Member State within a particular place, where (an asylum seeker) is deprived of his or her freedom of movement” <sup>615</sup> ; previously, the EU Commission had proposed to define it as “the confinement of (an applicant for asylum) by a Member State within a restricted area, where his freedom of movement is substantially curtailed” <sup>616</sup> .
	As far as the notion “detention” of illegally staying third-country nationals is concerned, the EU Commission is referring to it as “temporary custody” of a “third-country national” <sup>617</sup> .
<b>Detention centre</b>	cf. “Administrative detention centre”
<b>Detention facility</b>	cf. “Administrative detention facility”
<b>Detention order</b>	an administrative or court decision or act ordering the detention of a person (in some countries the removal order and the detention order are not separated and thus constitute one single measure)
<b>Detention premise</b>	cf. “Administrative detention premise”
<b>Directive</b> (cf. EU directive”)	An EU directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods (Art. 249 Treaty of Amsterdam).
<b>E</b>	
<b>EU acquis</b> (cf. “EU law”)	the complete set of EU law
<b>EU directive</b>	An EU directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods (Art. 249 Treaty of Amsterdam).
<b>EU law</b>	EU law distinguishes three types of law: primary law (treaties of the EU), secondary legislation (decisions, directives, recommendations and regulations) and decisions of the European Court of Justice and the Court of First Instance.
<b>EU legislation</b>	Decisions, directives, recommendations and regulations (also called “secondary legislation”)
<b>F</b>	
<b>Foreigner</b>	a person who is not a citizen of the country where she/he is staying at
<b>I</b>	
<b>illegally staying third-country national</b>	“any person who is not a citizen of the (European) Union” <sup>618</sup> and whose “presence on the territory of a Member State” is regarded as “illegal stay” because the stay “does not fulfil, or no longer fulfils the conditions for stay or residence in that Member State” <sup>619</sup> .
<b>(To) imprison</b>	to deprive someone of her/his liberty as a result of conviction for a violation of law <sup>620</sup>

<sup>615</sup> Article 2 (k) Reception Directive

<sup>616</sup> Article 2 (j) COM (2002) 326 final/2

<sup>617</sup> Art. 14 COM Proposal Returns Directive

<sup>618</sup> 2005 EU Commission Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Proposal Returns Directive), COM (2005) 391, Art. 3 (a)

<sup>619</sup> 2005 EU Commission Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Proposal Returns Directive), COM (2005) 391, Art. 3 (b)

<b>Inland detention</b>	detention on the territory of a country
<b>L</b>	
<b>Law</b> (cf. “act”)	very general notion, may describe legislation and court decisions
<b>Legal age of adulthood</b>	when a minor stops being a minor and can legally act on his/her own
<b>M</b>	
<b>Minors</b>	those persons who have not yet reached the legal age of adulthood (age in the country of stay, not in the country of origin)
<b>Migrant</b>	a person who is staying in a State of which he or she is not a national (sociological notion) <sup>621</sup>
<b>O</b>	
<b>Outside world</b>	lawyers, NGOs, pastoral workers, family, friends etc; services in the centre are not considered as „outside world“
<b>P</b>	
<b>Particularly vulnerable people or people in vulnerable situations include, for example,</b>	<ul style="list-style-type: none"> <li>• elderly persons</li> <li>• families</li> <li>• persons with physical or mental disabilities</li> <li>• minors</li> <li>• pregnant women</li> <li>• sick persons</li> <li>• single mothers or fathers with child/children</li> <li>• unaccompanied minors</li> <li>• traumatised persons</li> </ul>
<b>Pre-admission detention or pre-accession detention</b> (cf. “detention”)	detention before somebody is admitted to the territory (at borders)
<b>pre-removal detention</b> (cf. “detention”)	detention for the purpose of removal
<b>Prison</b>	a closed centre for persons who are deprived of personal liberty because a court convicted them for violation of law
<b>Prisoner</b>	a person who is deprived of personal liberty <u>as a result</u> of conviction for a violation of law <sup>622</sup>
<b>R</b>	
<b>Removal/to remove</b>	the execution of the obligation to return, namely the physical transportation out of the country <sup>623</sup> (the person is on the territory of a country)

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<sup>620</sup> Cf. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, 76th plenary meeting

<sup>621</sup> cf. Art. 2 Nr. 1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: “‘Migrant worker’ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”

