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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*

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EXECUTIVE SUMMARY

On 11 and 12 May 2005 representatives of the International Helsinki Federation for Human Rights (IHF) conducted a mission on monitoring places of detention in the Republic of Hungary. The mission was the fourth under the project "Preventing Torture in the Closed Institutions of Central and Eastern Europe", financed by the European Commission. The project has eight partner organizations from Eastern and Central European countries. The leading partner in this project is the Bulgarian Helsinki Committee. The organizations include (in alphabetical order):

- Bulgarian Helsinki Committee
- Greek Helsinki Monitor
- Helsinki Committee for Human Rights in Serbia
- Helsinki Committee for Human Rights in the Republic of Macedonia
- Helsinki Foundation for Human Rights in Poland
- Hungarian Helsinki Committee (HHC)
- International Helsinki Federation for Human Rights (IHF)
- Moscow Helsinki Group

The IHF delegation visited eight types of institutions, which function under the authority of different organs (Ministries and local councils):

1) Institutions under the authority of the **Ministry of Justice** (and managed directly by the National Prison Administration) include

- **penitentiary institutions** for the confinement of persons sentenced for criminal offences or detained on suspicion for having committed an offence;
- the **Forensic Observation and Psychiatric Institution (IMEI)**, which is the only high security psychiatric institution in Hungary for those subject to "compulsory medical treatment" (i.e. those who have committed violent crimes against other persons or crimes that have endangered public safety and where there is a danger that they may commit similar crimes in the future); and
- the **Central Prison Hospital** in Tököl

2) Institutions under the authority of the **Ministry of Interior** include

- **police jails**, where criminal suspects can be detained exceptionally and for no longer than sixty days (police jails are managed directly by the County Police Headquarters, subordinated to the National Police Headquarters);
- **alien policing jails**, where non-Hungarian citizens can be detained if their entry or stay in Hungary does not meet the legal requirements and their expulsion was ordered or the expulsion order is under preparation (alien policing jails are managed directly by the Border Guards).

3) **Reformatories for juvenile offenders**, where reformatory education and pre-trial detention of juvenile offenders is implemented, are under the authority of the **Ministry of Youth, Family, Social Affairs and Equality**

4) Institutions under the authority of **local councils** include

- **psychiatric hospitals and wards**, where the treatment of mental patients is conducted on a voluntary or compulsory basis (their professional medical supervision is the responsibility of the **Ministry of Health**);
- psychiatric social care homes, where those psychiatric patients are treated whose condition is not menacing at the time of the treatment but who are not able to care for themselves even with assistance. Placement is based on the request of the patient or his/her statutory representative.

Hungarian authorities and the staff of the different institutions were mostly cooperative and helpful. Members of the IHF delegation were allowed to conduct private interviews with inmates in their cells even with those in pre-trial detention. The only exception was the prison in Sátoraljaújhely, where members of the delegation were not allowed to talk to convicts in the maximum security unit. The

information given by members of personnel to questions of the delegation was at times incorrect. The delegation had the impression that in most of these cases misinformation was not deliberate but rather stemmed from the fact that staff members themselves are not always aware of the relevant legal provisions and are convinced that their usual practice meets the legal requirements.

In the **Ministry of Justice** facilities, the IHF delegation found that the Hungarian penitentiary system was still characterized by heavy overcrowding, which – apart from meaning a constant breach of the legal norms pertaining to the placement of inmates – has negative effects on the proper implementation of the detainees' rights in a number of fields, such as education, cultural activities and sports. The delegation found that although the general material conditions in Hungarian penitentiary institutions were not unsatisfactory, certain parts of certain facilities (such as the disciplinary cells in the Tököl Penitentiary for Juveniles) were in such a bad state of repair that placement there could amount to inhuman treatment.

The delegation discovered that certain legal provisions applying to and practices applied by the penitentiary system are not line with international human rights norms. The rules of placement in the maximum security ward are such that a detainee may end up in administrative isolation throughout his/her whole sentence without having the possibility to appeal against the decision concerning his/her placement. The fact that the time spent in disciplinary isolation during a disciplinary investigation shall not be deducted form the term of the disciplinary confinement imposed as a punishment, in practice significantly prolongs the legally prescribed maximum of confinement administered for disciplinary offences. The hence emerging possibility of imposing lengthy disciplinary confinements on juvenile inmates is in breach with international standards. The delegation also regarded as a matter of serious concern the practice that based on a general order of the National Commander of the Penitentiary Administration, inmates (including juvenile detainees) in disciplinary confinement and isolation shall wear handcuffs each time they leave the disciplinary cells, even during their daily one-hour walk.

Examples of unlawful practice include the openly admitted policy that in case of ill-treatment complaints, the medical records on the injuries are often sent only to the head of the concerned institution but not to the prosecutor's office, which would be required by Hungarian law. The fact that most physicians in the penitentiary system are members of the penitentiary administration's military-type of hierarchy raises concerns as to the true independence of these doctors. Another problematic practice is that in some penitentiaries sub-regimes are established, which overrule the judicial sentence on the severity of imprisonment. As a result, based on the management's administrative decision, an inmate relegated by the penal court to medium-severity imprisonment, may have to send his/her sentence among circumstances that are stricter than those of maximum-severity prisoners. Nor formal remedy against such administrative decision is in place.

The delegation also noted with concern the sometimes extreme length of pre-trial detentions, which – paired with the very strict rules among which pre-trial detainees are incarcerated – amounts to inhuman treatment in certain cases. In spite of the presumption of innocence and the fundamental aim of pre-trial detention (the securing of the criminal procedure's success), several remand prisoners are among worse conditions than convicted inmates (they spend 23 hours in their cells, have restricted possibilities for sports and cultural activities, and the laws regulating their contacts with their families are not any more lenient than the ones pertaining to convicts. The delegation also found that it often takes more than a month for prosecutors to allow family contacts, so a lot of pre-trial detainees spend the first 4-6 weeks of their detention in *de facto* incommunicado. This is especially true for those inmates who have ex officio appointed counsels, who in the majority of cases do not appear in the investigation phase and almost never visit their detained clients. The IHF delegation found it unsettling that there are no effective provisions and practices in place to monitor the performance of ex officio appointed lawyers.

In the **Ministry of Interior facilities** the IHF delegation was partly faced with the same problems as in the penitentiary institutions (e.g. delay in allowing contact with family members), however, some

specific problems were also discovered. Due to the fact that the material conditions and equipment of police jails are not regulated with the same detail as those of penitentiary institutions, the overall standards of physical circumstances of detention are sometimes significantly lower: there are no toilets in the cells, which can result in humiliating incidents for detainees who have to wait at length for guards to escort them to toilet, which can also be used as a means of informal punishment by the personnel. Tables and chairs are also often missing from police jail cells. Due to the lack of sufficient legal provisions, a person whose initial short-term arrest is implemented in a police lock-up may have to spend over a day without food, since the provision for people in short-term arrest is not compulsory, so if the person is transferred into a police jail after the evening meal, he/she will not get anything to eat until the next morning.

The IHF delegation found that although foreigners detained in the alien policing jails of the Border Guards are not suspects of any crime (they are detained in order to make sure that their expulsion orders can be executed), the circumstances of their detention are as strict as in the strictest penitentiaries: inmates may not leave their cells but for the one hour daily open air walk. As foreigners do not understand why they are detained and they can not communicate with the guards, the tension between the inmates and the guards is much higher than in prisons, especially because the maximum time of detention is one year that is unusually long compared to other countries.

The delegation regards the detention of asylum-seekers as an issue of particular concern: asylum-seekers shall not be placed in detention before their asylum applications were adjudicated, irrespective of whether they submit the application before or after the authorities find a way to expel them as "illegal migrants".

The IHF delegation would also like to point out that the health care for seriously ill or mentally disturbed foreigners in alien policing jail is not solved in the Hungarian system at all.

With regard to the **facilities under the Ministry of Youth, Family, Social Affairs and Equality**, the IHF delegation would like to point out that it seems absolutely arbitrary whether a juvenile offender's pre-trial detention is to be implemented in a juvenile penitentiary or in a reformatory institution. Since the latter is much more conducive of the juvenile's reintegration, it would be desirable to either raise the number of juvenile pre-trial detainees relegated to reformatory institutions, or to have the management of juvenile penitentiary institutions take over elements of the approaches and strategies applied in reformatories.

Without regard to whether they are placed in facilities under the Ministry of Justice (Forensic Observation and Psychiatric Institution) or in facilities under the local council, the situation of **people with mental disabilities**, whether placed for treatment against their will under the provisions of criminal or civil legislation or when placed in social care homes, needs to be addressed by the Hungarian authorities as a matter of urgency. The IHF delegation found that treatment and rehabilitation needs in the visited institutions were inadequate and at times in violation of international law as well as best professional practice in this field. Equally concerning, it had been observed that the competent authorities had failed fully to ensure that a system of regulations and procedures are in place to allow all those who are placed for psychiatric treatment against their will to be free from arbitrary detention and to effectively exercise their right to a fair trial. The effective exercise of these rights needs to be ensured throughout the treatment period. Those placed in social care homes should have their rights to actively participate and be included in the society fully respected. Therefore, the IHF strongly urges the Hungarian authorities to put in place an appropriate deinstitutionalization program.

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INTRODUCTION

CONTEXT AND PURPOSE OF THE VISIT

On 11 and 12 May 2005 representatives of the International Helsinki Federation for Human Rights (IHF) conducted a mission on monitoring places of detention in the Republic of Hungary. The mission was the fourth under the project "Preventing Torture in the Closed Institutions of Central and Eastern Europe", financed by the European Commission. The project has eight partner organizations from Eastern and Western European countries. The leading partner in this project is the Bulgarian Helsinki Committee. The organizations include (in alphabetical order):

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Six of the partner organizations work on monitoring places of detention in their own countries on a daily basis. Representatives of all organizations take part in monitoring the observance of human rights standards in the detention facilities in the countries of Eastern Europe.

The initial purpose of the mission was to monitor the respect for the human rights of the persons placed involuntarily in state institutions. The delegation based its monitoring on the international standards for the treatment of persons deprived of their liberty. In Hungary the mission was focused on eight types of institutions (functioning under the authority of different organs).

1) Institutions under the authority of the **Ministry of Justice** (and managed directly by the National Prison Administration) included

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- psychiatric social care homes, where those psychiatric patients are treated whose condition is not menacing at the time of the treatment but who are not able to care for themselves even with assistance. Placement is based on the request of the patient or his/her statutory representative.

One of the major assumptions of the project partners is that openness of the detention facilities to domestic and international scrutiny by human rights NGOs and other civil society groups is a basic safeguard against ill treatment and other human rights violations. A number of international organizations recently came up with recommendations encouraging countries to allow visits by human rights NGOs to places of detention. Article 6 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provides that “Everyone has the right, individually and in association with others: ... [t]o know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems”.

Hungarian legislation does not provide a general authorization for human rights NGOs to carry out monitoring missions in places of detention. The legal framework is uneven in this respect. With regard to penitentiary institutions, an explicit statutory authorization¹ makes it possible for human rights NGOs to conclude an agreement of cooperation with the National Prison Administration for the purposes of monitoring the conditions of detention in penitentiary institutions (although the National Prison Administration enjoys discretion in deciding whether to sign such an agreement). Based on this an agreement of cooperation concluded in accordance with this provision, the Hungarian Helsinki Committee (HHC) has been monitoring penitentiary institutions since 1999.

With regard to other forms of detention no such explicit authorizations exists. Despite this fact the monitors all Hungarian police jails regularly on the basis of an agreement concluded with the National Police Headquarters in 1996. The IHF delegation visited the most typical closed institutions proposed by the HHC. The HHC requested a special permission for institutions, which it does not monitor on a regular basis.

During the mission, the IHF delegation put together three monitoring teams comprising of 5-7 persons each. These teams visited up to four facilities a day. All the visits had the same pattern: the IHF delegation had an initial meeting with the prison management, than would inspect the premises and try to see and interview some of the inmates. At the end the IHF delegation had a concluding conversation with the facility management, where it made some observations and expressed some concerns.

Hungarian authorities and the staff of the different institutions were mostly cooperative and helpful. Members of the IHF delegation were allowed to conduct private interviews with inmates. The only exception was the prison in Sátoraljaújhely, where, citing security reasons, the management did allow the members of the delegation to talk to convicts in the maximum security unit. Another obstacle was that the information given by members of personnel to questions of the delegation was at times incorrect. The delegation had the impression that in most of these cases misinformation was not deliberate but rather stemmed from the fact that staff members themselves are not always aware of the relevant legal provisions and are convinced their usual practice meets the legal requirements, which is

¹ Article 13 of Act CVII of 1995 on the Penitentiary Administration stipulates that “within the statutory framework the penitentiary administration cooperates with the prison missions, NGO’s, denominations, foundations and private persons that perform tasks related to the monitoring of the conditions of detention, the facilitation of reintegration, charity activities or other penitentiary tasks. If such an organization or person should violate the provisions pertaining to the security and order of the penitentiary organization or the stipulations set forth in the agreement concluded with the penitentiary organization, the penitentiary organization may terminate the agreement.” Under Article 5 of Decree 6/1996 of the Minister of Justice on the Implementation of the Rules of Imprisonment and Pre-trial Detention such missions, NGO’s, denominations, etc. shall conduct their activities in the framework of agreements of cooperation concluded with the prison administration. If the cooperation concerns more than one penitentiary institutions, the agreement of cooperation is to be concluded by the Commander of the National Prison Administration.

equally unsettling. Non-Hungarian members of the monitoring teams were assisted with interpreters provided by the Hungarian Helsinki Committee.

In spite of all these difficulties, the IHF delegation was able to conduct meaningful research and to come up with important recommendations on both individual facilities and on the system as a whole. It will certainly appreciate the comments of the Hungarian government and of other institutions and individuals on its findings and recommendations and is ready to follow up on them.

List of relevant legal statutes and international norms

- Act IV of 1959 on the Civil code – *Civil Code*
- Act IV of 1978 on the Penal Code – *Penal Code*
- Act XXXIII of 1992 on the Status of Civil Employees – *Civil Employees Act*
- Act III of 1993 on Social Administration and Social Welfare – *Social Welfare Act*
- Act XXXIV of 1994 on the Police – *Police Act*
- Act CVII of 1995 on the Penitentiary System – *Penitentiary Act*
- Act XLIII of 1996 on the Service Relationship of the Professional Members of Armed Organs – *Armed Organs Act*
- Act CXXXIX of 1997 on Asylum – *Asylum Act*
- Act CLIV of 1997 on Health Care – *Health Care Act*
- Act XIX of 1998 on the Criminal Procedure – *CCP*
- Act XXXIX of 2001 on the Entry and Stay of Foreigners – *Alien Policing Act*
- Decree 19/1995 (XII. 13.) of the Minister of Interior on the Order of Police Jails – *Police Jail Regulation*
- Decree 6/1996 (III. 6.) of the Minister of Justice on the Implementation of the Rules of Imprisonment and Pre-trial Detention – *Penitentiary Regulation*
- Decree 11 of 1996 of the Minister of Justice (X. 15.) on the Disciplinary Responsibility of Detainees in Penitentiary Institutions – *Disciplinary Decree*
- Decree 30/1997 (X. 11.) of the Ministry of Social Welfare – *Juvenile Reformatory Regulation*
- Decree 5/1998 (VII. 12.) of the Minister of Justice on Health Care Provision for Inmates – *Penitentiary Medical Regulation*
- Joint Decree 27/2001 of the Minister of Interior and the Minister of Justice (XI. 29.) on the Implementation of Detention Ordered in the Alien Policing Procedure – *Alien Policing Detention Decree*
- Decree 36/2003 of the Minister of Justice (X. 3.) on the Implementation of Forensic Compulsory Treatment, Temporary Forensic Compulsory Treatment and the Tasks and Operation of the Forensic Observation and Psychiatric Institution – *IMEI Regulation*
- Law Decree 11 of 1979 on the Implementation of Sanctions and Measures – *Penitentiary Code*
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988 – *Body of Principles*
- Recommendation 87/3 of the Council of Ministers on the European Prison Rules – *European Prison Rules*
- Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990 – *UN Rules for Juveniles*
- The CPT standards: "Substantive" sections of the General Reports of the European for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – *CPT Standards*
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 37/194 of 18 December 1982 – *Principles of Medical Ethics*
- Convention for the Protection of Human Rights and Fundamental Freedoms – *ECHR*

1. FACILITIES UNDER THE MINISTRY OF JUSTICE

1.1 Background information

Three types of institutions where detention is implemented are under the authority of the Ministry of Justice:

- penitentiary institutions
- the Forensic Observation and Psychiatric Institution (IMEI), and
- the Central Prison Hospital in Tököl

Since the latter two are rather special (both are the only one in their own category in Hungary), in this section we will focus on penitentiary institutions, and describe the specific legislative background of the other two types of institutions in the respective sections describing the visit paid to them.

The main types of detention implemented in penitentiary institutions are the following:

- imprisonment of convicted prisoners
- pre-trial detention
- confinement for petty offences

There are two basic types of penitentiary institutions: remand prisons (so-called "county penitentiary institutions") and national penitentiary institutions for convicted prisoners. However, remand houses also hold convicted prisoners (e.g. for the purposes of maintenance works), and pre-trial detainees can also be found in national penitentiary institutions (although within the institutions convicted prisoners and pre-trial detainees are strictly separated from each other).

There are three subtypes of national penitentiary institutions: maximum-severity penitentiaries (*fegyház*), medium-severity penitentiaries (*börtön*) and low-security penitentiaries (*fogház*). These are the three different basic degrees of the severity of imprisonment in the Hungarian penal system. In the prison sentence imposed on the convicted defendant the judge shall determine on the basis of the Penal Code's provisions, whether the sentence shall be served in a maximum-, medium- or low-severity penitentiary. (E.g. the imprisonment shall be served in a maximum-severity penitentiary in the case of a life sentence, if the sentence is at least three years and has been imposed for certain severe criminal offences, or if the sentence is at least two years and the convicted person is a multiple recidivist or has committed the offence as the member of a criminal organization.)

The types of imprisonment differ by the degree of the severity of detention and supervision; movement within the premises of the prison; amount of money allotted for personal needs; rewards and disciplinary sanctions, participation in the prison activities, and so on.

Prisoners serving maximum-severity imprisonment are under permanent control and supervision. They may move within the premises of the prison only with proper authorization and under supervision. They may exceptionally be assigned to participate in work outside the prison premises only when their segregation from society is ensured during the assignment.

Prisoners serving a medium-severity sentence may move freely in determined areas within the perimeters of the prison. They may be granted short-term absence leaves and assigned to participate in work outside the premises of the prison.

The rules pertaining to penitentiary institutions are set forth by the Penitentiary Code and the Penitentiary Regulation. Below we summarize the most important rights and obligations of convicted prisoners (the rules applying to pre-trial detainees and people in petty offence confinement are basically the same with slight differences).

Admission, cell

The prisoner shall receive information about the rules of the implementation of detention, about his/her rights and obligations and the internal rules of the penitentiary within 24 hours after admission. Information shall be given to the detainee about the coercive measures that can be applied against him/her. In case the prisoner is illiterate, information shall be given orally and the fact that the prescribed information was duly provided shall be confirmed by two witnesses.

Upon admission, all those objects shall be taken away from the prisoner that are forbidden to be kept within the penitentiary, and prisoners shall be supplied with some necessary equipment, such as cutlery, sponge-cloth, glass, linen, and so on.

The number of people to be placed in a cell shall be defined in a way that each inmate have six cubic meters of air space and – in the case of adult male inmates – three square meters of moving space. Minors and women shall be provided with three-and-a-half square meters of moving space. When calculating the moving space, the space covered by equipment and furniture shall not be taken into account. (The required moving space is 4 square-meter for pre-trial detainees) In the cell there must be a washbasin with running water and a separated toilet with proper ventilation.

Prisoners are entitled to at least one hour open-air exercise per day.

While in detention the following groups shall be separated from each other:

- a) women from men,
- b) pre-trial detainees from convicts,
- c) accomplices from each other,
- d) healthy inmates from ill inmates, those suffering from infectious diseases from those with non-infectious diseases, HIV-positives from all other detainees,
- e) adults from juveniles,
- f) smokers from non-smokers

Nutrition, clothes, cleaning

Detainees are entitled to receive meals at least three times a day (one warm meal). The nutrition value of the meals depends on the medical status and age of the detainee. Depending on the possibilities of the penitentiary, prisoners' religious habits shall be taken into consideration when providing meals. Working prisoners receive nutrition supplement. Based on a recommendation by the doctor, dietetic or light meal shall be provided.

Under the Hungarian law, the following energetic values shall be guaranteed for different categories of prisoners.

Non-working prisoners	9,200 – 10,000 Joule (2.2 – 2.4 calories)
Prisoners involved in easy work	13,400 – 15,000 Joule (3.4 – 3.6 calories)
Prisoners involved in hard work	14,700 – 16,300 Joule (3.5 – 3.9 calories)
Prisoners on hospital treatment	12,600 – 13,400 Joule (3 – 3.4 calories)
Doctor prescribed additions to diets	3,200 – 16,800 Joule (0.8 – 4 calories)

Detainees are obliged to wear a uniform that must be proper for the season and the weather. While working, detainees must be provided with smock, safety clothes and safety equipments.

Detainees have the right to take a shower at least once a week, depending on the possibilities of the penitentiary. Those working under pollutant conditions shall be allowed to take a shower every day. All detainees must be provided with basic cleaning equipments, such as soap, toothbrush, toothpaste, comb, toilet paper, tools for shaving, tampon, if they cannot afford to buy such articles (detainees may

purchase necessities from their deposit money and wage twice a month in accordance with the rules set forth by the head of the penitentiary).

Contact with the outside world

Right to contact means the right to receiving visitors, making phone calls, sending and receiving letters, sending and receiving packages. Convicted inmates can maintain contacts with those persons whom they request to be included in the list of contacts. In the case of relatives, such a request may not be rejected unless the maintaining of contacts poses a threat to the security of the detention. In the case of persons who are not relatives, it depends of the educator's decision whether he allows the inclusion of the given person into the list. In case of pre-trial detainees rights related to maintaining contacts may only be exercised after the prosecutor or the judge (depending on the phase of the criminal procedure) gave permission for it. The request for permitting contact must be submitted to the prosecutor or the judge by the detainee.

Visitors can be received once a month at a scheduled time. Contact shall be controlled. The visit shall last for at least 30 minutes and may be extended on request. At the same time 2 adults and 2 children can be received. In case the visitor breaks the internal rules of the penitentiary and does not terminate the violation upon warning, the visit can be interrupted. During the visit, the inmate may eat the food brought by the visitor and checked by guards. If the Warden orders so due to security reasons, the detainee may talk to the visitor only through bars or from a special booth, but normally restricted physical contact between the detainee and the visitor shall be allowed.

Prisoners are entitled to write and receive letters with no restriction concerning the number and length of letters. The content of the letters can be controlled for security purposes. Letters written to the lawyer, to international organizations, consular authorities or official organs may not be censored.

Detainees have the right to use the phone in accordance with the provisions of the house rules. The contents of the talks may be controlled except for calls to the lawyer and consular authorities.

The inmate shall be entitled to receive at least package per month. The weight of the package may not be more than 5 kg.

No form of contact (personal meeting, telephone conversation, letters) with the lawyer may be controlled by the penitentiary in any way. In office hours the lawyer may visit the inmate without any restriction. If meeting with the lawyer is urgent because a procedural deadline would expire, meeting with the lawyer may take place out of office hours as well. During the visit official documents can be handed over by the lawyer and kept by detainee.

Work, resting time, education and cultural activities

Prisoners are obliged by law to work (unless they are not capable to do so for reasons such as illness, lack of available jobs, etc.). Prisoners are obliged to contribute to maintaining the order of the penitentiary institute, which is not classified as work. The amount of time spent on maintenance activities (cleaning the cell or the corridors, etc.) may not exceed 4 hours per day and 24 hours per month.

If the detainee takes part in education, working hours shall be scheduled in such a way that makes participation in education possible. If education involves the taking of exams, the inmate shall be absolved from the obligation to work for 5 days in order to enable him/her to prepare for the exam.

Prisoners shall receive as remuneration for their work at least one third of the minimum wage of the preceding year. From this remuneration a certain amount is deducted as contribution to the inmate's costs of living.

The Hungarian penitentiary system has two basic types of education: school education integrated with the general educational system (elementary school, high schools, vocational secondary school, etc.) and the so called vocational education, which is not integrated with the general system but is aimed at providing the inmates with skills that may promote their reintegration into society after release (e.g. house painting, masonry, basic computer skills). It is compulsory to allow the inmate to participate in primary education (participation is not compulsory). Participation in secondary or higher education may be permitted by the Warden upon the request of the detainee.

Detainees are entitled to participate in cultural and sports activities in accordance with the possibilities of the penitentiary.

Remedies

In a dispute concerning detention, a decision will be made by the head of the given penitentiary unit. Detainees have the right to ask to be heard in person by the Warden of the institution without naming the purpose of the hearing.

Detainees may file a complaint with the Warden against the decision of the head of the penitentiary unit within 15 days from its communication.

Apart from the possibility of filing a complaint, in cases concerning detention prisoners are also allowed to turn to the prosecutor supervising the lawfulness of implementing punishments; or the competent ombudsman (the general ombudsman, the ombudsman of national and ethnic minority rights, or the data protection ombudsman). Inmates may also turn to the court against certain decisions (e.g. the imposing of disciplinary confinement, decisions on damages caused by the institution to the inmate, etc.).

Obligations and disciplinary punishments, rewards

A prisoner is obliged to:

- respect the internal rules of the penitentiary, to fulfill the orders given by members of the prison staff;
- contribute to the maintenance (cleaning) of the penitentiary;
- subject himself to necessary medical examination;
- contribute to the costs of his/her detention,
- pay for the damages caused by him/her.

If the prisoner violates his/her obligations set forth by law he/she can be subjected to the following disciplinary punishments:

- reprimand
- reduction of the amount that can be used for purchasing necessities for a maximum of 6 months and by a maximum 50 percent
- disciplinary confinement for 30, 20, 10 days (depending on whether the inmate in a maximum-, medium- or low-severity penitentiary institution).

The inmate may file an appeal disciplinary confinement to the penitentiary judge, with regard to other disciplinary punishments, a complaint may be filed to the Warden of the penitentiary institution.

Rewards prisoners can be awarded include among others a verbal praise, an extra package or visit, the remittal of a disciplinary punishment, or the clearing of a disciplinary punishment from the record, the permission to leave the penitentiary for 24 hours, or for 5, 10, 20 days (depending on the severity of the penitentiary institution).

Security groups

Upon his/her reception into the penitentiary institution, the inmate is graded by the Admission Committee according to how dangerous he/she is to the order of the penitentiary system. The grading system enables the penitentiary to – from a security point of view – further categorize the inmates committed to different – low-severity, medium-severity or high-severity – penitentiaries by the court.

The Admission Committee places those inmates with positive security profiles in the Grade 1 regime, who are expected to adhere to the rules of detention, are unlikely to escape or commit an offense and whose secure detention may be provided through simple supervision. Grade 4 prisoners are those who are expected to escape or commit an act severely endangering or violating the order of the penitentiary or his/her or other people's life and/or physical integrity, or who have already committed such acts, and whose safe detention may only be guaranteed through guarding or – exceptionally – through surveillance. Grade 2 and Grade 3 prisoners fall in between the two extremes.

It means that if – for example based on the severity of his/her criminal offense – an inmate is convicted to imprisonment in a high-severity penitentiary institution, he/she may still be qualified as a Grade 1 or Grade 2 prisoner if based on his/her personal characteristics he/she poses no threat to the security of the institution. On the other hand, if someone is imprisoned for some petty theft, but the prison authorities have the information that he/she is planning an escape, he/she will be qualified as a Grade 4 prisoner regardless of the fact that the offense for which he/she is imprisoned is not severe

Cases of single placement

The following cases of single placement exist in the Hungarian penitentiary system.

Disciplinary confinement (*magánelzárás*): As was outlined above, this is the most severe disciplinary measure in Hungarian penitentiary law. Its maximum length is 30, 20 and 10 days in maximum-, medium- and low-severity institutions respectively. The maximum length of disciplinary confinement is 20 days for pre-trial detainees and 10 days for juvenile pre-trial detainees. For convicted juveniles the maximum terms are 20 and 10 days, depending on whether the juvenile inmate is in a low- or a medium-severity institution. Pregnant women and mothers with small babies are exempted from the possibility of disciplinary confinement. More disciplinary confinements may be executed consecutively, but if their aggregate length reaches the statutory maximum, the confinement shall be interrupted for five days, after which the execution may be continued.

A medical check shall be performed before the implementation of disciplinary confinement is commenced. The doctor shall check the status of the inmate in disciplinary confinement at least once per week (more frequently upon request). Upon the doctor's suggestion the Warden shall suspend or interrupt the implementation of disciplinary confinement.

Disciplinary isolation (*fegyelmi elkülönítés*): It is a type of "pre-trial detention" in disciplinary proceedings. The disciplinary isolation of an inmate may be ordered if it is necessary for the success of the disciplinary procedure to prevent him/her from communicating with other offenders, witnesses and aggrieved parties. Disciplinary isolation may not exceed 15 days, and apart from the restriction concerning communication with other participants of the disciplinary procedure, the inmate in disciplinary isolation shall not be restricted in his/her rights provided by the Penitentiary Code.

Security isolation (*biztonsági elkülönítés*): An inmate may be placed in security isolation if he/she violates or threatens the order or security of the institution, participates in a group defying orders, refuses to eat, work or obey instructions, or behaves in a way that is directly dangerous to others or himself. The maximum length of security isolation is 10 days, which can be prolonged with another 10 days if necessary. The necessity of security isolation shall be revised every 5 days. Persons in such isolation are subject to certain restrictions, e.g. they may only receive visitors in a special booth, they may not participate in collective cultural and sports activities, the cell door must be closed all the time even if the person is in a regime where this is otherwise not obligatory, etc.

A special form of security isolation is the isolation of those who behave in a way that is directly dangerous to others or themselves. Such inmates have to be placed in special cells, and they have to be immediately examined by a doctor after being placed there. Such cells are small, their walls are covered with soft material. Inmates may not be kept in such cells for more than 6 hours, placement shall be revised every two hours, and the status of the inmates is checked every 5-10 minutes.

Maximum security cell or ward (*különleges biztonságu zárka vagy körlet*): If a person is qualified as a Grade 4 inmate (inmates meaning the highest security risk, see above), he/she may be placed in a maximum security cell. The law does not specify on the basis of what reasons such placement is possible, so it is completely up to the penitentiary system to decide whether a Grade 4 prisoner is detained under normal circumstances or in a maximum security cell.

The Admission Committee of the given penitentiary institution may order that the inmate be placed in a maximum security cell for a maximum of three months. The Admission Committee may prolong placement with three months on two occasions. After nine months, placement shall be ordered by a special committee appointed by the national commander. The special committee shall examine at least once in every six months whether placement in the maximum security ward is well-grounded.

The rights of persons placed in a maximum security cell are restricted. For instance, their cell must be locked all the time irrespective of the regime they are in, they may only participate in collective sports and cultural activities with the Warden's special permit, the range of objects and articles they may keep with themselves may be restricted.

There are two maximum security wards (a whole unit with maximum security cells) in Hungary, established as units of the Satoraljaújhely Maximum- and Medium-Severity Penitentiary (visited by the IHF delegation) and the Sopronkőhida Maximum- and Medium-Severity Penitentiary.

A special case of placement in a maximum security cell is when it is done in order to protect the inmate from others.

Coercive measures

The forms and detailed rules of the use of coercive measures are set forth in the Penitentiary Act. The types of coercive measures include

- bodily force
- handcuffs
- teargas, truncheon, electric shocking device
- service dog (with or without muzzle and leash)
- fire arms.

After a coercive measure has been applied, the incident is recorded in a form. The Warden shall deliver a formal decision on whether the use of the coercive measure was lawful or not. A copy of the form is given to the concerned inmate, who may apply for remedy against the Warden's decision.

With regard to the use of arms, the rules are similar, with the exception that in such cases it is the prosecutor's office that decides about the lawfulness of the application, and the inmate may appeal to the court against the prosecutor's decision. If arms are used the prosecutor's office shall be notified immediately.

Procedure to be followed in alleged cases of ill-treatment

A medical examination shall be immediately carried out, if outward signs of injury are witnessed upon the arrival of the detainee, or a person transferred from a police jail, youth custody center, or military custody claims to have been ill-treated. A record of the examination shall be prepared, and a copy

thereof shall be sent to the authority performing the detainee's transfer and to the public prosecutor in charge of supervising the lawfulness of detention.

If an inmate complains that he/she has been ill-treated within the penitentiary institution by a member of the personnel, under the CCP (which sets forth the general obligation of officials to file a report if they obtain information about a criminal offense),² the Warden is obliged to file a report with the Military Prosecutor's Office. Under the Armed Organs Act,³ the Warden is also obliged to launch a disciplinary procedure against the member of the personnel accused with ill-treatment. The disciplinary procedure may however be suspended until the criminal procedure is closed down. (Disciplinary punishments range from a warning to the termination of the accused person's service relationship.)

Inspection

Penitentiaries in Hungary are inspected by the National Prison Administration, the Penitentiary Supervisory Department of the Ministry of Justice, the Public Prosecutor's Offices, the Governmental Supervisory Office, the National Audit Office, the National Health Service, and the parliamentary commissioners for human rights (ombudspersons), each from their point of competence respectively.

The organ conducting the given inspection notifies the Warden about the results. A plan of action is prepared for the elimination of the discovered shortcomings. The plan of action contains the deadline for eliminating the problem and also the person responsible for its implementation. The Warden notifies the organ conducting the inspection about the measures taken to eliminate the shortcomings.

1.2 Visit to Unit III of the Budapest Remand Prison

The IHF delegation visited the institution on 11 May 2005. Members of the delegation were met by Mr. László Csere, Warden of the Budapest Remand Prison.

1.2.1 The facility

The Budapest Remand Prison consists of three units: Unit I in the 5th district of Budapest (the admission unit), Unit II in the 2nd district and Unit III in the 10th district. Unit III is the largest remand house in Hungary, holding about 24 per cent of the total population of pre-trial detainees.

Unit I was built in 1888-1892, Unit II in 1913-1923, while Unit III is relatively new: initially designed as a workers' hostel, the premises of the new unit were purchased by the Hungarian Prison Service in 1996 and converted into a prison facility, which started its operation in 2000. There has not been a general reconstruction in Units I and II in the past decade. Partial reconstruction works are performed as necessary and allowed by the budget.

Unit III consists of two identical buildings with seven floors. The roof functions as a walking yard (see later).

1.2.2 Inmate and staff data

Pre-trial detainees and convicted inmates are placed in the Budapest Remand Prison. Convicted inmates are incarcerated in the institution primarily for the purposes of maintenance works. The total numbers at the moment of visit were: 1,215 pre-trial detainees and 451 convicted inmates.

Capacity and number of inmates on day of visit

Institution	Capacity	Actual number of inmates on day of visit	Rate of overcrowding (%)
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² Article 171

³ Article 119

Unit I	153	277	181
Unit II	237	424	178
Unit III	628	965	153
Budapest Remand Prison (total)	1018	1666	163

The Warden pointed out that the total number of prisoners was around 2,000 one and a half years ago.

There are no females in Unit III. Most inmates in Unit III are adults. Juveniles are very seldom placed in Unit III, and if so, then only for transfer purposes. 75% of the inmates are between 19 and 39 years of age. At the time of the visit the number of foreigners was 194, coming from 32 different countries. Romanians, Russians, Ukrainians and some other states of the former Soviet Union were mentioned as the most frequent countries of origin. In spite of the relevant legal provisions and the great number of foreigners, no written information on detainees' rights in any foreign language is available in the institution.

One Azeri pre-trial detainee who was placed in the prison for killing an Armenian person, for instance told the IHF delegation that upon admission to the prison, he was explained his rights in Russian but did not receive them in a written form.

The total number of staff is 735. Although Unit III holds the most inmates, the most people (335) work in Unit I, as this unit is where admission and release take place, plus this is where the financial department and the department for the human resources are located. 95 persons work in Unit II and 305 in Unit III. Thus, the overall staff-inmate ratio in Unit II is 1:3.2.

The situation is even worse educators and social officers. Educators are members of the penitentiary personnel who are responsible for the inmate's education and the facilitation of his/her reintegration. It is the educator's task to follow during the prison term the situation and personal development of the inmate. *Inter alia*, the educator will write an assessment opinion about changes in the prison regime of imprisonment, the ordering of lenient executive rules, conditional release, placement under protective supervision or in the temporary group or in the healing and educational group, the application for interruption of the sentence, before the preparation of recommendations for transfer. The educator controls and handles the inmates' written correspondence, is entitled to bring decisions about the application of any common rewards, the inmate may turn to the educator with complaints, requests, etc. Consequently, the educator plays a vital role in the process that is prescribed by law to facilitate the inmate's reintegration into society. Social officers perform the same job as educators, but they are lower ranking officers with only secondary education.

In Unit III there are 12 educators and 4 social officers. Every floor has either an educator or a social officer, meaning that one person is in charge of 75-85 inmates, which is better than the Hungarian average, still it makes the performance of reintegration tasks impossible, and renders educators to merely fulfill their administrative tasks (handing out and forwarding letters, allowing visits, and so on).

The group met with the head educator (female) who said that she faces no problem because of her gender, since a woman can act as a mother figure to the inmates. Yet, most educators are actually male. The actual problem is that inmates in a remand prison are under more tension than convicted inmates. This makes an educator's task in a remand prison more difficult.

1.2.3 Material conditions

Although the Budapest Remand Prison is not the most overcrowded penitentiary institution in Hungary, the reality concerning per capita moving space is far from what is forth by law (net 4 square meters per pre-trial detainee).

Institution	Overall space per capita (sq.m)	Uncovered space per capita (sq.m)
Unit I	3.4 – 3.8	2.4
Unit II	3.2 – 3.6	2.2
Unit III	3.6	2.4

The IHF delegation believes that this kind of double standard is not acceptable. An institution that is implementing punishments for the violation of laws should not break the law itself. Scarce financial resources are not accepted as justification if for instance a citizen does not pay his/her taxes. Similarly, **the financial situation of the penitentiary system should not be used as an excuse for not abiding by the norms.**

Whereas the IHF delegation heard no complaints with regard to natural light, level of the noise in the cell, there were problems with regard to cell ventilation and heating. **A number of inmates complained though that during summer time the temperature is unbearable.** They ask the guards to open the peepholes, thus creating some circulation of air. They said though that not all guards are willing to do that. **Such condition and methods are against international norms** (see reminder under Section 1.2.8).

On the other hand, during the time of our visit, the weather was rather cold for this time of the year (mid-May). One inmate in the medical unit complained that his cell was very cold – a fact also experienced by the IHF delegation. Responding to our question, the Warden said that the average cell temperature was 18 degrees, unless of course the inmates decide to open the window, which is up to them, and in which case the cell temperature may obviously fall below 18 degrees. The heating is turned off from 15 April till 15 October. If however the temperature remains below 12 degrees for three consecutive days, the prison administration is obliged to turn on the heating.

Upon our question whether he thinks that 18 degrees is an appropriate temperature for an ill person with fever, the head of the medical unit replied that such inmates are granted permission to stay lying during the day, which also means that they are allowed to use their blankets.

A normal cell the IHF delegation visited had three normal beds and a bunk bed. Not much space is left for prisoners to move in the cell. Every inmate has his/her own locker. The bed is of normal height from the floor, inmates have only one blanket, a pillow and a sheet. The sheets seem clean and they are said to be changed every two weeks. The cell was 2 meters wide and not more than 3 meters long. A toilet is placed inside the cell (separated completely from the rest of the cell).