<sup>622</sup> Cf. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, 76th plenary meeting

<sup>623</sup> 2005 EU Commission Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Proposal Returns Directive), COM (2005) 391, Art. 3 (e)

<b>Removal order</b>	“an administrative or judicial decision or act ordering the removal” <sup>624</sup> (in some countries the return decision and the removal order are not separated and thus constitute one single measure)
<b>Repulsion/to repulse</b>	to push back (at a border)
<b>Return/to return</b>	“the process of going back to one’s country of origin, transit or another third-country, whether voluntary or enforced” <sup>625</sup>
<b>Return decision</b>	“an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing an obligation to return” <sup>626</sup> (in some countries the return decision and the removal order are not separated and thus constitute one single act)
<b>T</b>	
<b>Temporary custody</b>	cf. “detention”

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<sup>624</sup> 2005 EU Commission Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Proposal Returns Directive), COM (2005) 391, Art. 3 (f)

<sup>625</sup> 2005 EU Commission Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Proposal Returns Directive), COM (2005) 391, Art. 3 (c)

<sup>626</sup> 2005 EU Commission Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Proposal Returns Directive), COM (2005) 391, Art. 3 (d)



# ANNEX A

## Cyprus

- The **Lakatamia Police Station** is located at the back of a district of Nicosia (Lakatamia) in the north-eastern suburbs of the capital.
- The **Larnaca Police Station** is located within a closed space at the Larnaca Police Station, in the city of Larnaca, the third largest city in Cyprus, approximately 60 kilometres from the capital (Nicosia) and only a stone's throw from the coast.
- The **Larnaca International Airport** detention space is located within the Larnaca International Airport building. The airport is located in the suburbs of the Larnaca district, on the coast, approximately 60 kilometres from the capital (Nicosia).
- The **Limassol Police Station** is located within a closed space at the Limassol Police Station, in the city of Limassol, the second largest city in Cyprus, approximately 80 kilometres from the capital (Nicosia) on the coast.
- The **Nicosia Central Prison Block 10** is located within the enclosed area of the Central Prison in Nicosia, in a special ward known as "Block 10".

## Czech Republic

- The **Detention Centre Bela-Jezova** is located in Central Bohemia, 20 km from Mlada Boleslav.
- The **Detention centre Postorna** is located in the Southern Moravia region, 50 km from Brno, close to border with Austria.
- The **Detention Centre Velke Prilepy** is located 20 km from Prague in Central Bohemia.
- The **International Airport Ruzyně** closed reception space is located in the transit zone of the international airport in Prague, and it is a special area on the ground floor of the airport.
- The **closed reception centre Vysni Lhoty** is located in Northern Moravia, 30 km from Ostrava.

## Estonia

- The **Citizenship and Migration Board Removal Centre Väljasaatmiskeskus** is located around 15 km outside of Tallinn in Harku County Aia 5, near to the Harku Prison.
- The **North Police Prefect Police Station**

## Hungary

- **Ferihegy Border Guard Directorate** (alien policing jail)
- **Ferihegy International Airport** (transit zone detention facility for persons to be returned)
- **Nyírbátor Border Guard Directorate** (alien policing jail)
- **Budapest Border Guard Directorate** (alien policing jail)
- **Győr Border Guard Directorate** (alien policing jail)

## Latvia

- **Internment Camp for Illegal Immigrants in Olaine**

## Lithuania

- The **Pabradė Foreigners' Registration Centre** is located in the Švenčionys district, Pabradė, 45 km northeast of Vilnius, 12 km from the EU external border with Belarus.

## Malta

- The **Lyster Detention Centre** is located in Hal Far, very close to Malta International Airport. Hal Far is a largely industrial area, situated close to the coastal village of Birzebbuga.
- The **Safi Detention Centre** is located at the outskirts of Safi Village, just opposite the runway of the Malta International Airport.
- The **Ta' Kandja Detention Centre** is located within the grounds of the headquarters of the Special Assignment Group (SAG) of the Malta Police Force at the outskirts of Siggiewi Village.