On the 6th floor, where non-working inmates are placed, there are three showers in the bathroom. Non-working inmates may take a shower once a week for 30 minutes. Working inmates are allowed to have a shower every day.

Most (but not all) cells have a TV set placed above the door. Prisoners are not allowed to decorate the walls of a cell, as the cells serve only for temporary accommodation.

The hygiene of personal clothing seemed rather low. This may be due to the problems of establishing contacts with the outside world in the first period of pre-trial detention (see in more detail below), and also due to the fact that adequate logistics for doing the laundry are practically missing. (Hot water in the cells may not be regarded as such.)

The furniture in the patients' rooms in the medical facility seemed rather run-down and the walls should be re-painted. Most of the rooms have two beds and two worn-out, wooden bedside cabinets. The bed is normal height from the floor, inmates have only one blanket, a pillow and a sheet. The sheets seem clean and they are said to be changed every two weeks.

Natural light is sufficient, however the light is turned off by guards at 21:30, so after this time the inmates cannot read. Only the toilet lights turn on-off from inside the cell. The bathroom (situated within the cells of the medical units), with a shower, a sink and a toilet is clean.

The daily per capita food allowance is USD 2.8 – 3.1 (calculating with a USD 1 = HUF 197 exchange rate). The IHF delegation did not have the opportunity to visit the kitchen of Unit III, but inmates complained that the quality and quantity of prison food were not of very high standard (though some said it was better than in the police jail where they had been kept before being transferred to Unit III). The IHF delegation was told that dietary requirements were kept in the prison. This statement was supported by a diabetes patient consulted in the medical unit. Religious requests are also taken into consideration, although the Warden informed the IHF delegation that at the time of the visit there were no inmates in the prison with special religious dietary requirements. The above mentioned Azeri detainee with a Muslim religious background stated that he was a vegetarian, so the IHF delegation could not pose a question on such special requirements.

Additional food could be bought in the prison shop. Those who cannot afford to spend money on additional food, may receive parcels. The leadership of the Budapest Remand Prison allows two parcels per month (double of the prescribed minimum).

The IHF delegation was served the food that the personnel gets, and had to conclude that it leaves much to be desired especially in terms of quality. The IHF delegation had the same experience in the Tököl Penitentiary institution, which has the facilities have the same food-contractor.

1.2.4 Activities and contacts

According to the prison staff, due to the overcrowding plus the obligation to separate accomplices it is very difficult to organize out of cell activities for pre-trial detainees. Therefore, **with the exception of the daily one hour outdoor exercise, most pre-trial detainees spend 23 hours per day in the cells.**

There are two walking yards: one is literally in the prison yard, the other is however located on the roof of the buildings. The prisoners from the 5th, 6th and 7th floors have their outdoor exercise in a caged yard on the roof of the prison building. The space of the caged yard is about 40 square meters.

As opposed to this, prisoners from lower levels have their exercise in the ground-floor yard where some sport facilities like basketball boards are located. However, sports opportunities do not seem more frequent for these inmates either. According to the Warden's information, sports activities are available for inmates only once a week (explained with a lack of time). The Warden also mentioned that the inmates have access to the gym, but it did not become clear if this was seen as a kind of reward, or an activity that is accessible to all the inmates. **The reward approach would clearly be in contradiction with the Penitentiary Code, which claims that it is a right of the inmate to make use of the sports facilities⁴ and also extends this right to pre-trial detainees.⁵**

The IHF delegation was told that in Unit III no formal education is available (as the unit holds mainly pre-trial detainees). If one of the convicted inmates wishes to participate in such education, he/she has to ask to be transferred into one of the penitentiary institutions where education is provided. The Warden of the Budapest Remand Prison said that there is only one inmate who is in the process of obtaining a college diploma. There are certain training programs to prepare the convicts for the time they are released (these are primarily for convicted prisoners) and there is a so-called peer-training focused on drug problems (in which pre-trial detainees may also participate).

The prison chapel has a mass twice monthly. There is a mass for Easter as well. The penitentiary system has institutionalized relations with the Catholic, the Lutheran, the Calvinist and the Jewish denominations (based on Decree 13/2000 of the Minister of Justice). Priests and pastors of these

⁴ Article 36

⁵ Article 118

religions visit on a regular basis. If an inmate needs another religious representative, then he/she needs to submit a request, and the representative's visit has to be permitted by the Warden. The above Decree however claims that based on the needs of the inmates, all registered churches (their number in Hungary is over one hundred) may perform religious activities in the prisons.

There is a library in each of the three units. Altogether there are 35,000 to 40,000 books that circulate between all three units. Most of the books are in Hungarian, but there are Romanian, English, Italian, German volumes as well. Embassies often donate books to the Budapest remand prison. There is also legal bibliography.

The prisoners can read newspapers provided that they can afford to buy them, as the prison management does not have resources for providing the inmates with newspapers and journals. The prisoners can also read the penitentiary system's own newspaper "Prison News" and can also contribute to it. Almost all cells have TV sets.

In the visiting facility, there are 24 visiting booths: 8 with fiberglass separating visitors from inmates, and 16 without fiberglass. There are 2 cameras monitoring the place. Guards also walk behind the booths to monitor the visits. All booths used to have fiberglass windows preventing physical contact between inmates and family members, but upon the warning of the Chief Public Prosecutor's Office, the visiting area was reconstructed. The air in the visiting room is a bit stuffy – there are three big windows, but all three were closed.

There are no social measures for those who never receive visits. Although the leadership claimed that in case a detainee does not receive any visit, the educator(s) undertake steps, the IHF delegation was not explained what kind of steps the prison director referred to. **There is certainly no institutionalized system to assist those who do not receive visits.**

A guard is standing few steps away from the telephone cell, while an inmate is talking over the phone. To use the phone, the inmate needs to have a phone card. If an inmate cannot afford a phone card and an urgent call needs to be made, the prison administration provides the inmate with a card.

There are no restrictions for a contact with the lawyer. The lawyer may without any restriction visit a detainee from Monday to Friday during office hours. Outside office hours, a visit by the lawyer is only possible if it is necessary due to some urgent procedural reason. Phone calls to lawyers are restricted though to 5 minutes per week. To receive calls from the lawyers is not permitted in Hungarian prisons.

Unit III is in a relatively good situation concerning lawyers' visiting rooms (compared to the Hungarian average). Every floor has one such room, which means that altogether 14 visiting rooms are in place for consultations between the inmates and their defense counsels.

The architectural solutions used with regard to the lawyers' visiting rooms and the rooms where investigators meet the inmates seem to reflect the lack of the equality of arms in the criminal procedure: whereas it is possible for the personnel to observe what is happening in the lawyers' room through a window, the room where the police investigators and prosecutors meet the inmate is on the opposite side, with a thick door preventing either visual or audio control. Both the Warden and his staff found that "normal" and/or understandable. (See Reminder under Section 1.2.8)

1.2.5 Medical care and treatment

In Unit III there is 1 head physician, 1 dentist and 3 other doctors with a general doctor's diploma (of whom 1 is a neurologist and 1 is a surgeon). Specialization is not an admission criterion. Doctors have specific office hours (usually from 7.30 until 15.30), so there is not always a doctor in the units but there is always a nurse to serve the inmates. The dentist's office hours are even more restricted, but he also comes in depending on the needs of the inmates. There are no doctors in the units during the weekends. However, there is a duty system. The nurse is the one to decide whether she will call an

ambulance or the doctor when urgent incidents come up during the weekend. Should there be a need, inmates are transferred to the Central Prison Hospital in Tököl. Civilian hospitals may also be used if the needed treatment is not available in the Tököl hospital or if there is an urgent need.

Admission is performed in Unit I of the Budapest Remand Prison. Upon admission in the prison, a nurse is conducting a general check-up of the detainee. The nurse fills out a medical form (questions about illnesses, medication that the inmate takes), measures the inmate's blood pressure and performs a lung screening. (Screening for TBC is repeated annually.) Within 72 hours, a doctor performs a second check-up, which also includes EKG.

Until one and a half years ago HIV testing was obligatory for all inmates. Now it is performed only if the inmate wishes to be tested. Should the results of the test be positive twice, the inmate is transferred to the HIV Unit in Tököl. Inmates with lice problems are separated from the rest till they recover. The hepatitis test is not obligatory either. Some inmates do suffer from hepatitis B or C and they are either treated in the unit or transferred to the hospital.

During its present visit, the IHF delegation heard no complaints about access to medical care.⁶ Inmates have to sign in for medical checks in advance with the nurses or the guards. In urgent cases however, treatment is provided instantly. The number of patients seen by the doctor is quite high: between 40 and 60 per day. At the time of the visit (11 May 2003), the number of inmates examined by the dentist since January 2005 was 1,161.

The Medical Unit is well equipped the dental ambulance is very clean, modern and has all necessary instruments. Medicine prescribed by the doctor is distributed by the nurses twice a day (in the morning and in the evening). Nurses in the night shift may give medication to an inmate, but a doctor must approve the treatment. A nurse can give an inter-muscular injection, while the inter-venal injection may be given by a doctor only. Those prisoners, who have a permission to keep medication with them, receive the whole daily dose in the morning, except for tranquilizers, which must be taken in front of the nurse. Methadone is not provided in the Budapest Remand Prison⁷.

In exceptional cases, a guard can also hand out medication based on very strict instructions from the doctor.

The prison staff informed the IHF delegation that practitioners have a general knowledge of the most important foreign languages, but after talking to one foreign inmate, with a good command of English and Russian, it turned out that not all staff members do speak foreign languages, as the inmate informed the delegation that he had to explain his medical complaints via mimics and gestures.

Out of the altogether 9 doctors of the Budapest Remand Prison, 6 are officers, i.e. they are integrated in the military hierarchy. Due to the fact that their status is regulated by Armed Organs Act, whereas the status of civilian doctors employed by the penitentiary is regulated by the Civil Employees Act, there is a difference in the salaries of the two groups. Civilians earn about HUF 30,000-50,000 less per months (EUR 120-200). The Warden said that he was trying to somehow balance the salaries, so that civilian doctors may accept the post.

The problem that arises out of the military status of physicians (meaning that the doctors are thus under double dependence and by that mere fact incapacitated to oppose in cases of torture or maltreatment) is not perceived by the management at all.

⁶Access to a physician was one of the biggest problems according to the Hungarian Helsinki Committee's prison survey in 1999-2000. When the research was repeated in 2003, significant improvement was revealed in this respect

⁷Methadon treatment is only available at the Forensic Observational and Mental Institute (IMEI)

Further conflicts may be created for example with regard to drug addicted inmates, in the case of whom obligations of confidentiality may collide with an officer's obligation to report whenever the suspicion of a criminal offense arises.

Therefore, the delegation believes that the status of medical personnel in penitentiary institutions ought to be reconsidered by the Hungarian authorities and legislators.

1.2.6 Discipline

Disciplinary and isolation cells are placed on the 8th floor, together with the special cells for patients meaning a threat to themselves and others.

The disciplinary cells (in which disciplinary confinement is implemented, see Section 1.1 above) are around 8 square meters, with big windows that provide a good source of natural light. Every punishment cell has a bed, which is locked to the wall during a day, as the inmate may not sit or lie on it during the day. Except for the bed, the cell has a chair, a small table (both screwed to the ground), sink, iron mirror and a small heating body. There is also a toilet in the cell. Person's belongings are kept in a box located in the space between the cell door and an internal bar.

The IHF delegation was informed by the personnel that an inmate placed in a disciplinary cell can read only the Bible or any other equivalent to the Bible (Koran or similar religious books). However, this is only so if they have these books, as the prison administration cannot provide them with such items. **This information is in contrast with the Hungarian law which says that an inmate in disciplinary confinement may have with him/her any book, and not only religious ones.**

Cells for patients meaning a threat to themselves and others are small [2X1meters], their walls are covered with soft, black, soundproof material. There is a small window opposite to the door that serves for air circulation and a toilet facility is placed outside of the two cells. (As was outlined above, detainees may not be kept in such cells for more than 6 hours, placement shall be revised every two hours, and the status of the inmates is checked every 5-10 minutes.)

Unit III also contains maximum security cells, for those Grade 4 prisoners who are regarded as especially dangerous. Each such cell has a bed, a table, a locker, a toilet, a shower and a sink, all placed in the cell. Pieces of furniture are nailed in the floor. The mirror above the sink is made out of steel. There is an internal bar enabling the guards to open the cell door without getting into direct touch with the inmate. Some of these cells are observed through cameras.

The IHF delegation spoke with an Azeri inmate placed in a maximum security cell. According to information provided by the Warden he is in such a cell because of the criminal offence he committed (the inmate is a police officer himself, he had come to Hungary for an English course and killed an Armenian class mate with an axe) and because at the beginning of his detention he had some problems with the guards. The inmate told us that he had been detained for 15 months and was still waiting for his first instance decision.

Another case of an inmate placed in a maximum security cell was a Russian who claimed that on his way home from Croatia he was captured by the Hungarians. He had no complaints on Unit III. On contrary, he felt as he was in a "five-star hotel" after different other prisons in Hungary. However, he was in a maximum security cell because, at the time of his arrest – he wounded policemen. It seemed rather consistent with the reasons behind putting the Azeri inmate in a MS cell.

In the period between 1 January and 10 May 2005, there were:

- 24 disciplinary confinements (20 pre-trial detainees and 4 convicts; all of them men; 1 foreigner /a Romanian/; 13 first time offenders and 11 recidivists; average age was 28 years)

- 14 disciplinary isolations, i.e. quasi "pre-trial detention" in disciplinary cases (10 inmates for 15 days, 4 inmates for less than 15 days: 1, 2, 6 and 7 days respectively).⁸

According to the Warden, overcrowding is the main reason for conflicts between prisoners, but compared to Units I and II, the situation in Unit III is acceptable, as the relative number of prisoners is lower. Minor conflicts occur on a daily basis, but these are handled by the educators. In more serious cases psychological help is offered (individual or group sessions on conflict prevention). The leadership of the institution initiates 3-4 criminal proceedings in a year for inter-prisoner fights.

1.2.7 Ill-treatment

The information the IHF delegation got gives rise to the suspicion that not in all cases does the leadership of the Budapest Remand Prison follow the proper procedures in alleged cases of ill-treatment (for an outline of the legal framework see section 1.1 above). The Warden claimed that if the complaint of ill-treatment concerns another institution (i.e. the inmate complains in the Budapest Remand Prison that he/she was ill-treated at the police station, in another penitentiary institution, etc.), the medical record and the accompanying documentation containing the details of the complaint are sent to the head of the concerned organ (head of the police station, Warden of the other penitentiary institution, etc.), but no mention was made of a parallel copy sent to the prosecutor's office. The same was explained by the physician the delegation met. If he sees an injury that could be considered as dubious, he would note it, and send his findings to the "chief of the Police".

It may have been a misunderstanding, but it seemed that in the Warden's view it is the obligation of the head of the concerned organ to file a report with the prosecutor's office, although **the law explicitly says that the institution where the injury is detected or the complaint is registered also has a reporting obligation toward the prosecutor's office.**

There is also a problem with the practice followed in the case of complaints against personnel of the Budapest Remand Prison. From what the Warden said on this subject it seems that the leadership launches a disciplinary procedure, which includes a preliminary investigation (against the accused staff member) which is performed by an investigator commissioned by the Warden and which may take no more than 30 days. Only based on the results of the preliminary investigation does the leadership decide whether to file a report with the Military Prosecutor's Office and/or carry on with the disciplinary procedure. If for instance an inmate files a lot of such complaints which prove to be unfounded, they may decide not to forward "his 20th complaint".⁹

As the forwarding of ill-treatment complaints shall under no circumstances be up to the discretion of the prison's leadership, this practice is against the law. The Year 2001 Report of the Independent Department for Penitentiary Supervision and Rights Protection of the Chief Public Prosecutor's Office on the Treatment of Inmates supports this interpretation, when (on page 8) it lists as an example of unlawful procedure a case whereby the Warden of the Budapest Penitentiary Institution (not the same as the Budapest Remand Prison) decided to investigate an ill-treatment case first, instead of making a report to the competent Prosecutor's Office.

According to information provided by the Warden, annually 4-8 complaints of ill-treatment by other organs are recorded upon admission to the Budapest Remand Prison, whereas the annual number complaints concerning ill-treatment by the Budapest Remand Prison's personnel is around 15-20, out of which 1-5 per year prove to be well-founded. The delegation was informed that only rarely does the leadership of the Budapest Remand Prison file a report against complaining inmates for the criminal offense of "unfounded accusation", if a complaint of ill-treatment proves to be unfounded.

1.2.8 Length and practice of pre-trial detentions

⁸Numbers were given by the Budapest Remand Prison in writing

⁹Quote from the Warden

If during the investigation stage the investigative authority comes to the conclusion that the defendant ought to be placed in pre-trial detention, it notifies the prosecutor. During the investigation phase, it is the prosecutor's right to put forth a motion for pre-trial detention, based on which the investigative judge decides on ordering pre-trial detention (for a maximum of 30 days initially).

The investigative judge may prolong it with three months at a time, until the total length reaches one year. After that year, the pre-trial detention may be prolonged by a county court judge with two months at a time. There is appeal against the decisions of both the investigative judge and the county court judge. After three years, the detention has to be terminated.

In the trial phase, the pre-trial detention ordered or maintained by the trial judge after the submission of the bill of indictment may last until the first instance decision, the pre-trial detention ordered or maintained by the trial judge after delivering the first instance decision and pre-trial detention ordered or maintained by the second instance trial judge may last until the criminal procedure is closed down, but not longer than the length of the imprisonment sentence imposed in the first instance decision.

If pre-trial detention ordered or maintained in the trial phase exceeds 6 months, its necessity is revised by the first instance court, and if it exceeds one year, its necessity is revised by the second instance court. The defendant and the defense counsel may request the termination of pre-trial detention any time.

In spite of this intricate system of supervisions and the fact that the CCP prescribes fast track treatment of the case if the defendant is in pre-trial detention, the IHF delegation heard a lot of complaints concerning the length of pre-trial detentions in Hungary.

As it was outlined above, the Azeri inmate the IHF delegation talked to had been in pre-trial detention for 15 months, and although he did not deny the murder he was accused of, he was still waiting for his first instance decision. Another person (whose first instance decision was repelled by the court of second instance and was now waiting for the new first instance decision in the retrial procedure) **had been in pre-trial detention for 28 months**, when the delegation met him.

The IHF delegation in general found the length of pre-trial detentions to be a matter of concern. The delegation was informed that out of the 16,399 persons in penitentiary institutions on 31 December 2004, 4,088 (25%) were pre-trial detainees, and in spite of the legally prescribed fast track treatment for pre-trial detainees, out of the 4,088 persons 1,776 (43%, i.e. almost half of them) had been in pre-trial detention for more than 6 months.

In addition to the unexplainable length of pre-trial detentions, the IHF delegation also noticed that there is no sub-differentiation between pre-trial detainees on the basis of the ground for their pre-trial detention. Not the same rules of separation should be applied to those who are in such detention solely on the ground of possible escape, and those who are detained because there is ground to believe that they could influence the investigation if not taken into custody. Concerning the former group, strict isolation from other inmates is completely groundless.

1.2.9 Reminder on relevant international norms and recommendations

European Prison Rules, Article 16: In all places where prisoners are required to live or work: (a) the windows shall be large enough to enable the prisoners, *inter alia*, to read or work by natural light in normal conditions. **They shall be so constructed that they can allow the entrance of fresh air except where there is an adequate air conditioning system.** Moreover, the windows shall, with due regard to security requirements, present in their size, location and construction as normal an appearance as possible; (b) artificial light shall satisfy recognized technical standards

Body of Principles, Principle 18/4: Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

Principle 21/2: No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.

1. 3 VISIT TO THE SÁTORALJAÚJHELY MAXIMUM- AND MEDIUM-SEVERITY PENITENTIARY

The IHF delegation visited the institution on 11 May 2005. The delegation was hosted by the Warden, Mr. József Estók, and several members of the staff, and had the opportunity to inspect the premises and to see some of the documentation related to detention and also to interview some prisoners in private. It was not allowed to see and interview the prisoners in the special security unit. With this exception the staff of the prison was generally cooperative and did not in any way hinder the monitoring activities.

1.3.1 The facility

The Sátoraljaújhely Maximum- and Medium-Severity Prison serves the North Hungarian Region as a maximum- and medium-severity penitentiary institution. Its special wing for prisoners regarded as extremely dangerous (the maximum security ward) is one of the two such wards that serve the entire penitentiary system of Hungary, i.e. prisoners of this type are sent here from all over the country. The penitentiary was built in 1905 in the middle of the town and has a total of 17,446 sq. meters. The penitentiary consists of three building complexes.

1.3.2 Inmate and staff data

The prison's total capacity is 263 persons. On the day of the visit it had 381 inmates, i.e. it was 145% overcrowded. 210 inmates were sentenced by the court to maximum-severity confinement, 131 to medium-severity confinement, 6 to the low-severity confinement, while the others were in pre-trial detention. Data presented by the prison management suggested that with no change of the capacity, the situation with overcrowding was not something temporary but was more or less similar over the past four and a half years. The following table shows this dynamic:

Average Number of Prisoners in the Sátoraljaújhely Maximum- and Medium-Severity Penitentiary by Years

	Convicted	Remand	Total
2001	355	26	381
2002	359	24	383
2003	349	23	372
2004	359	17	376

Most of the prisoners at Sátoraljaújhely were convicted for serious crimes – 16% for murder; 38% for robbery; 21% for burglary/theft. 137 (36%) of them were first-time offenders, the rest were recidivists. 14 were sentenced to life imprisonment and 51 were sentenced to prison terms of more than 10 years. The prison held also nine foreigners, seven of them – Ukrainians.

As it was outlined in Section 1.1, upon arrival, inmates are graded into four security groups by the Admission Committee. Classification is based on the character of the crime committed by the convict, on the personality and prior criminal records of the convict, and on the security state of the prison. Classification of Grade 1 and 2 prisoners is reviewed annually, while the classification of Grade 3 and Grade 4 prisoners is reviewed every six and three months respectively.¹⁰ Remand prisoners are usually graded into the 3rd security group. In practice, security classification might overrule the sentence of the court. For instance, those sentenced to maximum-severity confinement, shall be guarded if they move outside their cell¹¹ and the door of their cell shall be closed all the day.¹² Those sentenced to medium-

¹⁰ Articles 42 and 43 of the Penitentiary Regulation

¹¹ Article 26 Paragraph (2) of the Penitentiary Code

¹² Article 41 Paragraph (3) of the Penitentiary regulation

severity penitentiary may move freely inside a designated part of the institution¹³ and during the daytime the doors of their cells shall as a rule be open.¹⁴ However, the usual practice of penitentiaries is that even if an inmate was sentenced by the court to medium-severity prison, if he/she is classified as a Grade 4 prisoner he/she will not be permitted to leave the cell and the door of his/her cell will be closed all day. On the day of the visit there were 21 convicts in the Grade 4 and 95 convicts in the Grade 3 security group.

According to the house rules of the Sátoraljaújhely penitentiary all three types of imprisonment (maximum-, medium- and low-severity imprisonment) as determined in the judicial sentence will be further divided into a mild, a basic and a strict regime. This means that in Sátoraljaújhely there are in fact nine execution levels. This classification system, called “progressive execution rules”, is not based on any law, however, it is followed in other penitentiary institutions, such as the Tököl Penitentiary for Juveniles. The new Draft Bill on the Execution of Sentences envisages that the system of “progressive execution rules” be extended to a national level. On the day of visit three persons sentenced to maximum-severity imprisonment and four persons sentenced to medium-security imprisonment served their sentence under the strict regime of their respective imprisonment levels.

The type of placement differs by the type of regime the prisoners are placed under. 113 (30%) prisoners (including those in the maximum security ward) were accommodated in cells for four or less than four inmates. The rest occupied large dormitories for 8, 12, 14 or more inmates.

The prison employed a total of 222 staff, 49 of which worked for the company, which employed prisoners. Of these 155 employees were directly involved in work with prisoners. The rest were support and auxiliary staff. The overall ratio sounded nice (1: 1.7 inmates), yet the specific one is less bright (1: 2.2 inmates).

In the maximum security ward the prison had eight cells to accommodate prisoners placed under a special regime of administrative isolation, the regulations on which have been summarized under Section 1.1 above, but are recapitulated here for the sake of clarity.

Under the Penitentiary Rules,¹⁵ if a person is qualified by the prison’s Admission Committee (see above) as a Grade 4 inmate, he/she *may* be placed in a maximum security cell (or ward). The law does not specify on the basis of what reasons such placement is possible, so it is completely up the penitentiary system to decide whether a Grade 4 prisoner is detained under normal circumstances or in a maximum security cell.

The Admission Committee of the given penitentiary institution may order that the inmate be placed in a maximum security cell for a maximum of three months. The Admission Committee may prolong placement with three months on two occasions. After nine months, placement shall be ordered by a special committee appointed by the National Commander. **The committee does not hold hearings, and reviews its decision at least once in every six month. However, neither of the above bodies bring formal resolutions, and no appeal is possible to any higher level authorities or any courts, while the rights of a person placed in a maximum security cell are severely restricted.**

There is no final time limit for placement in a maximum security cell. As a matter of fact some convicts serve their whole sentence in the maximum security ward. This has been happening e. g. to Magda Marinko, a citizen of former Yugoslavia, who was sentenced for murder. He was also charged with killing the members of a whole family (a couple and two minors) but due to the lack of evidence, the court acquitted him from this charge. During its previous visit HHC was not permitted to talk to him either.

¹³ Article 27 Point (c) of the Penitentiary Code

¹⁴ Article 41 Paragraph (5) of the Penitentiary Regulation

¹⁵ Article 47

These eight cells of the maximum security ward are situated within the perimeters of a “special corridor” complex. On the day of the visit there were four prisoners placed in that corridor. The IHF delegation was not able to talk with any of them but saw their cells and acquainted itself with the regime they were placed in. The cells in this unit were closed all the day. The prisoners were only allowed one-hour outdoor exercise in a special part of the prison. The walking space for this unit was around 25 sq. m. bare concrete floor. It was covered from above with metal bars and did not have any sports facilities. The prisoners could sign up to use the adjacent poorly equipped sports hall every second day for one hour and they performed the exercises alone. In terms of the relevant Hungarian legislation, they could participate in the general activities of the prison only with the Warden’s special permit. They were allowed visits of friends and family as the other prisoners but had to talk with them only by phone in a special booth separated with a plastic partition disabling any contact. It is possible for the guards to keep contact with the inmates by a special phone from the corridor, so without contacting them directly.

The IHF delegation was concerned by the extreme isolation and deprivation of human contact, which can be extremely damaging to prisoners held in the “special corridor”. Due to the aggregation of different factors (isolation, prolonged periods of time spent and a possibility for arbitrary placement), the conditions there can be described as inhuman. The IHF delegation expressed its concerns at the end of the meeting to the prison management.

1.3.3 Material conditions

The state of hygiene in Sátoraljaújhely on the day of the visit was in general satisfactory in all the wards the IHF delegation visited. Overcrowding however expressed itself in the state of the cells, some of which were indeed packed with two levels of beds and insufficient space for movement even for a short-term accommodation. The cells were equipped with sinks and cupboards for personal belongings. They had a toilet facility, which was fully separated from the living area. There were some tables but the number of chairs in the cells was insufficient.

Cells and dormitories allowed for some access to natural light but it was insufficient. The IHF delegation took some measurements and in one cell the lightening was 169 lux on the table. The artificial light too was insufficient in many cells as the bulbs were too small.

Prisoners who worked were able to have shower every day. Those who did not, had showers twice a week.

Temperature in the cells was around 19-20 degrees. Ventilation was a problem in some small cells. The IHF delegation asked but did not hear complaints about temperature during the winter. Bedding was sufficient and clean.

In general, the legally prescribed energetic values should be sufficient in view of the circumstances at Sátoraljaújhely. On the day of the visit the daily food allowance was HUF 320 (EUR 1.3). The administration claimed that with this money it was able to ensure the necessary caloric value of the food for the different categories of prisoners. The IHF delegation heard complaints from prisoners about the quality and quantity of the food but they were sporadic. Most prisoners were able to buy additional food from the prison canteen or to get some during visits of their relatives or friends. Religious minorities in the prison got separate menu according to their dietary requirements.

3.1.4 Activities and contacts

With the overcrowding and the maximum-severity regime under which the prisoners were locked in their cells when they were in, work and outdoor exercise in Sátoraljaújhely were a key to preventing the material condition from becoming inhuman. Most of the prisoners were engaged in work. Working compound was in a separate building inside the prison. Some prisoners worked for the company involved in the production of shoes. Others were engaged in work in the internal prison services

(cleaning, library etc). Since 2002 however the tendency in Sátoraljaújhely has been for decrease of the number of prisoners engaged in work. This is clearly demonstrated by the following table:

Work in Sátoraljaújhely Maximum- and Medium-severity Penitentiary by Year

	Working	Non-working	Total
2002	341	42	383
2003	337	35	372
2004	310	58	368
2005	310	58	368

Prisoners who work were remunerated. Those who work in the prison services got HUF 17,700 – 20,800 (EUR 70 – 83) a month. Those working for the company got HUF 14,266 – 25,548 (EUR 57 – 102) a month. Prisoners who study get a stipend of HUF 5,900 (EUR 24) a month. **The law provides that prisoners shall be remunerated at least one-third of the minimal wages paid at national level in the previous year. As the provision is interpreted restrictively, prisoners are paid the smallest possible amounts laid down by the law.** All prisoners have deposit accounts, where the salary is transferred. Inmates can spend their money to pay for their telephone calls, to buy goods or to send some to their relatives.

The IHF delegation was told that the prisoners who work do not get benefits for the purposes of retirement. This means that those who spend e.g. five years in the prison have no chances to receive sufficient pension benefits. This is a rather unsatisfactory situation and the IHF delegation expressed its concerns to the prison management at the end of the visit.

In addition to work, prisoners at Sátoraljaújhely were involved in other activities. There was a pottery workshop where some, although not many, could engage themselves for some time. Prisoners could also use the library, which had 9,000 books, including some new ones. The IHF delegation saw two prisoners working in a small woodcraft workshop. It also saw an “IT room” with some 15 computers allegedly used by the prisoners, mainly for the purpose of conducting IT training courses, although there were no users there on the day of the visit.

The prison employed a Catholic chaplain and had a chapel for 60 prisoners who could attend religious services.

The prison administration provides one hour visits for the prisoners once a month. The visiting facility for the inmates sentenced to medium- and maximum-severity imprisonment, was a large room with tables and benches where the prisoners can have some physical contact with their visitors. The facility for those who are placed in the maximum security ward however had a plastic partition separating visitors, which did not allow for physical contacts. Prisoners who were interviewed by the IHF delegation said that they were allowed only a short physical contact with children in the beginning and in the end of the visit. There are no possibilities for physical contact with lawyers but it was possible to exchange documents.

Inmates can make calls (five minutes per week) from the prison. Telephone cards can be bought in the prison shop. **Under the current law,¹⁶ use of telephone is a right that is to be provided as allowed by the circumstances of the given institution** (detainees may use the phone in accordance with the provisions of the house rules), **which allows the administration to regard this not as a right, but rather as something that may be permitted, and phone calls may be restricted with a simple reference to the possibilities of the prison. The administration can impose restrictions** (on phone calls, placement in security groupings) **without written decision.** This is not subject to judicial review.

¹⁶ Article 36 of the Penitentiary Code

The Ministry of Justice inspected the prison a week before the visit of the IHF delegation. From time to time the county prosecutor visits the prison for inspection purposes. The previous Ombudsperson visited the prison once too. In November 2002 the prison was visited by the Hungarian Helsinki Committee.

1.3.5 Medical Treatment and care

The prison employed two full-time doctors – a general practitioner and a dentist. They were helped by nurses. Similar to the situation in Unit III of the Budapest Remand Prison (see Section 1.2.5), most members of the medical staff form part of the military hierarchy, they bear military ranks and are subordinated to the Warden.

The health care of inmates in all prisons except for the Forensic Observation and Psychiatric Institution is supervised by the Central Prison Hospital. Several other medical specialists from outside visit prisoners upon request, including a psychiatrist, who visits once a month. The local ambulance and the local hospital too offer services to prisoners when needed. Inmates who need hospitalization will generally be transported to the Central Prison Hospital in Tököl but in emergency cases they will be treated in the local hospital or if they need a special treatment that is not provided in Tököl, they will be treated in special institutions. **Still, the medical service at Sátoraljaújhely, as well as elsewhere in the penitentiary system of Hungary, cannot be considered sufficiently integrated with the national health care system, as employees of the prison, medical practitioners cannot be fully independent, especially in a maximum-security ward where lots of security considerations ought to be taken into account in cases of transfer or interruption of punishment for health reasons.**

The IHF delegation visited the health care facility of the prison. It was modestly equipped but well organized. The general examination room was around 25 sq. m. It was equipped with two beds. During the interviews with medical professionals the IHF delegation found that there is no legal minimum on the length of a medical check, which the doctors must follow. **They check all newly arriving prisoners and record any traces of physical abuse on their bodies but are not obliged to report suspicious cases to the Prosecutor's Office. These are reported to the prison administration instead. This practice is against the law.** As it is pointed out in the section on relevant Hungarian laws, under the Penitentiary Regulation,¹⁷ a medical examination shall be immediately carried out, if outward signs of injury are witnessed upon the arrival of the detainee, or a person transferred from a police jail, youth custody centre, or military custody claims to have been ill-treated. A record of the examination shall be prepared, and a copy thereof shall be sent to the authority performing the detainee's transfer and to the public prosecutor in charge of supervising the lawfulness of detention.

All medicines administered by the doctors are free for the inmates. Dental prothesis and therapeutic equipments are in general also free.

1.3.6 Discipline

Sátoraljaújhely prison had five disciplinary cells and the IHF delegation was able to see them and to talk with segregated prisoners in private. The standard disciplinary cell was around 8 sq. m. It had an open toilet facility, a wooden bed 20 cm from the floor and a small table, which looked also like a chair. **It was dark, far below acceptable standards and it was not possible to read in the cell during the day.** The inmates were not allowed to use mattresses during the day – they were lifted in the morning and were returned in the evening. The inmates were allowed to take one-hour outdoor exercise while in disciplinary confinement. The rest of the time they spent in the cell and received their meals there. **The IHF delegation believes that 30 days spent under such conditions could amount to inhuman treatment and expressed its concern with the conditions of detention in the disciplinary cells to the prison administration at the end of the day.** Let alone that “punishment by

¹⁷ Article 17

placing in a dark cell, [...] shall be completely prohibited as punishment(s) for disciplinary offences [...]” (European Prison Rules, Article 37).

With regard to medical treatment of inmates in disciplinary confinement the Hungarian legislation is not fully in line with the European Prison Rules, for in terms of the Disciplinary Decree (issued by the Ministry of Justice),¹⁸ “the checking of the medical condition of inmates in disciplinary confinement and their examination by a doctor at least once a week shall be guaranteed, while Article 38 of the European Prison Rules prescribes that a “medical officer shall visit daily prisoners undergoing such punishments”.

The awards were used extensively by the prison authorities. The latter provided the IHF delegation with the following statistics for awards and punishments since 1999:

Awards and Punishments at Satoraljaújhely Maximum- and Medium-severity Penitentiary by Year:

	1999	2000	2001	2002	2003	2004
Awards	612	604	974	1,169	1,510	1,798
Punishments	194	165	157	135	293	230

These figures may lead to conclusion that the ratio punishment/award has significantly increased; from 1:3,15 it amounted to 1:7,8 which should be exemplary case. It should be highlighted though that the majority of the awards are praises, which do not result in any direct positive consequence (apart from the legal ones concerning the inmate’s penitentiary records), while short-term leaves are employed rarely.

This is mainly due to the fact that in late 1999 the government radically changed its policy towards penitentiaries with respect to awards that permitted convicts to leave the institution during their term in prison. In 1988 convicts were permitted to leave the Satoraljaújhely prison 260 times in the framework of the so-called lenient executive rules, an award that gave a possibility to inmates to leave the prison regularly.¹⁹ In the same year convicts were awarded with a short term leave 128 times. For 2000 these figures decreased to 21 and 26 respectively. The practice applied until 1999 was never restored, the Draft Bill on the New Penitentiary Code proposes lenient executive rules to be completely abolished from the system.

1.3.7 Ill-treatment

The IHF delegation was told that the use of force is rare in the prison. In 2005 there were three cases of use of physical force, all to stop inter-inmate violence. In one of the cases handcuffs were used in addition to force. The staff is obliged to register the use of force and special means separately.

Prisoners interviewed by IHF delegation members did not complain of unlawful and arbitrary use of force by the staff of the prison. Most believed that at Satoraljaújhely the staff enforced the law rigidly but within strict limits. Strict maintenance of discipline and tight regime prevented inter-inmate violence, which, the IHF delegation found was not widespread in the prison.

1.4 Visit to the Tököl Penitentiary for Juveniles

¹⁸ Article 30

¹⁹ Under Article 28/A of the Penitentiary Code, lenient executive rules may be applied if the inmate has served half of the time for conditional release, and there are well-founded reasons to believe that the purpose of imprisonment may be attained even if more lenient executive rules are applied to him/her that would be prescribed on the basis of the level of imprisonment determined by the criminal court. Advantages provided by these rules to inmates include: leaving the penitentiary maximum four times a month for not more than 24 hours, receiving visitors outside the prison, unguarded work outside the prison, etc.

The IHF delegation visited the institution on 12 May 2006. The delegation was received by the institution's Warden, Mr. László Illés, two Deputy Wardens – one responsible for financial and another for penitentiary affairs – and a representative of the National Prison Administration.

1.4.1 The Facility

In spite of the regular maintenance works, the condition of all the buildings is constantly deteriorating; the public utilities are also in a very bad state of repair. The last renovation took place in 2001, when Unit B 14 was reconstructed. The unit where juveniles are accommodated was built in 1974.

1.4.2 Inmate and staff data

The total capacity of the institution is 825 persons. On the day of the visit the number of inmates was 745, out of which 190 were juveniles and 555 adults. The ratio of first time offenders vs. recidivists was 74% – 26%. The age distribution is as follows: below 18 years – 12%, 19-25 years – 36%, above 26 – 52%. 52% of the inmates were spending a sentence of imprisonment up to two years, the sentence of 41% was between 2 and 5 years, while 7% of the inmates had a sentence exceeding 5 years. At the time of the visit there were 9 foreigners (6 Romanians, 1 Albanian, 1 Ukrainian, 1 Vietnamese).

For a long time the institution used to be the only penitentiary institution for the detention of juvenile convicts and pre-trial detainees, but since the mid-1990's, further penitentiaries for juveniles have been built. In 1997 a small prison was established in Kecskemét (Southern Hungary, 30 inmates), in 2002 another institution was opened close to Miskolc (North East, 160 inmates), and a third one is being built in Pécs (South West, 50 inmates). Therefore, the number of juveniles has radically decreased in Tököl (according to the Hungarian regulation, inmates shall be placed as close to their hometowns as possible), and the empty spaces were filled up with adult inmates. (According to Hungarian penal law, a juvenile is a person who committed the crime between the age of 14 and 18. If a person is convicted for an offense as a juvenile, he/she is to be treated in the penitentiary system as a juvenile until the age of 21. After reaching this age he/she is moved to an adult institution.)

Most of the adults are in Tököl for the purpose of working. Approximately 350 persons work for the for-profit company operating next to the Tököl prison, another 130-150 people do maintenance work in the institution and the Central Prison Hospital, also situated next to the Prison. Most of the remaining adults are inmates whose health condition is such that entails the possible necessity of hospital treatment from time to time. (Only among these inmates are there some maximum-severity prisoners, all the other adults are spending low or the medium severity sentences.)