## Poland

- The **Krosno Odrzańskie Border Police Station** is located within 30 km from the western boarder of Poland
- The **Lesznawola Guarded Centre for Foreigners** is located around 10 km from Grójec and 45 km from Warsaw.
- The **Lublin Police Station** is located within 95 km from the eastern land Border of Poland.
- The **Okęcie International Airport/Warsaw** detention space is located in close neighborhood of Warsaw International Airport.
- The **Szczecin Border Police Station** is located within around 25 km from the western land Border of Poland as well as sea border
- The **Wloclawek Police Station** is located within 348 km from the eastern land Border of Poland and also 348 km from the western Border

**Slovakia**

- The **Medved'ov Police Detention Centre for Foreigners** is located in the West of Slovakia, about 70 km from Bratislava, close to the Hungarian border.
- The **Sečovce Police Detention Centre for Foreigners** is located in the Eastern part of Slovakia, about 40 km from Košice, close to the Ukraine border.

**Slovenia**

- The **Detention Centre Postojna** is located in the Veliki otok, not far away from Postojna, which is about 50 km from the capital on the way towards Trieste (Italy).

## ANNEX B

### **CYPRUS: SYMFLIOSI**

*Symfiliosi* is a non-profit non-governmental non-partisan organisation based in Cyprus.

*Symfiliosi /Uzlaşma* are the Greek and Turkish words for 'Reconciliation', respectively. Its mission is to actively engage Cypriot society in a dialogue on reconciliation between the two larger communities of Cyprus, Turkish-Cypriots and Greek-Cypriots, with the aim of promoting a culture of reconciliation, peace, democracy and cooperation. At the same time, the organization has a keen interest and involvement in anti-racism, anti-discrimination, social cohesion and integration of migrant communities, combating sex trafficking and safeguarding the rights of minorities.

**Dr Nicos Trimikliniotis** is a British trained Barrister at law and sociologist. He is an adjunct assistant professor at Intercollege and the national expert of the Network of Legal Experts on the transposition of the anti-discrimination EU acquis (author of the Reports on Cyprus in 2003, 2004, 2005, 2006).

### **CZECH REPUBLIC: COUNSELLING CENTRE FOR REFUGEES (CCR)**

The *Counselling Centre for Refugees* primarily provides legal, social and psychological assistance to asylum seekers in the Czech Republic. Its services are for all migrants, irrespective of their legal status. Its employees regularly visit asylum seekers at refugee facilities. Along with services for asylum seekers, the *Counselling Centre for Refugees* informs the media, legislators, government and municipal officials, as well as the general public, by means of lobbying, public campaigns, lectures, publications, concerts, exhibitions and various other activities and events. It intends to influence public opinion towards greater tolerance and openness for principles respected in democratic societies.

**Magda Faltova** works as a legal councillor, providing legal counselling to asylum seekers and foreigners staying in the Czech Republic, representing clients during asylum interviews and immigration procedures and writing appeals.

### **ESTONIA: ESTONIAN REFUGEE COUNCIL EESTI PAGULASABI (ERC/EP)**

*Estonian Refugee Council Eesti Pagulasabi* is a non-governmental organisation founded in December 2000 as a continuation of the Legal Assistance Project that operated in the period from September 1999 to December 2000. The main objective of the activities of the *Estonian Refugee Council Eesti Pagulasabi* is to ensure that persons in need of international protection who come to Estonia are treated in accordance with international standards and receive such protection. *Estonian Refugee Council Eesti Pagulasabi* provides professional, but free-of-fees legal assistance to asylum seekers and disseminates information about refugee issues and sensitises the public for these questions more generally.

**Lehte Roots** is a lawyer and obtained a Master's Degree in Public Management at the University of Potsdam (Germany). She is a founding member of *Estonian Refugee Council Eesti Pagulasabi* and a member of the Board of *Estonian Refugee Council Eesti Pagulasabi*.

### **HUNGARY: HUNGARIAN HELSINKI COMMITTEE (HHC)**

*Hungarian Helsinki Committee* monitors the enforcement of human rights enshrined in international human rights instruments, provides legal assistance to victims of human rights abuses falling under its scope of activity, and informs the public about rights violations. In Hungary, the *Hungarian Helsinki Committee* (HHC) is the main NGO that has regular access to detention centres maintained by the border guards. The HHC's access is based on a bilateral agreement of cooperation between the HHC and the National Border Guard Headquarters, signed in 2002, which allows the HHC to provide legal assistance to detained migrants and to monitor conditions of detention in so-called alien policing jails. Other NGOs also pay visits to border guard detention centres on an irregular basis, such as the Mahatma Gandhi Human Rights Organisation, or religious/church groups.