The IHF delegation was told that at that moment of the visit there were only male inmates. Actually, based on the written answer given by the management to the questions of the delegation after the visit, it became clear that at the time of the visit there were 15 female juvenile inmates in the institution. Since the delegation did not know about their presence, there was no opportunity to talk to them.

The Tököl institution is a rare case in Hungary, not facing the problem of overcrowding. The actual capacity of the institution is 1500 inmates. However, due to the necessary segregation between juveniles and adults, the empty spaces in the juvenile unit may not be filled with adult inmates, so the juvenile unit is not full, and therefore the current number of inmates is below the institution's capacity.

The institution's total staff consists of 300 persons. The staff - inmates ratio was 1:2,5 at the time of the visit. Yet, since it is the only institution in Hungary without electronic guarding, the Warden is of the opinion that more guards would be necessary. The Warden believed that the number of personnel for the juvenile penitentiary unit was more or less sufficient. Four educators are employed and each one is responsible for 25-30 juvenile inmates, while the national average is 85 inmates per educator.

This seems to be in contradiction with the Warden's view expressed in relation to rape-cases (see below): he said that in this regard that the lack of sufficient personnel was the main problem. There is only one guard on duty on each corridor (one corridor holding 18 cells), and therefore it is not possible for the guard to check everything and keep everything under control.

Tököl's juvenile inmate population consists of pre-trial detainees and convicts relegated to low- and medium-severity imprisonment (under the Hungarian law, there is no maximum-severity imprisonment for juveniles). At the time of the visit there were approximately 60 detainees in each group.

A complex regime-system is operated for the juveniles. Within both the low- and the medium-severity level three groups have been established: a mild, a basic and a strict regime. In addition there are specialized groups. These are the following.

Correctional group: for inmates who find it difficult to fit in, because they are either too aggressive or too weak (i.e. unable to protect themselves from others). At the time of the visit there were two inmates in this group. They had been in the group since September and October 2004 respectively. The educators placed them in this group because they had problems fitting in and needed protection from the rest of the inmates. Both of them said that they felt much better with this placement. Before being placed in this group, one of them was in the basic, while the other one in the mild regime of the medium-severity penitentiary section.

Healing and educational (therapeutic) group: under the Penitentiary Regulation, there are compulsory and optional cases of when an inmate shall or can be placed in such a group. The placement of the inmate is compulsory in the therapeutic group if for instance the inmate's legal capacity is restricted; if the inmate was treated in the Forensic Observation and Psychiatric Institution (IMEI) due to his/her psychiatric problems, provided that his/her condition has improved to such an extent that it does not further hinder the implementation of the imprisonment; or if his/her personality disorder makes his/her placement in such a group necessary. Compulsory placement in the therapeutic group shall be preceded by an examination at IMEI.

The healing and educational group functions according to the special needs of the inmates who are placed there.²⁰

Not in every penitentiary institution can one find a therapeutic group. In those institutions where such a group is established (therefore also in Tököl), the Warden – based on a physician's suggestion but without a preliminary examination at IMEI – may place inmates suffering from a personality disorder in the therapeutic group for a maximum of 30 days.

The therapeutic group in Tököl currently consists of five inmates, who are placed in this group because they have psychological problems. The inmates had been in this group for different periods of time, meaning 3, 4, 6 or 8 months and one of them for 2 years.

Special group: the special group has been set up for the difficult cases. Those inmates are placed here who committed crimes against human life (murder, homicide, attempted homicide), and those whose sentence exceeds five years. There were five inmates in this group, three of them are 19 years old and two of them are 20 years old. One of them had been in the prison for three years, two of them for four years, one of them for five years and one of them for six years. One of them was sentenced for theft, another for robbery and blackmail and three of them for homicide. All of them had been in disciplinary confinement at some point during their detention in Tököl.

²⁰ Under § 175 of the Penitentiary Regulation “the education, training and employment of inmates placed in a healing and educational group shall be realized in the framework of a complex therapeutic program. Inmates placed in healing and educational groups live on the basis of a special schedule and they are provided with psychotherapeutic treatment as well as education and employment corresponding to their special needs.”

In the view of the IHF delegation such sub-grouping is only acceptable if it does not "overrule" the penal court's decision on the severity of the imprisonment. As it was explained under Section 1.1, in its sentence, based on the Penal Code's provisions, the penal court decides on whether the convict shall serve his/her sentence in a low-, medium-, or high-severity penitentiary. **If the sub-grouping performed by the penitentiary management results in that a person in the strict regime of the low-severity penitentiary group is detained among stricter circumstances than someone from the mild regime of the medium-severity group, it means that the court's decision on the severity of the imprisonment will not be respected, and therefore, the management's practice is unlawful.**

1.4.3 Material Conditions

In the juvenile building, the ground floor corridor accommodates the mild regime of the low-severity penitentiary section, the disciplinary unit (with disciplinary confinement cells and disciplinary isolation cells), as well as the offices of the general medical practitioner and the dentist. There is no natural light in the corridor. The building is old and rather run-down. There is one camera at the end of the corridor.

In the disciplinary unit there are approximately 15 cells. The IHF delegation saw two cells of the "left wing" (where the disciplinary confinement cells are situated) and one of the "right wing" (where the disciplinary isolation cells are located). (As it was outlined above, disciplinary isolation is a kind of "pre-trial detention" in disciplinary cases, whereas disciplinary confinement is the disciplinary punishment itself).

The disciplinary confinement cells are very small (1.2 meters wide, 3 meters long and 3 meters high). **They are wet, old and lack practically any natural light.** The window is 0,5 X 0,5 meters, but so thickly barred that natural light is not allowed in. There is a bed and a bench – both fixed to the ground. There is also a toilet inside. It is in a horrendous state. **There is no running water in the cell.** Water is passed in by the guards in plastic bottles in the morning. The personnel said that once they have more money, running water would be made available in the disciplinary cells as well.

The security isolation cell has a bigger window (1 X 0,6 meters), a basin with running water and a better iron toilet. The reason for the difference is that in theory apart from the restriction concerning communication with other participants of the disciplinary procedure, the inmate in disciplinary isolation shall not be restricted in his/her rights provided by the Penitentiary Code, and that also extends to the required physical conditions of the cell.

The yard used for open air exercise in the disciplinary unit is extremely small.

The IHF delegation also visited the cells of the special group, the correctional group and the therapeutic group. These are located on the first floor of the juvenile unit. These cells were relatively spacious (3 X 5 meters).

The cell of the special group had 6 beds of normal height above the ground, 2 windows (2 X 1 meters) letting in sufficient natural light, a toilet, one basin, 3 electric bulbs, one desk, a TV set, a radio, plants and posters on the walls. The cell of the therapeutic group had 6 beds, 2 basins, plants and 1 TV set.

1.4.4 Activities and contacts

A local council elementary school has a branch within the institution and 100-120 inmates attend it annually, since education until the age of 18 years old is compulsory in Hungary. At the time of the visit, there were 55 juvenile convicts (14-18 years old) in the institution. Pre-trial juvenile detainees also attended the school. Besides basic education, professional training classes for potential occupation purposes are also organized in the institution. Examples include painting, masonry, computer science

and bike-motorbike repairing. Currently the administration is negotiating for training classes for cemetery gardening as well.

The philosophy of the institution is to keep inmates busy so as to avoid trouble. To this end they also offer sport programs to fulfill the increased needs of juvenile inmates. Such activities are easy to organize, since the institution is quite spacious and has sport fields.

The IHF delegation interviewed members of the special group, the correctional group and the therapeutic group about the activities too. The inmates in the special group said that they take a walk as a group and also play football among themselves, not mingling with other inmates. Last year they had attended elementary school classes and painting classes as well. They are allowed to make calls twice weekly, on Monday morning and evening. They also receive visits once monthly, but since their families live far from the institution, they cannot visit them actually. None of them attends the mass.

One of them (V.L.) had asked to be temporarily transferred to another institution in Debrecen, in order for his family to be able to visit him, However he told the delegation that his transfer had been scheduled for 27 August, while it was possible that he might be released on 26 August. When the Warden was informed by the IHF delegation about this complaint, he said that he would look into the matter and try to solve the problem, but added that V.L.'s release on 26 August is not certain: if he is put on parole, he will be released on this date, but if the penitentiary judge does not approve of V.L.'s parole, V.L. be released only in 2007.

The inmates in the therapeutic group said that they do take a half-hour walk but only 2-3 times per month. The personnel refuted this claim. The therapeutic group inmates also complained that they have to take their outdoor exercise in a separate barred area, which feels like a cage. The psychologist visits them 2-3 times weekly on her own, and they can talk with her. None of them is on any psychiatric drugs. They were much pleased with their educator. Two of the inmates go to school, one attending the 1-7th grade classes, the other one attending the 8th grade just in order to pass time since he had already accomplished his 8th grade studies in the past. They said that they were allowed visit the chapel inside the prison. Inmates in the therapeutic group also complained that legal institutions that would make it possible for them to leave the prison for shorter periods of time (as a reward or an instrument of reintegration), are practically never applied.

They had complaints about the food, which they think to be of bad quality and insufficient quality. They added that two inmates have to eat from the same dish-plate, although on the day of the visit this was not so, presumably to demonstrate to the IHF delegation that the treatment of inmates is better than it really is. One of their main complaints was that they as a therapeutic group do not have their own special group/community rules although they believe that it is prescribed by the law. They claimed that they had only received new version of the penitentiary house rules (62-34-17/2005) the day before the delegation's visit. The old penitentiary house rules (62-34-48/2004) were also shown to the delegation.

The other serious grievance of the persons in the therapeutic group was that they are constantly harassed by the detainees of the special group. (These groups are placed next to each other, the corridor segments in front of their cells are separated by bars.) This statement was substantiated by an incident that happened on the day of the visit. On his way back from the school to his cell, a member of the special group rushed into the cell of the therapeutic group (cell doors are open during the day), and before the guards could intervene, punched R. M. (one of the inmates in the therapeutic group) in the face. R. M. suffered visible bruises.

When asked why these groups are placed close to each other, the Warden said that this is the only way to keep eye on them, because otherwise one of the sensitive groups would be placed far away from the guards. **Obviously, the present solution is not sufficient either to prevent incidents like the one described above.**

According to the two inmates in the correctional group, they are allowed to take a walk along with those placed under the mild regime of the low-severity penitentiary section and with the therapeutic group. They stated that they had no harassment incidents, either by the other groups or by the personnel. In contradiction with the statements of the inmates of the therapeutic group, they said that the reason why the other groups had not caused them any trouble is that their cell is separated by the bars across the corridor, which are always closed, except when a detainee is escorted by a guard.

There are school classes twice a week. One day consists of five classes, 45 minutes each. It is not obligatory to separate the inmates from the three groups (therapeutic, correctional and special groups) when they attend school classes.

1.4.5 Medical care and treatment

The Central Prison Hospital is also located in Tököl, however the hospital personnel form a different organizational unit and are under separate leadership. The hospital will be dealt with in a separate section.

Three psychologists are employed in the Juvenile Penitentiary, one of them was pregnant at the time of the visit. There are three doctor posts in the institution, but only two were filled in May 2005: by a head physician and a dentist. The institution has for a long time been unable to find a doctor who could fill the third status. There are 8 nurses, 5-6 of them have some specialization. There is a nurse on duty 24 hours a day.

(From an organizational point of view, Unit K (the unit for HIV positive inmates) belongs to the Juvenile Penitentiary, however, the medical treatment provided for such inmates will be dealt with in the section on the Central Prison Hospital.)

The institution, allegedly, pays increased attention to drug detection. In 2004, there were 6-8 drug addicts in the institution. Yet, the drug prevention unit was closed down last year. According to the Warden the reason is that they realized that the anti-drug program was more useful if extended to all the inmates, instead of just a restricted number of inmates within such a unit. However, the delegation did not hear about these anti-drug measures any more.

1.4.6 Discipline

It has to be noted that the Warden laughed when he said that the options for different disciplinary measures regarding juveniles were rather scarce. Thus, disciplinary confinement is quite commonly applied.

According to data provided by the administration, while the total number of the institution's inmates has increased in the past years, the number of disciplinary offences has decreased. For example, the number of disciplinary offences in 2004 was said to be about 600 (with approximately 800 inmates). In comparison, in 1999 there were fewer inmates (approximately 550), while the number of disciplinary offences was higher (1,000).

Yet, in 2004 there were 66 disciplinary confinements, imposed on 42 juveniles and 24 adults. Out of the 66, 52 were first time offenders, 3 recidivists, 6 special recidivists (special recidivists are recidivists who commit the same or a similar offense), 5 multiple recidivists.

At the time of the visit, three inmates were in disciplinary confinement, two were in disciplinary isolation and one in security isolation (for the meaning of the different terms, see Section 1.1).

Case #1: The delegation met two juvenile inmates (17 and 20 years old) punished with disciplinary confinement. One of them was sanctioned for disrespectful behavior toward the guards. Both of them got 10 days (the maximum for juveniles is 20 and 10 days, depending on whether the juvenile inmate

is serving a low- or a medium-severity sentence), but spent 11 days in disciplinary isolation (kind of "pre-trial detention" in disciplinary proceedings) before their case was decided upon.

With regard to the temperature in the disciplinary cells, they said that during wintertime it is all right, as the heating is on. When however the heating is turned off, the disciplinary cells are cold even in the summer. They claimed that they had no trouble with most of the guards. This does not mean that the relationship is fully unproblematic. For example, one of the interviewed inmates claimed that he had once asked for water (as it was outlined above, there is no running water in the disciplinary confinement cells), and the guard only handed in the water one hour later saying, "At least, I will have no more problems with you".

The Penitentiary Code excludes the possibility of receiving visitors and packages if the inmate is in disciplinary confinement. It is unclear whether in practice telephone calls are also excluded. Although the law prescribes that if a family visit was cancelled because the inmate is in disciplinary confinement, the Warden *may* allow that it is held after the confinement is over (i.e. the inmate does not have to wait for the next, ordinary monthly visit), **the IHF delegation would like to draw attention to international norms, which explicitly claim that "the restriction or denial of contact with family members should be prohibited for any purpose"** – see Reminder on relevant international norms.

Case #2: The inmate interviewed is a 28-year-old recidivist sentenced for theft. He has already been in the medium-severity section for 8 months. He has been in disciplinary confinement for five days because he refused to work. He has family (2 children) in a distant region of Hungary, and had therefore asked to be transferred to another prison. He thought that if he refused to work they might transfer him. The only articles he is allowed to have with him are books. Still, he can hardly read due to the lack of light (there is hardly any natural light, and the single light bulb hanging down from the ceiling does not provide sufficient artificial lighting).

Case #3: The inmate interviewed is a 17-year old pre-trial detainee charged with theft. He has spent 1 year and 2 months in pre-trial detention. He has been in disciplinary isolation for two days because a disciplinary proceeding was initiated against him for fighting with another inmate. His hearing will take place the following Thursday (19 May 2005). In case he gets a disciplinary confinement as a disciplinary punishment, he will not appeal against the decision. It would not be his first time in disciplinary confinement. The previous time he spent 10 days in such confinement. Smoking and newspapers are allowed before the hearing.

Case #4: One inmate (R.A.) claimed that once he had spent altogether 48 days in confinement. He claimed that he had spent the maximum 15 days in security isolation during the disciplinary investigation period, he had then been punished with 20 days in disciplinary confinement, base, but he had appeal on the results of the investigation, but he had appealed against the decision and spent 13 more days in confinement while waiting for the decision of the penitentiary judge. The judge maintained the punishment, so he had to serve 20 days in disciplinary confinement. Altogether this adds up to 48 days.

The story was refuted by the staff, who said that it was not allowed to keep someone in isolation while he/she was waiting for the results of the appeal to the penitentiary judge. According to the Penitentiary Code, the appeal to the penitentiary judge has a suspending effect on the penitentiary management's decision imposing disciplinary confinement, while in terms of the Disciplinary Decree, security isolation may not be maintained after the end of the first instance disciplinary proceeding. This means that the law indeed excludes the possibility of keeping the detainees in confinement while they are waiting for the second instance decision of the penitentiary judge.

On the other hand, the case highlights a serious problem of the existing legal framework, namely that under the Disciplinary Decree,²¹ the time spent in disciplinary isolation may not be

²¹ Article 29

deducted from the term of the disciplinary confinement. This practically prolongs the maximum length of confinement imposed for disciplinary violations with 15 days (which thus becomes altogether 25 or 35 days in the case of juveniles, depending whether they are detained in a minimum- or a low-severity penitentiary). **The IHF delegation therefore suggests that the Disciplinary Decree be amended in order to eliminate this anomaly. The Disciplinary Decree should also exclude the possibility of placing someone in disciplinary isolation during the disciplinary proceeding if the nature of the disciplinary offense he/she is charged with makes it unlikely that as a result of the proceeding he/she will be punished with disciplinary confinement.**

Case #5: There was one inmate in security isolation. He claimed that he himself had asked to be placed in security isolation, because he had been annoyed by the people surrounding him. Since he was sentenced for a cruel murder, the staff thought it was best to grant his wish. The inmate informed the delegation that he was treated well.

1.4.7 Ill-treatment

The IHF delegation met two juvenile inmates (17 and 20 years old) in disciplinary confinement, who were at the time of the visit taking their daily one-hour exercise in the walking yard of the disciplinary unit. The yard is approximately 3 x 7 meters big, with barbed wire all around, but still in the open air. Both inmates were handcuffed.

When asked about the reason for that, the Warden referred to Point 2 of Order No. 1-1/25/2000 of the National Penitentiary Commander, in terms of which inmates in disciplinary confinement or in security or disciplinary isolation shall be handcuffed whenever they leave their cell or ward. This means that they are also handcuffed during the daily outdoor exercise.

The Warden went on to say that these inmates were dangerous both to other inmates and the guards. In addition he pointed out that “There are two approaches. The first one holds that juveniles can be re-socialized while in a custodial institutions. The second one holds that a juvenile criminal should be treated as a criminal. It seems that the second one works better.”

In addition to expressing our fundamental disagreement with this philosophy, we also have to point out that the above mentioned Order is not in line with the Hungarian legislation either. As it was explained in Section 1.1, **apart from the restriction concerning communication with other participants of the disciplinary procedure, the inmate in disciplinary isolation shall not be restricted in his/her rights provided by the Penitentiary Code. However, the Order violates this rule, since handcuffing whenever the inmate leaves the cell certainly means a restriction of rights.** For example, under the Penitentiary Code,²² the inmate is entitled to use the sports facilities of the penitentiary. If however, the inmate is handcuffed, he/she cannot play basketball or use the gym, so his/her right set forth by the Penitentiary Code is restricted, although the Disciplinary Decree does not authorize such further restrictions.

Furthermore, the practice of handcuffing juvenile inmates in confinement amounts to a direct violation of the Beijing Rules as well as the European Prison Rules (see Reminder).

During the visit to the juvenile prison, the IHF delegation was informed about a rape case that happened between juvenile inmates last year. In response to the IHF delegation’s inquiries about the rape, the Director of the Central Prison Hospital (see Section 1.5) said that rape cases occur mainly among juveniles and that only juveniles become rape victims. He vaguely remembered the case but did not go into details. He said that in such cases the hospital prepares a medical record and sends it to the custodial institution where the rape happened. He stressed that rarely does the hospital have rape cases, as medical help is only sought when the wounds are very serious.

²² Article 36

On the other hand, the Warden of the Juvenile Penitentiary replied that both the doctor and the nurse had reported the rape to the prosecutor but there had been no answer from the prosecutor at the time of the visit. Actually, rape in prison, according to the Warden is a fact of life. He informed the delegation that there are 4-5 rape cases every year in the institution. In such cases the penitentiary administration carries out a disciplinary investigation. The alleged perpetrator is isolated from the victim. If the allegation is confirmed the perpetrator is punished with disciplinary confinement but a criminal proceeding is also initiated. The file (also containing the victim's medical records) is sent to the criminal investigating authorities (the prosecutor or the police). Later on, the institution receives information on the outcome of the criminal procedure from the investigating authority.