**Marta Pardavi** holds a law degree from the Budapest-based ELTE Faculty of Law. She is co-chairing *Hungarian Helsinki Committee*, and her focus has been on monitoring detention, supervising the coordination of legal assistance and various capacity building programmes, and legal aid reform.

#### **LATVIA: CARITAS LATVIA**

*Caritas Latvia* is a non-governmental organisation founded by the Latvian Catholic Bishop Conference in 2004. It is present in the international structure of Caritas Internationalis and Caritas Europa. Its mission is to promote Caritas Network among the Catholic population in Latvia, as well as to serve and assist socially deprived people in Latvia, which includes migrants and refugees. Since 2005 *Caritas Latvia* has joined the Equal Project, "Step by Step", which was started by the Office of Citizenship and Migration Affairs in Latvia. The role of *Caritas Latvia* in this project is to develop a skill audit for asylum seekers, to assist them in integrating to life in Latvia and enter the job market. The Equal Project was *Caritas Latvia's* first experience of work with migrants, and since then work with asylum seekers and illegal immigrants has become a priority for the organization.

#### **LITHUANIA: CARITAS LITHUANIA-VILNIUS**

*CARITAS Lithuania-Vilnius* is a Catholic organisation in the Archdiocese of Vilnius, which is part of *CARITAS Internationalis* and *CARITAS Europa*. It provides social services to asylum seekers and focuses on their local integration. *CARITAS Lithuania-Vilnius* has an active role in helping asylum seekers to lead a more dignified life in the Foreigners' Registration Centre, a premise in the district of Švenčionys, 45 km northeast of Vilnius. The services in the Foreigners' Registration Centre include: information; material help for particularly vulnerable persons; psychological consultation; representation of children at the school; IT and Internet courses; sport activities as well as other leisure activities.

**Tomas Kurapkaitis** holds a Bachelor's and Master's Degree of Social Work at Vilnius University and studied social pedagogy at the Fachhochschule in Dresden (Germany). With *CARITAS Lithuania-Vilnius* he is responsible for Refugee Programme Development. He is a lecturer at Vilnius University.

#### **MALTA: JESUIT REFUGEE SERVICE (JRS) MALTA**

*Jesuit Refugee Service (JRS) - Malta* is part of the *Jesuit Refugee Service (JRS)*, an international Catholic organisation, which was set up by the Society of Jesus (Jesuits) in 1980 and is now working over 50 countries worldwide. Its mission is to accompany, to serve and to plead the cause of refugees and other forcibly displaced people. *JRS Malta* gives priority to asylum seekers in detention, offering visits, legal assistance, social work and pastoral care in four centres, and lobbying for a change in government policy on detention. *JRS Malta* maintains contact with migrants when they are released from detention. Within civil society, *JRS Malta* also works at raising awareness on the plight of refugees.

**Dr Katrine Camilleri** is a law graduate from the University of Malta. She has worked with JRS Malta since 1999, offering legal assistance to asylum seekers and working on project development within the organization.

#### **POLAND: CARITAS Polska**

*CARITAS Poland* is a Catholic organisation in Poland, which is part of *CARITAS Internationalis* and *CARITAS Europa*. Its mission includes accompanying and serving migrants and refugees. Beneficiaries are: recognised refugees, asylum seekers, and persons under subsidiary forms of protection, migrants, returnees, and couples in mixed marriages. The support covers: psychological support, legal counselling, social support and social integration activities. *CARITAS Poland* runs five Centres of Support for Migrants and Refugees, located in Białystok, Lublin, Słubice, Warsaw and Zgorzelec. *CARITAS Poland* pursues also social and information campaigns as well as awareness raising projects and advocacy work related to problems and situations of migrants and refugees in Poland.

**Katarzyna Sekuła** works as migration officer with Caritas Poland. She is an elected member of the Migration Commission of Caritas Europa for the term 2008-2010. Currently, she coordinates the project entitled "Pre-integration of asylum seekers and integration of foreigners with tolerated stay permit and recognised refugees. psychological, legal and social aid."

#### **SLOVAKIA: CARITAS SLOVAKIA**

*CARITAS Slovakia* is an organisation of the Roman-Catholic and Greek-Catholic Church in Slovakia and it is part of *CARITAS Internationalis* and *CARITAS Europa*. It is a relief, development and social service organisation working to build a better world, especially for the poor and oppressed. Its activities are focused on combating poverty and social inequality as well as on migration and asylum.

**Alzbeta Koválová** holds a philological degree and used to be a Senior Lecturer for foreign students at Comenius University in Bratislava (Slovakia). She is the National Coordinator of Caritas Slovakia for migration affairs.

#### **SLOVENIA: JESUIT REFUGEE SERVICE (JRS) Slovenia**

*Jesuit Refugee Service (JRS) Slovenia* is part of the *Jesuit Refugee Service (JRS)*, an international Catholic organisation, which was set up by the Society of Jesus (Jesuits) in 1980 and is now working over 50 countries

worldwide. Its mission is to accompany, to serve and to plead the cause of refugees and other forcibly displaced people. *JRS Slovenia* provides social and pastoral services to asylum seekers in an open reception centre and to detainees in the detention centre in Postojna. Among further projects, *JRS Slovenia* broadcasts a radio programme called “Building a more Open Society”, dealing with refugee, detention and migration issues.

**Robin Schweiger SJ** holds a degree in economics (Ljubljana, Slovenia), philosophy (Dublin, Ireland), theology (Rome, Italy) and a PhD from the Gregorian University in Rome. He is a pastoral worker and the National Director of *JRS Slovenia*.

## **PROFILES OF PARTNER ORGANISATIONS IN THE EU-15 MEMBER STATES**

### **FRANCE: CIMADE**

**Caroline Intrand**

### **GERMANY: JESUIT REFUGEE SERVICE (JRS) GERMANY**

*Jesuit Refugee Service (JRS) Germany* is part of the *Jesuit Refugee Service (JRS)*, an international Catholic organisation, which was set up by the Society of Jesus (Jesuits) in 1980 and is now working in over 50 countries worldwide. Its mission is to accompany, to serve and to plead the cause of refugees and other forcibly displaced people. JRS-Germany focuses on administrative detention of illegally staying third-country-nationals and destitution of refugees providing pastoral, social and legal counselling; from there JRS-Germany draws its analysis and advocacy work.

**Stefan Kefler** holds a Master of Arts in History, Economic Sciences and African Studies of the University of Cologne. He works as Senior policy officer with *Jesuit Refugee Service (JRS) – Germany*.

### **GERMANY: RENOVABIS**

*Renovabis* is the solidarity initiative of the German Catholics with the people in Central and Eastern Europe. Founded in March 1993 by the Catholic Episcopal Conference in Germany, upon the proposal of the Central Committee of the German Catholics, the initiative supports its partners in the pastoral, social and societal renewal of the formerly communist countries of Central, Eastern and South-Eastern Europe. During the past 14 years, *Renovabis* has supported the realisation of some 14,000 projects in 28 countries of Central, Eastern and South-Eastern Europe – with an overall volume of almost 390 million €. *Renovabis* initiates and accompanies partnerships between West and East in Europe and thus furthers the exchange of experience, human encounters and common learning. In this context *Renovabis* also supports organisations promoting the development of civil societies in the corresponding countries.

### **EUROPE : JESUIT REFUGEE SERVICE (JRS) - EUROPE**

*Jesuit Refugee Service (JRS) - Europe* is a regional office which is part of the *Jesuit Refugee Service (JRS)*, an international Catholic organisation, which was set up by the Society of Jesus (Jesuits) in 1980 and is now working in over 50 countries worldwide. Its mission is to accompany, to serve and to plead the cause of refugees and other forcibly displaced people. The JRS-Europe office in Brussels networks with other JRS regional offices; it supports the national JRS offices in Europe, coordinates their activities, analyses EU policy and legislation and advocates at EU level. JRS-Europe work focuses on administrative detention, destitution and externalisation of asylum as well as questions of migration and development.

**Cornelia Bührle RSCJ** holds a German Grand State Exam law degree and studied political science, philosophy and theology. Until recently she worked as EU Policy and JRS-Europe Advocacy Officer at *Jesuit Refugee Service (JRS) – Europe*.