There seems to be a contradiction between the statement of the Warden that there was enough personnel working with the juvenile inmates, and his view that since "there is only one guard per corridor during the night, and the corridor is very long" there is not much the penitentiary administration can do to prevent rape cases. We have to strongly emphasize that relevant international norms prescribe "unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile" (see Reminder).

1.4.8 Reminder on relevant international norms and recommendations

European Prison Rules, Section 39: The use of chains and irons shall be prohibited. Handcuffs, restraint-jackets and other body restraints shall never be applied as a punishment.

European Prison Rules, Section 14.2: Where accommodation is shared it shall be occupied by prisoners suitable to associate with others in those conditions. There shall be supervision by night, in keeping with the nature of the institution.

UN Rules for Juveniles, Rule 33: During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile.

UN Rules for Juveniles, Rule 67: All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose.

UN Rules for Juveniles, Rule 87 (d): All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

CPT Standards, Extract from the 9th General Report [CPT/Inf (99) 12], Par 35: Places where juveniles may be deprived of their liberty almost invariably make provision for disciplinary sanctions to be applied to inmates who misbehave. In this connection, the CPT is particularly concerned about the placement of juveniles in conditions resembling solitary confinement, a measure which can compromise their physical and/or mental integrity. The Committee considers that resort to such a measure must be regarded as highly exceptional. If juveniles are held separately from others, this should be for the shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material and offered at least one hour of outdoor exercise every day.

1.5 VISIT TO THE CENTRAL PRISON HOSPITAL IN TÖKÖL

The IHF delegation visited the institution on 12 May 2005. The delegation spoke to dr. Imre Kováts, the Director of the Central Prison Hospital (CPH), the Deputy Director, several doctors, nurses and inmates. The Director of the hospital is a physician by profession and holds the rank of captain. The Deputy Director has no medical background. The second Deputy Director is a chief of pulmonology. Members of the IHF delegation were given permission to inspect the entire prison hospital premises.

1.5.1 The Facility

The CPH is located within the Tököl Penitentiary for Juveniles, outside a small village around 25 kilometers from Budapest, in a four story building constructed in the sixties. There do not seem to have been any recent renovations. The IHF delegation was told that the bathroom of the gynecological ward was renovated two years ago.

The CPH has the following wards: a gynecological and maternity ward; a casualty ward and surgery; internal medicine and pathology; pulmonology; a dental ward and a dental surgery. Inside the listed wards there are sub-units: otolaryngology; ophthalmology; urology; dermatology and venereal diseases; ophthalmology, radiology; laboratory and pharmacy. Next to the entrance to every ward in the hospital, there is a table with a nurse who keeps the record of the daily routine.

1.5.2 Inmate and staff data

The CPH can accommodate 297 patients. The number of patients varies between 180 to 230 inmates per day. Approximately 10,000 patients circulate through the CPH per year. At the time of the IHF delegation's visit, there were 201 hospitalized inmates and twelve new patients arrived.

To be sent to the prison hospital, an inmate needs a prescription, accompanied by a letter from a doctor. If there is no time to transfer sick detainees to Tököl, urgent cases, such as heart attacks, are handled in the civil hospitals near the respective prisons. Psychiatric patients and juveniles are not treated in the CPH. Patients are brought to the CPH from all 32 penitentiary institutions in Hungary, and the CPH also serves patients from the police jails of Budapest and Pest County. All female inmates are placed in the gynecological ward.

Approximately four to five percent of the patients are foreigners. The Director said that there has been a wide range of nationalities treated at the prison hospital. The inmates originate most frequently from Albania, Macedonia, Romania, Serbia and the Ukraine but there have also been patients from Croatia, China, Germany, the Netherlands, Russia, Spain, Switzerland, Vietnam, and the USA²³. The Director did not, however, specify which nationalities/ethnic groups were present at the time of the IHF visit to the prison hospital.

The prison hospital staff includes permanent and part-time medical staff: nine physicians, six part-time physicians, 94 supporting medical staff including assistants and nurses; security and administrative personnel. The hospital has a neurologist-consultant and a pediatrician for newborn babies on the maternity ward. Cardio surgery cases are sent to hospitals in Budapest. Issues related to neonatology are also handled in hospitals in Budapest. There are four persons performing the tasks of educators. Two of them are so called social officers, who are engaged with non-medical affairs like phones, correspondence and checking the parcels the inmates receive in the hospital. Thus the overall ratio is 1:1,7 inmates.

²³ Some of the doctors speak Romanian as some of them come from Transylvania, but it does not seem that the staff has advanced knowledge of foreign languages

The IHF delegation spoke to nurses and they stated that inmates generally behave respectfully to them. When they do not, the nurses attempt to calm them down; otherwise they must enter the room with a guard.

Penitentiary staff guards the outside of the building, while hospital security staff is responsible for security inside the building. The hospital security staff is also responsible for the transportation of patients who cannot be treated in the hospital, to hospitals in Budapest and for guarding them while they are treated in the civilian hospitals.

1.5.3 Material conditions

The IHF delegation visited only three wards – gynecology, surgery and the internal medicine ward – and spoke to around 30 inmates and 7 staff members. Generally, the rooms the IHF delegation visited were overcrowded, and the physical conditions were far from satisfactory. Only the rooms in the gynecological ward were properly cleaned.

Gynecology: All female inmates no matter what kind of medical complaints they have are placed in the gynecological ward. The department has eleven rooms with 40 inmates. The ward has its own surgery for gynecological needs, a birth room, and an observation room.

At the time of the IHF delegation's visit, the room for pregnant women contained seven inmates in a room of approximately 20 square meters, with virtually no space between the beds, just enough for the bedside cabinets. The bedding seemed to be clean: every bed had a pillow, blanket and a sheet. The room had two windows, good natural light and ventilation. The electric light did not seem to be sufficient for reading. There was no high level of noise in the cell. The room had a sink and a separate toilette. The patients can take a shower every day.

The patients are kept closed in the room throughout the day. The IHF delegation was told that the rooms are kept closed because the doors of the wards may not be kept closed during the day. The inmates can leave the room four times a day to have a cigarette and to have a 45- minute walk in a cage-surrounded yard. Once a month they can receive a visit and a parcel. The inmates are satisfied with the treatment and they did not complain about the food.

The bathroom at the gynecological ward was renovated two years ago. It has a sink, two toilets and four showers. Despite the renovation the bathroom does not seem very tidy.

Maternity clinic: The maternity clinic is located in the gynecological ward. There are approximately 25 births registered at the CPH per year. One of the rooms the IHF delegation visited had three beds and three cribs. There was only one inmate with a child lying in a crib next to her bed. Close to the door was an area for changing diapers. The room seemed very clean and tidy, with windows, sufficient natural light and fresh air. The IHF delegation did not talk to the mother as she had just woken up upon IHF delegation's arrival.

Next to the room the IHF delegation visited, there was a special room for babies with twelve cribs and a small terrace for mothers. On the terrace, women can breast-feed their babies and be with them in a free space. At the entrance of the room, there is a storage place for diapers and baby clothing that is mainly donated.

The clinic also has a mobile incubator. However, neonatology problems can only be handled in Budapest hospitals.

Surgery ward: The room visited in the surgery ward was very stuffy and had no fresh air. All windows were closed, because one of the inmates complained about the draught. The room had eight beds and eight bedside cabinets but there were only seven patients in the room on the day of the visit. Every bed had a pillow, a sheet and a blanket.

The room had a sink and a separate toilet. The patients can take a shower every day. The natural light is good due to big windows, but the artificial light is not sufficient for reading. The patients stated that the treatment was generally satisfactory.

The patients can leave the room to have a cigarette four times a day. For the rest of the time the room is closed, and the patients are allowed to leave it once a day to have a 45-minute walk in the enclosed yard.

Internal medical ward: The room in the internal medicine ward is meant for seven inmates. It contains seven beds and bedside cabinets. There were only five inmates in the room. The beds in the room are in a bad shape and are dented. Every bed has a pillow, sheet and a blanket. The room also has a TV set. There is a sink, a steel mirror, and a separate toilette in the room. Inmates can have a shower every day.

According to the patients, the medical treatment is fine and the nurses treat them well. Yet, they complained that the windows are in a bad state of repair and no matter how warm the heaters are, a cold draught comes into the room. Those inmates, whose beds are under the windows, therefore feel cold.

They were not satisfied with the steel mirror, as they cannot shave properly. They have to provide their own hygiene materials or get them from their families. The sheets are changed weekly. They receive clean pajamas every second week.

Patients said that they have to clean the rooms themselves. It is unclear whether this is their obligation, or the cleaning personnel does not do their job properly.

Inmates are allowed to have a walk every day for 45-60 minutes, and can receive a visit once every month for two hours.

Nutrition: The IHF delegation spoke with the inmates about the food they are served and were told it was the same as in the prisons. On the day of the visit for breakfast they received half a loaf of bread, and marmalade or honey. For lunch they had a soup-like-dish, while for dinner they were served cream cheese and a leek. However, the IHF delegation believes that a person who has recently been operated on must have more appropriate food.

The prison/CPH administration provided the IHF delegation with information on the cost of the food based on the contract with the entrepreneur:

- HUF 52 (EUR 0.21) are spent per day for a patient in the hospital
- HUF 115 (EUR 0.46) are spent for inmates with tuberculosis
- HUF 173 (EUR 0.70) are spent for inmates with diabetes
- HUF 138 (EUR 0.55) are spent for special hospital diet
- HUF 51 (EUR 0.20) are spent for dairy diet
- HUF 312 (EUR 1.25) is the average norm for food for babies between 0-4 months
- HUF 433 (EUR 1.73) is the average norm for food for babies between 4-6 months
- HUF 666 (EUR 2.66) is the average norm for food for babies between 6-12 months
- HUF 115 (EUR 0.46) are spent as additional sum for pregnant women
- HUF 297 (EUR 1.19) is the average norm for breast feeding mothers

1.5.4 Activities and contacts

Fifteen patients at a time are allowed to have a 45-60 minute walk in a space in front of the hospital. The walking yard (known by the patients as the "cage") is extremely small (maybe 20 square meters). It has very densely woven bars and a cement floor. Half of the "cage" is covered by a small roof so that patients can have their outdoor exercise when it is raining. It is equipped with three narrow

benches and a small trash can. **It is incomprehensible why the inmates must have their walk in this small enclosed yard, because the yard of the prison is very spacious, full of trees, grass and flowers.**

The patients can read books, as there is a small library in every unit of the hospital. There are no other activities offered to hospitalized inmates.

Patients can receive visitors once a month. For those inmates who do not receive any visits, hospital administration engages either an educator or a psychologist to work with them or sometimes finances the travel of their family members. The Director of the prison hospital mentioned that some of the inmates have refused to meet with their family members.

The prison hospital was visited by the Hungarian Helsinki Committee (HHC). The IHF delegation saw several flyers on the hospital's billboards with the HHC's contact information.

1.5.5 Medical care and treatment

The CPH does not have a full-time employed psychologist, but if there is a need for one, the hospital has access to a psychologist who works in the juvenile prison. The HIV prisoners are not brought to the CPH. They are treated in the Unit K, and in urgent cases they are taken to Szent László hospital in Budapest.

Before receiving treatment, every patient has to sign a form of consent. The form contains the general information, and in addition the practitioner in charge:

- has to mark if the medical examination is necessary due to a complaint of the inmate or because of his/her disease;
- has to mark what kind of examination was conducted – a physical examination (including rectal examination with finger), and/or instrumental examination (EKG, taking blood pressure, RTG examination, RTG examination with contrast medium, and/or laboratory examination: blood, urine, faeces and – in case it is necessary – HIV check up).

The form includes a field for inmates who do not agree to be examined, stating *“I do not agree to any examinations of admission to the hospital. I relieve those doctors whose examinations I have not accepted of the responsibility, if later complications may develop. My consent to examinations and treatment is on the basis of fully understanding the information given and is without any compulsion.”*

Finally, at the end of the document, there is a space for the date, the practitioner's signature, the patient's signature and signatures of two witnesses. Diagnoses of non-Hungarian speaking inmates are also written in English, Russian, or German.

With regard to the institution's relation with the national health care system, the Director said that in general the penitentiary health care system is connected with the civilian health care system in four ways. (i) It happens (e.g. in smaller county penitentiaries) that health care duties are performed by civilian general practitioners if the penitentiary institution's physician is not available for some reason. (ii) All inmates whose illness can be treated within the penitentiary health system, shall be given treatment within this system, however, if due to the urgent nature of the case, there is no time to transport the inmate to a penitentiary health care institution, treatment shall be provided by a civilian institution. (iii) If the penitentiary system is not able to provide treatment (e.g. in a complex cardio-surgical case), the patient is sent into a civilian hospital. (iv) The National Health Service (the organ that exercises supervision over all health care institutions, including state and denominational hospitals, private clinics, and so on) exercises control over the health care institutions of the penitentiary as well. The National Health Service sets the standards for medical services and monitors whether these standards are met.

1.6 VISIT TO THE UNIT K OF THE TÖKÖL PENITENTIARY FOR JUVENILES

The IHF delegation visited the facility on 12 May 2005 within the framework of its visit to the juvenile penitentiary.

1.6.1 The facility

Under the Penitentiary Regulation,²⁴ HIV positive inmates shall be separated from all other inmates. In terms of the Penitentiary Medical Regulation,²⁵ “due to their special medical condition, the need for their protection and the need for the community's protection, HIV positive inmates shall be placed in the designated penitentiary institution regardless of their regime”. The special unit designated for HIV positive prisoners is Unit K, which is located in the premises of the Tököl Penitentiary for Juveniles. It is a separate, one-storied building surrounded by a small garden. The building used to be a prison museum, until in 1998 it was transformed into a unit for inmates infected with HIV. It is separated from the rest of the prison area by a wall, and has 16 one-person cells.

1.6.2 Inmate and staff data

On the day of the visit there were seven inmates in the Unit. There were both remand and convicted prisoners among them. They were adult, male prisoners – some with long, some with short term sentences. There were first time offenders as well as recidivists among the detainees in Unit K.

The IHF delegation was not given specifics on the nationality of the inmates, but was told that they were generally Hungarians. Only later, the IHF delegation was told that one of the inmates was Spanish. Furthermore, it came out that there was also a Ukrainian citizen with a life sentence (1st instance decision) in the Unit K.

The medical staff informed the IHF delegation that it was not compulsory for HIV positive inmates to be in Unit K. This information is however completely false, as in terms of the legal provisions quoted under Section 1.6.1 above, the segregation of HIV positive inmates is obligatory under Hungarian law. HIV testing ceased to be obligatory last year, if however, someone chooses to be tested and it turns out that he/she is HIV positive, he/she will have to go to the Unit K, whether he/she likes it or not. **Although this practice has been criticized by the CPT in both 1999 and 2003, the Hungarian authorities show no willingness to reconsider their stance in this regard.**

The staff also added that HIV positive inmates prefer to stay segregated because they feel more protected in Unit K than among other inmates. The inmates confirmed this statement.

The prison staff that works at Unit K claims to have no prejudices against the HIV patients and receives higher salaries for working in the Unit. The Unit is visited every day by a practitioner and a nurse. The practitioner has worked for the juvenile penitentiary for 20 years, and the nurse has been working in the prison's medical unit for five years.

1.6.3 Material conditions

Unit K has a small yard with flowers, a small reception area with a telephone hanging on the wall, a locker for the guards, a small utility room with a washing machine and cleaning supplies, a living room, a room for visits, a small kitchen and 16 cells along the corridor. The cells are open during the day. The overall impression was that the place was clean and relatively pleasant.

The cells had around nine square meters, and approximately 3,5 square meters of uncovered space. They were clean, with a bed, wardrobe, small table and a chair. The bed was at least 30 cm above the floor; it had a blanket, pillow and a sheet. The inmates' personal clothing was rather clean.

²⁴ Article 39 Paragraph (1) Point (e)

²⁵ Article 43

There was good natural light due to the big windows. The cells had three sources of electric light – two were in the cell and one was in the sanitary facility. There was no noise. One heater was located below the windows. The cell ventilation could be better. The sanitary facility is separate and can be closed off from the living space by a door. It has a toilette, a tap and a shower. Hygiene materials can be bought in the prison shop.

Unit K has a small kitchen for food preparation. The inmates receive a larger amount of money for food than the other prisoners, but the quality of food in Unit K is not different from that of the food received by the other inmates in the Tököl prison. Additional food can be bought in a prison shop. Family members are permitted to bring food to the inmates only if they buy it at the prison shop.

1.6.4 Activities and contacts

The inmates spend from eight to fifteen hours in their cells. They did not complain about the treatment. They keep together, have good relations and do not have contact with other prisoners outside the Unit. It has its own library, including foreign books (English and Russian ones). It was emphasized that Unit K inmates also have access to the central library of the prison.

Prisoners can read books, walk in the small yard for some time. No other activities are proposed for them.

Unit K has a special room of some 15-20 square meters for family visits. The family can visit an inmate once a month for two hours. Family members can only bring food to an inmate if they buy it at the prison shop. The inmates are allowed to receive three telephone calls per week.

Unit K was visited in 1999 by the CPT and by the Hungarian Helsinki Committee. Both organizations made recommendations after visiting the Unit.

1.6.5 Medical care and treatment

A specialist from the Budapest hospital specialized in the treatment of HIV/AIDS (Szent László Hospital) pays a visit to Unit K every second week and examines the inmates. In the meantime, prison medical staff tend the patients. The prison physician emphasized that in the intervals she can and does contact the specialist every time she needs to consult him in connection with the health condition of any of the inmates. An inmate whose health condition worsens gets transferred to Budapest. Blood tests are taken when necessary. Unit K has a psychologist, who conducts individual and group therapy.

Medications are prescribed by specialists from the Szent László Hospital and delivered to Unit K every week. The following medications are used for the treatment of inmates: *Combivir*, *Lendormin*, *Dormicum*, *Stochrin*, *Tolvon*, *Videx*, *Zenit*, *Gerodorm*. The medical staff of Unit K, which also works in the Tököl Penitentiary for Juveniles, showed the IHF delegation the patients' medical records.

1.6.6 Discipline

The staff could not recall when it had last happened that a disciplinary punishment had been imposed on any of the HIV inmates. This is due to the fact that there have been no cases of severe misbehavior on the HIV inmates' part, and the administration tends to disregard minor offences due to the special condition of the inmates of Unit K.

One of the inmates the delegation spoke to was first apprehended in Spain. He requested transfer to Hungary without expecting or knowing that he would be isolated from other prisoners. Now he believes that it may be better like this, because in Spain he was maltreated by other prisoners. He added that the cells are fine and the personnel treat him well. He "could not remember" volunteering for isolation in the Unit K.

1.6.7 Reminder on relevant international norms and recommendations

CPT Standards, Extract from the 3rd General Report [CPT/Inf (93) 12], Par 56: The CPT wishes to emphasise that there is no medical justification for the segregation of an HIV+ prisoner who is well.

1.7 VISIT TO THE FORENSIC OBSERVATION AND PSYCHIATRIC INSTITUTION (IMEI)²⁶

The IHF team that visited Forensic Observation and Psychiatric Institution (hereafter referred to by its Hungarian acronym IMEI) on 11 May 2005. The facility is located in the South-Eastern suburb of Budapest. The delegation spoke to Dr. Albert Antal, IMEI Director and Chief Physician, Ms. Ibolya Kovács, Deputy Head Nurse, and Dr. János Homula, Medical Director.

1.7.1 The Facility

IMEI, established in 1896, provides accommodation for patients in seven wards of three separate buildings. IMEI is the only high security psychiatric institution in Hungary for those subject to forensic compulsory treatment (*kényszergyógykezelés*), i.e. the treatment of those who have committed violent crimes against other persons or crimes that have endangered public safety and where there is a danger that they may commit similar crimes in the future, provided that the initial offence would be punished by imprisonment exceeding one year.²⁷

Under the CCP,²⁸ the court shall review *ex officio* the necessity of forensic compulsory treatment prior to the expiry of the one-year period from the beginning of the forensic compulsory treatment. If the forensic compulsory treatment is maintained, the review shall be done annually. A review may also be held upon the motion of the prosecutor, the person receiving forensic compulsory treatment, the spouse, legal representative, or his defender, or upon the application of the director of the institution of the forensic compulsory treatment. (An appeal against the court's decision is possible.)