# ANNEX C

## AT NATIONAL LEVEL

### CYPRUS

- Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee on the Prevention of Torture and Degrading Treatment or Punishment (CPT) from 22 to 30 May 2000, Strasbourg 15 January 2003.
- Response of the Government of Cyprus on the visit to Cyprus carried out by the European Committee on the Prevention of Torture and Degrading Treatment or Punishment (CPT) from 22 to 30 May 2000, Strasbourg 15 January 2003.
- Αυτεπάγγελτη Έρευνα Επιτρόπου Διοικήσεως για το σωφρονιστικό σύστημα της Κύπρου και τις συνθήκες κράτησης στις Κεντρικές Φυλακές, 26 Μαΐου 2004 (English Translation: Self-initiated investigation of the Commissioner for Administration<sup>627</sup> into the prison system of Cyprus and conditions of Detention in Central Prison, 26 May 2004).
- Έκθεση Επιτρόπου Διοικήσεως αναφορικά με τις συνθήκες κράτησης αλλοδαπών στις Κεντρικές Φυλακές και στα Αστυνομικά Κρατητήρια, 2 Φεβρουαρίου 2005 (English Translation: Report of the Commissioner for Administration<sup>628</sup> on the conditions of detention of foreigners in Central Prison and in Police Detention Centres, 2 February 2005).
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- ECRI (2006), Third Report on Cyprus, Adopted on 16 December 2005, Strasbourg 16.05.2006.

### CZECH REPUBLIC

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- Zákon 326/1999 Sb. o pobytu cizinců na území České republiky. Act 326/1999 on the Residence of Foreigners in the Territory of the Czech Republic (as amended on 1.1.2007)  
[http://www.mvcr.cz/azyl/migrace/legislativa/326\\_99\\_angl.pdf](http://www.mvcr.cz/azyl/migrace/legislativa/326_99_angl.pdf)
- Zákon 326/1999 Sb. o pobytu cizinců na území České republiky. Act 326/1999 on the Residence of Foreigners in the Territory of the Czech Republic (as amended on 1.1.2007)  
[http://www.mvcr.cz/azyl/migrace/legislativa/326\\_99\\_angl.pdf](http://www.mvcr.cz/azyl/migrace/legislativa/326_99_angl.pdf)
- Zákon 325/1999 Sb. o azylu. Asylum Act (as amended on 1.1.2007)  
[http://www.unhcr.cz/dokumenty/legislation\\_Aliens\\_Act.doc](http://www.unhcr.cz/dokumenty/legislation_Aliens_Act.doc)
- Správní řád. Code of administrative procedure (as amended on 1.1.2006)  
[http://portal.gov.cz/wps/portal/\\_s.155/701/cmd/ad/c/313/ce/10821/p/8411/\\_s.155/701?PC\\_8411\\_name=spr%C3%A1vn%C3%AD%20%C5%99%C3%A1d&PC\\_8411\\_l=500/2004&PC\\_8411\\_ps=10#10821](http://portal.gov.cz/wps/portal/_s.155/701/cmd/ad/c/313/ce/10821/p/8411/_s.155/701?PC_8411_name=spr%C3%A1vn%C3%AD%20%C5%99%C3%A1d&PC_8411_l=500/2004&PC_8411_ps=10#10821)
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<http://www.nssoud.cz/english.php>
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[http://www.nssoud.cz/zakony/99\\_1963.pdf](http://www.nssoud.cz/zakony/99_1963.pdf)

### ESTONIA

- **Ministry of Interior of Estonia**  
Changes in the administrative detention procedures before and after 01.05.2004/Changes in the migration field  
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- Act on Granting International Protection to Aliens, RT I 2006, 2, 3, enforced 01.07.2006,
- State Border Act, RT I 1994, 54, 902, enforced 31. 07. 1994
- Aliens Act, RT I 1993, 44, 637 enforced 12.07.1993

<sup>627</sup> This is the term by which the Ombudswoman is commonly referred to in Cyprus.

<sup>628</sup> This is the term by which the Ombudswoman is commonly referred to in Cyprus.

<sup>629</sup> This is the term by which the Ombudswoman is commonly referred to in Cyprus.

- Imprisonment Act, ([RT I 2000, 58, 376](#)), enforced 1.12.2000.
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- Internal code of the Citizenship and Migration Board Removal Centre Vājasaatmiskeskus: <https://riigiteataja.ee/ert/act.jsp?id=12748040>

#### **HUNGARY**

- Refugee Law Reader  
[www.refugeelawreader.org](http://www.refugeelawreader.org)

#### **LATVIA (No bibliography provided by the partner)**

#### **LITHUANIA**

- Istatymas Dėl užsieniečių teisinės padėties  
Law on the Legal Status of Aliens of 29 April 2004 (as amended on 29 November 2006)  
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**link does not work**
- Administracinių bylų teisėnos įstatymas  
Law on Administrative Proceedings of 14 January 1999 (as amended on 11 November 2004)  
[http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=284278](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=284278)
- Vyriausybės nutarimas dėl Laikinojo užsieniečių apgyvendinimo Užsieniečių registracijos centre tvarkos ir sąlygų patvirtinimo  
Order and Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre, approved by the Decree of the Government of the Republic of Lithuania of 29 January, 2001  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=208893](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=208893)

#### **MALTA**

- Council of Europe, Office for the Commissioner for Human Rights, Report by Mr Alvaro Gil Robles Commissioner for Human Rights on his visit to Malta – 20-21 October, 2003, Strasbourg, February 2, 2004
- Council of Europe, Office for the Commissioner for Human Rights, Follow-up report on Malta – 2003-2005, Strasbourg, March 29, 2005
- Council of Europe, Committee for the Prevention of Torture, Report on visit to Malta carried out from 18-22 January 2004, Strasbourg, August 25, 2005
- Council of Europe, Committee for the Prevention of Torture, Report on visit to Malta carried out from 13-18 May 2001, Strasbourg, August 27, 2002
- European Parliament Committee on Civil Liberties, Report by the LIBE Committee Delegation on its visit to the administrative detention centres in Malta, Brussels, March 30, 2006

#### **POLAND**

- **Office for Repatriation and Aliens: Legislation in Poland**  
<http://www.uric.gov.pl/Polish.law.265.html>

#### **SLOVAKIA**

- **UNHCR/Slovak Humanitarian Board**  
Clinic of Law TU, booklet  
Konanie o udelenie azylu na území Slovenskej republiky  
Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern European Countries, Danish Refugee Council, 1999
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Act as of June 20, 2002 on Asylum and Amendment of Some Acts  
Amendment: 606/2003 Coll.  
Amendment: 207/2004 Coll.  
Amendment: 1/2005 Coll.  
Amendment: 692/2006 Coll.
- 48/2002 Coll.  
Act of 13 December 2001 on the Stay of Aliens and on Amendments and Modifications of Some Other Acts  
Amendment: 408/2002 Coll.  
Amendment: 480/2002 Coll.  
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Amendment: 474/2005 Coll.  
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## **SLOVENIA**

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- **Lipovec Čebren Uršula**  
V zoni prebežništva: Antropološke raziskave prebežnikov v Sloveniji, Filozofska fakulteta, Ljubljana, 2002.
- **UNHCR/Save the Children**  
Program za otroke brez spremstva v Evropi: Načela dobre prakse”, Ljubljana, 2005.
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Monitoring policijskih prostorov za pridržanje, Amnesty International Slovenije, Ljubljana, 2004.
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Nadzor nad policijo in reševanje pritožb zopre njeno delo, Amnesty International Slovenije, Ljubljana, 2004.

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- **Zavratnik Zimic Simona**  
Migration Trends in Selected EU Applicant Countries: Slovenia, IOM, Ljubljana, 2003.
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<http://register.consilium.eu.int>
- European Court of Human Rights database and judgements  
<http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>
- European Parliament documents  
<http://www.europarl.eu.int/parliament/public/staticDisplay.do;jsessionid=81A730084F62E228C46431079E723ABC.node2?language=EN&id=151>
- European Union EU Prelex  
<http://europa.eu.int/prelex/apcnet.cfm?CL=en>
- European Union EU ScadPlus  
[http://europa.eu.int/scadplus/scad\\_en.htm](http://europa.eu.int/scadplus/scad_en.htm)
- European Union EU N-Lex  
<http://eur-lex.europa.eu/n-lex/pays.html?lang=en>



# ANNEX D

## Useful web links to organisations and institutions

### NATIONAL WEB LINKS

#### CYPRUS

- Symfiliosi  
<http://www.reconciliationcy.org>

#### CZECH REPUBLIC

- Counselling Centre for Refugees  
<http://www.uprchlici.cz>
- <http://www.mvcr.cz/ministerstvo/suz/lhoty.html>
- <http://www.mvcr.cz/ministerstvo/suz/praha.html>
- <http://www.mvcr.cz/ministerstvo/suz/zzc.html>