Aside from individuals subject to forensic compulsory treatment, other types of patients are also placed in IMEI. These include those sent for *temporary forensic compulsory treatment* (the "pre-trial detention" of those who are likely to be committed to forensic compulsory treatment eventually) as well as prisoners experiencing mental disabilities and other individuals who have been referred by prison officials (for example, prisoners who are referred with suspected personality disorders).

According to information provided by the Director and Chief Medical Officer, approximately 80% of IMEI patients are subject to involuntary treatment because of indictments for murder or manslaughter. On average, they spend 4 to 6 years in IMEI. In 2003, 33 patients were released from the institution. According to the Director and Chief Medical Officer, approximately 80% of the patients are under guardianship.

IMEI is part of the penitentiary administration. The Ministry of Health exercises professional supervision over the treatment on the patients. IMEI's operation is regulated by the Penitentiary Code, the Health Care Act, and the IMEI Regulation. The Penitentiary Code claims that the status of IMEI patients is governed by the Health Care Act unless the Penitentiary Code stipulates otherwise.²⁹ The main rules are summarized below with a focus on the rules pertaining to those under forensic

²⁶ The Hungarian Helsinki Committee and Mental Disability Advocacy Centre (MDAC) visited IMEI in December 2003. For detailed report of their visit, as well as comments made by IMEI Director and the Director General of the Hungarian Prison Service, see *Prisoners or Patients: Criminal Psychiatric detention in Hungary*, published in 2005

²⁷ Penal Code, Article 74

²⁸ Article 566

²⁹ Article 84

compulsory treatment, as other forms of placement in IMEI are regulated by the provisions pertaining to “ordinary” penitentiary institutions.

Adaptive leave

After one year of forensic compulsory treatment and with the permission of the Director and Chief Physician, a patient may be released on “adaptive leave,” the aim of which is to prepare the patient for reintegration into society. “Adaptive leave” lasts at most 30 days and may be extended once. According to the rules of IMEI, a patient must spend “adaptive leave” with a caregiver who undertakes in writing to care for the patient.

Restraints

According to the Penitentiary Code,³⁰ only limited physical restraint (partial or full restriction of movement) may be used with patients and only in those cases defined in the Act. These include the following:

- if the patient threatens or infringes his/her own or other's life or physical integrity;
- if the patient threatens or infringes IMEI's order, security or assets;
- if the patient's unauthorized leave may not be prevented in any other way;
- if the patient actively resists medical examination or treatment.

The use of restraint measures, which can be used with other kinds of prisoners (e.g. handcuffs, truncheon) is forbidden. Also applicable in the case of IMEI patients are the provisions of the Health Care Act,³¹ which limit the restriction of personal freedom in any way (by physical, chemical, biological or psychological means or procedures) to those people with a menacing or directly menacing behavior (a difference in Hungarian law). Only the attending physician can order the use of restraints. As an exception, in specifically justified cases, a specialized nurse can also order temporary restraint, but must immediately inform the physician, who must approve the restraint within two hours. In the absence of this approval, restraint must be ended immediately.

Contacts with the outside world

Under the Penitentiary Code,³² the correspondence of IMEI patients may not be restricted in length and frequency. IMEI patients may make one phone call per week, may receive visitors and packages once a week. IMEI may check the contents of all forms of communication. Patients shall be informed about this right of the institution.

³⁰ Section 84/A Point (a)

³¹ Article 192

³² Article 84 Paragraph (4)

Work

As a rule, the treatment of patients is regulated by the Health Care Act. Under this Act, patients are entitled to participate in therapeutic work, however, they shall not be compelled to do any kind of work, whether therapeutic or not.

Accordingly, IMEI patients are not obliged to work. Therapeutic work shall be made available to patients, whose recovery is likely to be accelerated by participation in such activities. Therapeutic work shall be provided in the budgetary framework of the institution, i.e. it is mainly related to the institution's maintenance and cleaning. Patients performing such tasks are entitled to a monthly reward. With a special permission from the Director and Chief Physician, patients may also conduct work outside the institution.

Provision for needs and other issues

Under the Penitentiary Code,³³ IMEI patients are obliged to follow the order of the institution and wear a uniform. IMEI patients may not be compelled to pay for damages they cause to the institution.

IMEI patients are entitled to put forward complaints and requests in accordance with the rules pertaining to prisoners.

The norms for the provision of food are governed by the rules pertaining to civilian hospitals (i.e. in this regard IMEI patients are not treated as penitentiary inmates).

1.7.2 Inmate and staff data

IMEI has a capacity to provide care for 311 patients. At the time of the visit the facility held 280 people, of whom about 30 are women and two are foreign nationals. Most of those held at IMEI were people who had been subjected by criminal courts to forensic compulsory treatment (see above). Other patients at IMEI have been committed, under separate Penal Code provisions, to compulsory treatment for alcohol or drug dependency if these conditions had influenced the perpetration of the offence. Some 20-30% of the patients were people who developed mental health problems after entering the prison system (remand prisons and prisons for convicted offenders). The latter were accommodated in two wards with 64 and 30 beds respectively. Yet another IMEI ward was assigned for acute psychiatry and neurology. Judicial authorities also send criminal suspects to IMEI for psychiatric observation and assessment.

The staff comprised 171 people: 95 are nurses and 15 physicians (11 of whom are psychiatrists³⁴), 6 psychologists and 6 occupational therapists. The management considered this number of staff insufficient to provide a service in line with the best professional standards. There is only one social worker in IMEI, mostly concerned with guardianship and discharge matters and six occupational therapists. There is a doctor and two nurses on night duty in each of the seven wards. **In view of the specific needs of IMEI patients, the IHF delegation considers that the staff to patient ratio 1:1,6 is inadequate.**

1.7.3 Material conditions

Although the physical environment provided in IMEI wards for the patients' accommodation and other living arrangements, was old and unsuitable for a modern forensic psychiatric facility, the IHF delegation found that basic living conditions were adequately maintained due to commendable efforts by the staff.

³³ Article 84

³⁴ Many of the psychiatrists were over the age 60 and retired from service where they practiced before arriving to IMEI

In the female ward most patients, at the time of the visit, just before lunch time, were lying on their beds and appeared sedated. The dormitories were of similar size (about 35 sq.m.) and similarly furnished. The IHF delegation visited a room with 12 beds, two sinks with running hot and cold water, and 12 lockers/wardrobes. The walls were clean and recently painted. There were paintings and pictures hanging on the walls. The sheets, blankets, pillows and mattresses were clean and in a good condition. There was sufficient access to natural and artificial lights.

The patients had some personal belongings and hygiene items. Some of the patients stated that they had attended a leather craft course although they could not show any objects that they had made. Some of the patients explained that they went out to visit the chapel or for a walk in the yard. Three of the patients interviewed stated that in February 2005 they had attended a court hearing for the review of their placement in IMEI, having already been there for four or five years. The court ruled that their compulsory treatment should continue. These patients stated that their guardians or close relatives were at the court hearings and though some of them wanted the patient to be released the judge did not take into consideration their opinion. A woman complained that no lawyer had represented her at the court hearing which was attended by the hospital psychiatrist and her daughter, who was also her guardian. Although the daughter had asked that she be discharged the forensic psychiatrist was of the opinion that the patient should remain in IMEI for further treatment.

The complaint appeared to the IHF delegation as indicative of ineffective legal representation of the patients in the review process which had been thoroughly scrutinized in a recent MDAC study.³⁵

There was also a living room in the female ward where the patients were allowed to smoke and watch television. The room had little furniture – a few benches and chairs, two shelves with books and a TV set. This room was also reportedly used for art and craft therapy. The dining area was arranged in the corridor of the ward. Tables and chairs were in a good state of repair. The tables were covered with tablecloths and set with plastic plates. There was another TV set in this area.

The IHF delegation also visited two male wards for 70 patients and 59 patients respectively. The rooms in the second ward were bigger than in the female ward – some measuring around 60-70 m², with 12 to 13 beds in each, lockers for every patient and two to three tables. The rooms were relatively clean and tidy. The natural and artificial light was sufficient. There were many patients who read books and did not complain of the light. The sanitary facilities were also in a good state of repair. The three showers were separated with plastic walls. The three toilets were clean. The tables and chairs in the corridor where the patients ate their meals were also in a good state of repair. The patients did not complain about the food. Some rooms in the first ward with 21 and 18 beds were very overcrowded. The psychiatrist on duty explained overcrowding by the persistence of courts to continue to send patients to IMEI, disregarding the institution's capacity.

Many of the patients interviewed by the IHF delegates stated that the food was good but of insufficient quantity. Some also complained that they were not issued with toilet paper or soap.

All patients in the compulsory treatment wards wore brownish uniforms that were **assessed by the IHF delegation as not conducive to strengthening personal identity and self-esteem. International standards point out that individualization of clothing should form part of the therapeutic process.**

1.7.4 Activities and contacts

³⁵ See Liberty Denied: Human Rights Violations in Criminal Psychiatric Detention Reviews in Hungary, published in March 2004 in Budapest.

There appeared to be very few, if any, organized activities or possibilities to engage in work or recreational, individual activity at the wards visited. Some description of daily activities has been presented above. There was also lack of any space where the patients were allowed some privacy.

The patients' contact with those outside the institution is important for their mental well-being and their ability to reintegrate into the community. At the same time, ensuring patient's contact with the outside world is a universally recognized safeguard to protect them from all forms of abuse. The discriminatory treatment of patients placed in IMEI for observation and assessment was of particular concern. The IHF delegates visiting the observation and assessment ward were told by some patients that it takes about a week for their letters to be posted from IMEI, unlike in the prisons from where they had been transferred. Packages were also delivered with a delay. The letters addressed to them arrive opened. Once a week they were entitled to a phone call to their family but were not entitled to receive calls. They also did not know how long their assessment would last so they could not invite anyone to visit them.

Some were very far from home, 300 to 400 kilometers, and it was difficult for their families to visit them. A 18-year-old patient admitted for observation 70 days before the IHF delegation's visit, stated that he had been allowed a visit from family only once, recently, and that the prosecutor had not allowed him to speak to his parents at the time of arrest. In a female ward most of the patients complained of the fact that their guardians took their children away and some of the patients did not know even the addresses of their children. They were allowed to call their relatives once a week for 5 minutes from a card-phone.

1.7.5 Medical care and treatment

Some of the data on medical treatment requested by the IHF delegates was apparently not collated for the institution as a whole. According to the Medical Director some 70 to 80 per cent of the patients have diagnosis of schizophrenia. All IMEI patients, apart from those who are simply under observation, would be receiving some psychiatric medication. He also stated that although the professional protocol in force for psychiatric medication indicated maintenance dosages at slightly lower levels than the dosages for the acute condition, IMEI patients generally received significantly lower dosage of medication when not in acute state. Furthermore, according to the Medical Director there were no patients whose sole psychiatric diagnosis was mental retardation. **An IHF delegate who is a psychiatrist, practicing in Budapest, disagreed with the portion of this statement concerning dosages indicated by professional protocols.**

Some of the information provided by the Medical Director regarding the use of psychiatric medication was of particular concern to the IHF delegation. Because atypical medication is expensive, it is not available, according to the management, in adequate quantities. IMEI's budget of HUF 33,000,000 or EUR 132,000 (which is pre-set by the Ministry of Health and the Ministry of Justice) had reportedly not been increased in recent years. Other health institutions received more flexible budgets depending on the diagnosis and numbers of patients treated. Therefore, only 15 to 20 per cent of the medication used in IMEI was modern atypical neuroleptics.

Many of the patients were reportedly treated with a combination of an atypical neuroleptic and a typical neuroleptic (frequently *Clozapin* and *Haloperidol*) which is considerably less expensive than therapy consisting only of atypical neuroleptics. This appeared to be in contradiction with the professional protocol because the probability for unwanted and potentially very severe side-effects of such treatment was significantly greater.

The Medical Director stated to the IHF delegation that the practice of combining atypical and typical neuroleptics allowed them to control both positive and negative symptoms and that the risk of major side-effects was minimized through close observation of the patient by qualified staff. **The IHF delegation found this explanation only partially acceptable, and was particularly concerned that some very severe side-effects resulting from the reported combination neuroleptic treatment,**

such as the Neuroleptic Malignant Syndrome (NMS), cannot be prevented even when the observation is close. Also, when the patient concerned was also given long acting depot neuroleptics, the immediate discontinuation of the drug is not possible as the active components remain in circulation for weeks.

Some specific complaints regarding their medical treatment were received from patients who had been transferred to IMEI from prisons or other detention facilities for observation. They stated that a doctor, presumably a psychiatrist, came to the dormitory for a visit every Tuesday and Thursday, when he examined all of the patients in the room, asking them if they had any problems. The examination would last about 10 minutes. Those interviewed stated that only upon admission were they examined in private – for about 5 minutes.

The IHF delegation was concerned that inappropriate medical treatment/care, such as the observed practices of medication and examinations, amount to, under international law, to cruel and inhuman treatment, which is prohibited.

Another matter of grave concern to the IHF delegation regarded the treatment of minors in IMEI, which had neither designated wards for minors nor any guidelines for their placement and care. The management stated that they did not see such ward as desirable because minors created a hierarchy among themselves, when placed together in an institution, and such an arrangement in IMEI would be detrimental to their treatment.

IMEI Director and Chief Physician, who has 20 years of experience in the institution, did not remember that they were ever responsible for a sentenced offender who had been younger than 18. However, according to the Medical Director the youngest patient held in IMEI had been 14. Admission of minors, according to the Medical Director occurred infrequently, about two or three cases annually, but no precise statistics on this were made available to the IHF delegation, as IMEI was not required to keep a separate register for minors or to modify treatment/care in respect of the patient's age.

In fact, there apparently were no specialized forensic psychiatric wards for juveniles in the country. Visiting the ward for observations and assessment, the IHF delegation was informed that a minor had been treated there in Mach 2005. **The IHF delegation was concerned that lack of adequate protection of minors and an arrangement whereby minors and adults are held together was in violation of international standards.**

There appeared to be few therapies other than pharmacotherapy. In the ward for observation and assessments, the IHF delegation was told that their patients do not stay there long enough to make their involvement in therapeutic activities meaningful. At the time of IHF delegation's visit the patients of a ground floor dormitory had just returned from what was described by the staff as a "weekly psychotherapy group". The patients, some of whom had been there for over a month, stated that this had been the first time they had attended such activity.

In a ward for women on compulsory psychiatric treatment, the IHF delegation observed, posted on doors, a weekly schedule of daily activities. But it appeared that even though the patients were supposed on the day of IHF visit to have seen a doctor and be taken for a leather crafts work-shop at 11.30 a.m., none of these activities took place. The psychiatrist who accompanied the IHF delegation explained that this schedule was out of date and that the leather crafts courses had been discontinued three months before.

Informed Consent

There appeared to be no recognition of the right to free and informed consent to medication for patients who are subject to compulsory treatment. Replying to a question on the information about the medication and its side-effects given to the patients, the director explained that some patients "know

precisely what they needed” while others have to be persuaded to take appropriate medication. Six months before the IHF delegation’s visit a sociologist studied, *inter alia*, this issue in IMEI and observed that three out of 10 patients claimed they had not receive information regarding the medication that they were given. **IHF delegation was aware that the legislation in force entitles a guardian to exercises this right on behalf of a patient who is legally incapacitated, or whose legal capacity has been restricted with regard to health issues. However, the patient’s opinions regarding her/his treatment should always be solicited and taken into consideration.**

In the ward for observation and assessments, IHF delegates spoke to some patients, transferred to IMEI from prisons, who stated that they did not receive any information on prescribed medication. One man complained about the side effects of the unknown medication, while another man complained that he had not been given the medication he had been receiving in prison and which he wished to continue to use.

1.7.6 Restraint and seclusion

The IHF delegation was told that aggressive behavior was very rare among IMEI patients. In such cases the staff initially resorts to ‘psychological coercion’. If medication is required for restraint the nurse had to consult a doctor. If this is not sufficient than physical restraint is resorted to and a guard, if necessary, is called to assist. There are no internal guidelines regarding the enforcement of restraint as the management feels these are not necessary given that they operated in line with relevant provisions of the Health Care Act, Penitentiary Code and ministerial regulations in this field.

Conflicts between patients were always dealt with by a team, composed of a doctor and two nurses on night duty. Keeping records of the application of restraint was introduced in IMEI before the ministerial order regulating this issue came into force in 2004. A copy of the decision to apply coercive measures was communicated to the prosecutor, IMEI security department, medical officer and the Director. One cell is used for restraint but it is not described as a seclusion room.

In a ward for women on compulsory psychiatric treatment the IHF delegation observed two rooms that looked like seclusion rooms. The doors had a small window for supervision and a locking mechanism from outside (this mechanism was removed from the door of one of the rooms). Inside there was a bed fixed to the floor and a toilet. The rooms were clean and light and the windows were fitted with metal bars. A female patient was found in the room without the locking mechanism. She was being helped to dress and the staff explained that she had been placed there because “she tears everything within her reach”. The patient reportedly had an intellectual disability and speech and hearing impairment.

The IHF delegation was concerned that placing this patient in a separate room may have been motivated because her behavior was considered by the staff as difficult. The IHF delegation was concerned that this would amount to seclusion of the patient in violation of international standards and recommends to IMEI authorities to take immediate steps to ensure that this woman receives appropriate rehabilitation and therapy and is assisted to integrate into social activities, as appropriate, with other patients and staff.

1.7.7 Ill-treatment

Information to patients about their rights was given verbally, immediately upon admission. There were also some printed forms. The IHF delegation observed a list of rights posted in some words. In the assessment and observation ward a paper listing patients’ rights had been given to some patients on the day of the IHF delegation’s visit, or a day earlier.

With regard to the right to complain the management explained that there was a lawyer on IMEI staff who is able to assist patients. There is also a patients’ rights ombudsperson, working for the local public health authority, who visited IMEI every week for about four hours. In response to a question

about the complaints procedure the management explained that a patient could tell a doctor or a nurse of the ward that he/she wished to file a complaint.

Patients could also complain directly to the Director who receives about 70% of all complaints. In each ward there was a complaint box. Most complaints concerned compulsory treatment or the yearly review of the court decision regarding compulsory treatment, or the lack of cigarettes. The director would deal promptly with all complaints. There had been no complaints of physical or other abuse. However some patients who were transferred from prisons complain that there they had been subjected to physical and sexual abuse.

The following are a number of complaints received by the IHF delegation, some of which refer to ill-treatment, which according to international law includes withholding adequate medical treatment.

In the observation and assessment ward the IHF delegation spoke to a patient who complained that he did not receive at his request medication for a headache. Another complained to the director about not receiving anti-depressants which he had been receiving in prison and for which he had been issued with a prescription. Both patients stated that it was better not to complain. Such situations are perceived by the staff as conflict-provoking and as a result the patients stated that they risked being injected with sedative. **The IHF delegation is concerned that the observed procedures which should protect patients from ill-treatment and other forms of abuse appeared insufficient and ineffective.**

Some patients in the second ward complained of the length of their compulsory treatment and the fact that they were forced to take medication against their will. The patients stated that if they had been sentenced with imprisonment they would have had opportunities to reduce their sentence by working in prison. Several patients explained that they had been in the hospital for 10 years and that the court annually decided to prolong their compulsory treatment without reviewing their actual mental state. The patients explained that the decision of the court was solely based on the report of their psychiatrists and they invariably insisted on continuing the treatment.

A patient, who was 18 years old when placed in IMEI, had been in continuous treatment there for 17 years. At the time of the visit he appeared to be experiencing hallucinations, although he was heavily medicated with *Haloperidol*, *Convunex*, *Akineton*, and *Leponex*. The chief psychiatrist of the ward stated that he could not be discharged because he suffered from paranoid schizophrenia, was still dangerous and “had no place to live”.