#### ESTONIA

- Inimõiguste Teabekeskus (Legal Information Centre for Human Rights/LICHR)  
<http://www.lichr.ee/new/index.php?page=10300>
- Ministry of Interior Estonia  
<http://www.siseministeerium.ee>

#### HUNGARY

- Hungarian Helsinki Committee  
<http://www.helsinki.hu>
- Mahatma Gandhi Human Rights Organisation/Mahatma Gandhi Emberi Jogi Egyesület  
[budgandhim@yahoo.com](mailto:budgandhim@yahoo.com)

#### LATVIA

- Legislation in Latvia: Immigration Law  
<http://www.likumi.lv/doc.php?id=68522&mode=KDOC>
- State Border Guard of the Republic of Latvia  
<http://robsardze.gov.lv>
- Office of citizenship and Migration Affairs in Latvia  
<http://www.ocma.gov.lv/>
- Office of citizenship and Migration Affairs in Latvia  
<http://www.ocma.gov.lv/>
- Office of citizenship and Migration Affairs in Latvia  
<http://www.ocma.gov.lv/>
- Latvian Red Cross  
<http://www.redcross.lv/aktualitates.php?lang=lv>
- Dialogi  
<http://www.dialogi.lv/>

#### LITHUANIA

- Caritas Lithuania  
<http://www.caritas.lt>
- Lithuanian Red Cross Society  
<http://www.redcross.lt/home.html>

#### MALTA

- Jesuit Refugee Service (JRS) – Malta  
<http://www.jrsmalta.org>

#### POLAND

- Caritas Poland  
<http://www.caritas.pl/>
- Guarded Centre for Aliens in Lesznowola  
<http://www.kwp.radom.pl/lesz.htm>
- Halina Nieć Association  
<http://www.pomocprawna.org/monitoringi.html>

- Helsinki Foundation for Human Rights  
<http://www.hfhrpol.waw.pl/en>
- Legal Intervention Association  
<http://www.interwencjaprawna.pl/index.html>
- UNHCR Poland  
<http://www.unhcr.pl/english>

#### **SLOVAKIA**

- *Caritas Slovakia*  
<http://www.charita.sk>
- *MINISTERSTVO VNÚTRA SLOVENSKEJ REPUBLIKY (MINISTRY OF INTERIOR OF THE SLOVAK REPUBLIC)*  
<http://www.minv.sk>
- Separated Children in Europe Programme  
<http://www.separated-children-europe-programme.org>
- UNHCR Slovakia  
<http://www.unhcr.sk>

#### **SLOVENIA**

- Društvo Ključ (Association Key)  
<http://drustvo-kljuc.si>
- IOM (International Organization for Migration)  
<http://www.iom.si>
- Jesuit Refugee Service (JRS) - Slovenia  
<http://www.rkc.si/jrs>
- PIC (Pravno-Informacijski Center nevladnih organizacij)  
<http://www.pic.si>
- Slovenska Filantropija (The Slovene Philanthropy)  
<http://www.filantropija.org>
- Slovenska Karitas (Caritas Slovenia)  
<http://www.karitas.si>

#### **EUROPEAN AND GLOBAL WEB LINKS**

- Alternatives to detention  
[www.alternatives-to-detention.org](http://www.alternatives-to-detention.org)
  - Caritas Europa  
[www.caritas-europa.org](http://www.caritas-europa.org)
  - Council of Europe CPT  
[www.cpt.coe.int/en](http://www.cpt.coe.int/en)
  - European Council on Refugees and Exiles  
[www.ecre.org](http://www.ecre.org)
  - European Court of Human Rights  
<http://www.echr.coe.int/ECHR>
  - European Union  
[europa.eu.int/comm/index\\_en.htm](http://europa.eu.int/comm/index_en.htm)
  - Helsinki Federation for Human Rights  
[www.ihf-hr.org](http://www.ihf-hr.org)
  - International Detention Coalition (IDC)  
[www.idcoalition.org](http://www.idcoalition.org)
  - Jesuit Refugee Service (JRS) - Europe  
[www.detention-in-europe.org](http://www.detention-in-europe.org)
  - Platform for International Cooperation on Undocumented Migrants  
[www.picum.org](http://www.picum.org)
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