The staff of the visited wards was questioned if any of the extension of treatment for any of the patients had been influenced by their social circumstances and whether it would not have been possible to care for some of the chronic patients in the community. They replied that medical and social conditions frequently made the patient’s situation very complex. Although some of the patients should no longer be in IMEI, they explained that there had been no available places for such patients in social care homes, seen as the only alternative. **The IHF delegation was concerned that the long period of treatment of so many IMEI patients may be an indication of the failure of the review procedure to set appropriate placement for an IMEI resident as well as the effectiveness of the provided alternative social care and treatment. That might be the explanation why a schizophrenic patient is held in the institute for 4-6 years while the average duration of psychiatric treatment of non-criminal patients in hospital is only some months.**

The IHF delegation was also concerned with the regime of patients placed in the observation and assessment ward. In this ward accommodating patients who had been transferred from prisons for a personality disorder or other psychiatric conditions, as well as patients who were subjected to involuntary treatment of alcohol abuse/dependency, IHF delegates spoke to patients who were kept in locked, overcrowded dormitories most of the day. Apart from a daily one hour walk outside the building, the only activity that they could engage in was watching TV, reading and doing cross-word

puzzles in the dormitory. They are also allowed to shower every day but they stated that hot water could be a problem. A patient complained that although he had a cold, the staff had refused his request to shower before everyone else, when he would be assured of sufficiently warm water. The seven occupants of room number 3 on the ground floor of this ward had been subject in prison to a variety of regimes. But even those who had been in the highest security regime had an opportunity to work and to engage in other activities, unlike in IMEI, where they were idle all the time.

Among the *individual cases* that the IHF delegation had the opportunity to examine, the situation of a man who was observed in a single bedroom in the Assessment and Methodological Ward was of particular concern. This 34-year-old man had “moderate retardation” as the sole psychiatric diagnosis. He had developed AIDS for which he was receiving prescribed medication. This man at the time lay in bed and appeared very frail and weak. According to the staff he was separated from others because he was under investigation for reportedly committing a violent sex offence and they were concerned about the safety of other male patients. He had been admitted to IMEI on 7 October 2004. The staff did not appear to have made any arrangements to ensure this patient had human contacts apart from what they could provide in the course of their daily routine, which to IHF delegation appeared as grossly insufficient. The patient’s mother visits once a week. Although it is in line with the Hungarian legislation, it was not considered by the IHF delegation as sufficient to provide him with appropriate human contacts. **The IHF delegation would be concerned that the implementation of a legal provision restricting the number of visits in this particular case where the patient is deprived of appropriate human contacts would result in a violation of this patient’s right to be free from cruel, inhuman and degrading treatment.**

In addition to medication for his AIDS condition, the patient had been prescribed neuroleptics “for anxiety and agitation” (*chaloferidor* 2x2.5mg and *tisertsin*). In the absence of a psychotic disorder, the justification for the treatment with neuroleptics was problematic and raised the concern that the medication was used solely to control behavior. **The IHF delegation was concerned that the conditions of detention and treatment of this person amounted to a violation of his internationally recognized right to be free from torture and cruel, inhuman and degrading treatment, and therefore recommends that all needs of this patient for care and therapy are addressed as a matter of utmost urgency.**

1.7.8 Reminder on relevant international norms and recommendations

2001-2003 survey of the Mental Disability Advocacy Centre: The placement of patients in IMEI and the judicial review of their placement has been subject of an extensive study conducted from 2001 to 2003 by the Mental Disability Advocacy Centre, documenting a range of human rights violations.³⁶ These, inter alia, included the following: annual court reviews determining the need for continued detention did not meet national and international standards for impartiality and fairness; court-appointed lawyers apparently failed to probe evidence presented to the court; they rarely met their clients before the reviews or explained to them the contents of psychiatric reports, and in some cases even recommended that their client be further detained; the court decision to continue detention appeared to rest solely on the opinion of the treating psychiatrist whose findings were not challenged; the average review hearing lasted less than eight minutes. Though it was not possible to focus the IHF visit on this complex issue, IHF delegates received complaints from patients about the failings of the judicial process and their representatives, confirming MDAC reported findings. Some of these complaints correspond with the findings of this Report.

Principles of Medical Ethics, Principle 1: Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

³⁶See Liberty Denied: Human Rights Violations in Criminal Psychiatric Detention Reviews in Hungary, published in March 2004 in Budapest

The IHF delegation also wishes to call the Hungarian authorities' attention to the following international instruments:

- *UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*³⁷
- The *CPT's Eighth Annual Report* contains standards for conditions and treatment in psychiatric institutions³⁸

1.8 RECOMMENDATIONS ON THE MINISTRY OF JUSTICE FACILITIES

1.8.1 Specific recommendations concerning Unit III of the Budapest Remand Prison

1. The IHF delegation recommends that steps be taken to solve the problems of ventilation and heating in the cells.
2. The IHF delegation recommends that the prison administration exercise closer control on the quality of food provided by the food-contractor.
3. The prison administration should bring its policy in line with the relevant Hungarian legal provisions, and allow that inmates in disciplinary confinement read books other than only religious ones.
4. An information leaflet on rights and obligations at least in the most frequently spoken languages (English, German, Russian, etc.) should be prepared in accordance with the pertaining Hungarian legal regulations.
5. The prison administration should make the gym be available to all inmates and not use it as a form of reward.
6. The prison administration should bring its practice followed in cases of alleged ill-treatment into line with the relevant Hungarian legal provisions, and notify the prosecutor in each case when a detainee claims that he/she has been ill-treated in either in Unit III or another facility. The notification of the prosecutor shall not be seen as the task of the other detention facility, and shall not be made dependent on the outcome of any internal investigation.

1.8.2 Specific recommendations concerning the Sátoraljaújhely Maximum- and Medium-Severity Penitentiary

- 1. The IHF delegation strongly recommends that the regime in the maximum security ward ("special corridor") be substantially reviewed in order to offer more activities and human contact to the prisoners detained there, because due to the aggregation of different factors (isolation, prolonged periods of time spent and a possibility for arbitrary placement), the conditions in the ward can be described as inhuman.
- 2. Material conditions in disciplinary cells should be significantly improved.
- 3. The IHF delegation recommends that the system of sub-grouping inmates be revised to make sure that it does not "overrule" the penal court's decision on the severity of the imprisonment.
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1.8.3 Specific recommendations concerning the Tököl Penitentiary for Juveniles

1. The material conditions in the disciplinary cells should be improved significantly. There is no justification for the striking lack of natural light in these cells. Running water should also be made available. The IHF delegation recommends that the use of these cells be suspended until the necessary changes are made.
2. The prison administration should introduce proper night supervision in order to prevent rapes being part of the everyday life of the inmates.
3. The prison administration should prevent inmates in the special group from harassing those in the therapeutic group – if necessary, by moving the cell of the therapeutic group into another wing of the unit.

³⁷ Adopted by the General Assembly Resolution number 46/119 of 18 February 1992.

³⁸ 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, Ref: CPT/Inf (98) 12[EN], published on 31 August 1998.

- 4. The IHF delegation recommends that the system of sub-grouping inmates be revised to make sure that it does not "overrule" the penal court's decision on the severity of the imprisonment.
- 5. The IHF delegation firmly believes that the primary aim of the detention of juveniles shall be reintegration into society, therefore, it suggests that the institution's management review its policy, and perform a shift from seeing imprisonment of juveniles as retribution against criminals towards an approach that places resocialization into its focus.

1.8.4 Specific recommendations concerning the Central Prison Hospital

1. The IHF delegation recommends that the use of the walking yard known as the "cage" be terminated, and patients of the hospital be allowed to take their 1-hour daily walk in a more spacious area.

1.8.5 Specific recommendations concerning Unit K

1. The IHF team calls on the Hungarian authorities to revise the practice of mandatory segregation of HIV patients.

1.8.6 Specific recommendations concerning IMEI

1. With regard to the specifically noted inappropriate medical treatment and care, particularly the observed practices of inadequate medication and examinations, the IHF team recommends the Ministry of Health and the Ministry of Justice to issue appropriate instructions and make available to IMEI adequate resources that would ensure that all patients receive appropriate care and treatment, including pharmacotherapy.
2. The IMEI or the competent authority should develop guidelines for the enforcement of all procedures concerning the contacts of the patients with the outside world and train the staff for their meaningful implementation.
3. The IMEI should develop specific guidelines for the implementation of restraint and seclusion and, if it is the case, should cease the practice of "under cover" use of seclusion rooms.
4. In view of the specific needs of IMEI patients, the IHF delegation considers that the staff to patient ratio at IMEI is insufficient and staff numbers should be increased.
5. The IHF delegation regards the IMEI patients' obligation to wear uniforms as not conducive to strengthening personal identity and self-esteem. International standards point out that individualization of clothing should form part of the therapeutic process.
6. The IHF delegation believes that the continuation or termination of compulsory psychiatric treatment shall not be influenced by social considerations. Patients shall not be kept under such treatment on the sole basis that they would have nowhere to go if they were allowed to leave IMEI.
7. The IHF delegation calls on the IMEI management to review the case of the patient with AIDS, who receives neuroleptics despite his lack of any diagnosed psychotic disorder.
8. The Hungarian authorities need to consider, as a matter of some urgency, along with the need to reform IMEI services, to transfer all patients to facilities that would be appropriate and conducive to patients' needs and treatment, including the provision of the full range of therapies and activities appropriate for their rehabilitation.

1.8.7 General recommendations concerning Ministry of Justice facilities

1. The Commander of the National Prison Administration should immediately amend the Order prescribing that inmates in disciplinary confinement and disciplinary isolation shall be handcuffed each time they leave their cell. The provision is not fully in line with the Hungarian legal norms, and is in absolute contradiction with international standards pertaining to the detention of juveniles.
 - 2. The Hungarian authorities should introduce due process guarantees for placement in any type of administrative isolation.
 - 3. The prisoners who work should be able to get retirement benefits for their work. Furthermore, the IHF delegation believes that the law and practice that makes it generally accepted that inmates get the one-third of the previous year's minimum wage for their fulltime work, violate the

"equal pay for equal work" principle, and should be amended in order to guarantee equal respect for the work performed by detained people.

4. Medical services in the prison should be fully integrated with the national health care system. The IHF delegation believes that the status of medical personnel in penitentiary institutions ought to be reconsidered by the Hungarian authorities and legislators, and the double dependence of medical staff in penitentiary institutions shall be terminated.

- 5. The relevant law should contain exact prescriptions for the number and length of phone calls available for each regime;

- 6. With regard to medical treatment of inmates in disciplinary confinement the Hungarian legislation shall be fully brought in line with the European Prison Rules: the daily visit of a medical officer shall be set out with regard to prisoners undergoing such punishments.

- 7. The system of the Lenient Executive Rules and practice of short term leaves should be restored; they are not awards but means to help the convicts to find the way back to the society.

8. The Hungarian authorities should take all necessary steps to decrease the rate of overcrowding (and thus the continuous breach of prisoners' rights) in Hungarian penitentiaries.

- 9. Prisoners in disciplinary confinement should be allowed to use mattresses during the day. Solitary confinement in itself should be seen as punishment. The IHF delegation regards further restrictions (such as the prohibition of using the mattresses) as unnecessary. "Side-effects" of disciplinary confinement, such as the restriction of contacts with the outside world, are in contradiction to international norms pertaining to the detention of juveniles for instance.

10. The Hungarian authorities should take immediate steps to ensure that Penal Procedure provisions regarding placement and review of people in forensic psychiatric institutions, as well as appropriate institutional regulations, are in line with international human rights standards, particularly with regard to the provision and effective enforcement of safeguards for the basic rights of people concerned.

11. The Hungarian authorities should take immediate steps to ensure that minors, in all detention facilities, including in forensic psychiatric institutions are afforded the special protection required by international standards

12. The Ministry of Justice should the Disciplinary Decree, so that the time spent in disciplinary isolation would be deducted from the term of the disciplinary confinement. This way disciplinary isolation could not be used to prolong the legally limited length of disciplinary confinement.

13. The Disciplinary Decree should also exclude the possibility of placing someone in disciplinary isolation during the disciplinary proceeding if the nature of the disciplinary offense he/she is charged with makes it unlikely that as a result of the proceeding he/she will be punished with disciplinary confinement.

14. The Hungarian authorities should take steps to decrease the average length of pre-trial detentions, and comply with the CCP's provision prescribing fast track procedure in the case of remand prisoners.

2. FACILITIES UNDER THE MINISTRY OF INTERIOR

2.1 BACKGROUND INFORMATION

There are two types facilities under the Ministry of Interior, where detention is implemented: police jails and alien policing jails (which are operated by the Border Guards). In this Section we will briefly describe the legal background of police jails. The background information for alien policing jails will be presented in the Section describing the visit to the Nyírbátor Alien Policing Jail.

Types of detention in police jails

There are three different types of detention implemented in police jails: short-term arrest (*előállítás*), 72-hour detention (*őrizet*) and pre-trial detention (*előzetes letartóztatás*).

Short-term arrest (*előállítás*): Short-term apprehension implemented by the Police. It may not last longer than “necessary”, but not longer than eight or (in exceptional cases) twelve hours. Possible causes include:

- if a person is caught red-handed; if an arrest warrant has been issued with regard to the given person;
- if someone refuses or is not able to credibly verify his identity;
- if a blood or urine test needs to be performed on somebody owing to the suspicion of a petty offense (e.g. D.U.I);
- if someone may be suspected with having committed a criminal offense (no well-grounded suspicion is necessary); etc.

72-hour detention (*őrizet*): The longest deprivation of liberty possible without a judicial decision. It may be ordered by the investigating authority or the prosecutor upon a reasonable suspicion that the defendant has committed a criminal offence subject to imprisonment, provided that a probable cause exists to believe that the defendant's pre-trial detention will be ordered.

Pre-trial detention (*előzetes letartóztatás*): In the case of an offense punishable with imprisonment the defendant may be subjected to pre-trial detention if

- he/she has escaped or hidden from the court, the prosecutor or the investigative authority; he/she has attempted to escape, or during the procedure another criminal procedure is launched against him/her for an offense punishable with imprisonment;
- taking into account the risk of his/her escape or hiding, or for any other reason, there are well-founded grounds to presume that his/her presence at the procedures may not be secured otherwise;
- there are well-founded grounds to presume that if not taken into pre-trial detention, he/she would – through influencing or intimidating the witnesses, eliminating, forging or hiding material evidence or documents – frustrate, hinder or threaten the procedure;
- there are well-founded grounds to presume that if not taken into pre-trial detention, he/she would accomplish the attempted or prepared offense or would commit another offense punishable with imprisonment.

Pre-trial detention is ordered by a judge upon the motion of the prosecutor.

An important development in Hungary was brought along by the coming into effect of Article 135 of the CCP (on 1 January 2005) limiting the maximum amount of time for which pre-trial detention may be implemented in a police jail (before the coming into force of this provision, there was no such limitation). Under this provision, before the submission of the bill of indictment, in exceptional cases, and upon the decision of the court, pre-trial detainees may be held in police establishments for a maximum of 30 days. Furthermore, based on the prosecutor’s decision they may be sent back twice to police establishments, each time for a maximum of 15 days, in exceptional circumstances justified by the investigation.

Since the new provision came into effect, the number of pre-trial detainees in police jails has decreased radically. Several police jails have been closed down, all the pre-trial detainees and also people in a 72-hour detention are placed in the remaining jails. (Premises used for implementing short-term arrest are still in operation in all police jails.)

Below we are summarizing the most important rights and obligations of pre-trial detainees placed in police jails. These are set forth by the Police Jail Regulation.

Rights in the police jail

Detainees have the right to be informed at the time of admission to the jail in their native language in writing (in justified cases orally) about their rights and obligations and how to exercise them; about the daily regime in the jail, how to submit requests and complaints, as well as disciplinary offences and possible disciplinary punishments, their length and legal remedies against them, as well as measures of force that may be used against me.

Detainees have the right to appropriate accommodation in the jail, to be given a blanket cover, a sheet, a blanket and a mattress, as well as basic hygienic articles if they do not have any (sent by their families).

They have the right to wear their own clothes, and to clean, wash and dry their undergarments and possibly their outer garments as well. Detainees have the right to take a hot shower once a day and to at least one hour open air exercise per day.

Detainees have the right to be given two hot meals and one cold meal each day. At least 20 minutes shall be provided for eating the meals.

Detainees have the right to medical treatment, to be examined by a doctor at their request and to receive medication free of charge.

People detained in police jails have the right to contact, under security supervision but without being controlled, representatives of different international organizations (e.g. the UN CAT and the CPT) and the Ombudspersons. On pre-arranged occasions, they may contact, under security supervision but without being controlled, representatives of churches for the purpose of exercising religion (detainees have the right to freely exercise their religion). Foreigner may contact, under security supervision but without being controlled the diplomatic or consular representative of their country accredited to Hungary.

Based on the agreement between the National Police Headquarters and the Hungarian Helsinki Committee, the Committee's members may visit police jails on unannounced visits and may speak with detainees under security supervision but without being controlled.

Detainees have the right to meet their attorney under security supervision but without being controlled.

Detainees have the right to receive a visitor at least once a month. The time of a visit is 30 minutes, and the police can control the visit. One visitor per visit is allowed to be received, but the police may permit the reception of more than one visitor at the same time. The family member or the detainee may request that the visit be extended by another 30 minutes, and the head of the police organ in charge of the procedure may grant permission.

Detainees have the right to receive a package (containing non-perishable food items, clothing and hygienic articles) at least once a month; however, the authorities may also grant permission to receiving more than one package per month. The package cannot weigh more than 3 kilograms.

Detainees have the right to write letters to family member and other persons. Detainees have to give the letter to the guards in unsealed envelopes. The officer working on the case may check letters randomly or regularly in order to control whether it contains any data, information or items that jeopardise the security of the jail or detention, the success of the criminal procedure, or if it carries the suspicion of crime. Letters written to or by the attorney, the prosecutor's office, the court and international organisations or ombudspersons cannot be controlled.

Detainees have the right to speak on the telephone with their attorney and family members, if there is a suitable telephone in the jail. The personnel may control the conversation apart from the call with the attorney.

Detainees have the right to make purchases for personal needs at least twice a month from their deposited money. Their attorney or family members shall primarily make the purchases for them. If this is not possible, detainees shall write a request to the person in charge of detention to order a designated officer to make the purchases on a designated day of the week.

Obligations in a police jail

Detainees shall comply with the house rules in the jail, and shall reimburse damages they have caused. They shall comply with the instructions of official persons.

Detainees shall take part in cleaning the jail premises and in providing for the detainees at no charge. They may only be obliged to work during the daytime, between wake up and curfew time. Work may not last longer than 4 hours per day and not more than 24 hours per month.

Detainees shall comply with the required medical examinations. In case of an infectious disease or the suspicion thereof, detainees have to undergo the compulsory or necessary examinations and medical treatment, as well as disinfecting clothing.

Detainees have to abide their clothing to be examined, or to be searched if needed. Only a person of the same sex may carry out a search, and only a doctor may conduct a search of body crevices.

If they wilfully cause damage to their health or refuse food, detainees shall reimburse the transport and guarding costs related to their medical care.

Disciplinary offences

Among others, the following behaviours constitute a disciplinary offence: violating the above-mentioned obligations; hindering another detainee in exercising his/her rights or performing his/her duties; exhorting other detainees to jointly refuse to take food; infringing the rules about receiving visitors and sending/receiving letters; possessing an item that is not listed among permitted items.

The following disciplinary punishments may be applied for disciplinary offences:

- reprimanding;
- decreasing the amount available for spending on personal needs for not more than 3 months;
- disciplinary confinement for not more than 20 days (for juveniles, not more than 10 days).

A written decision shall be taken on the disciplinary punishment. Detainees shall be provided with one copy of the decision. Judicial review is available only against ordering disciplinary confinement; other disciplinary punishment may be challenged only by complaint that will be decided upon by the head of the jail.

2.2 Visit to the Central Police Holding Facility (Jail) of the Budapest Police Headquarters

The visit was conducted on 11 May 2005. The IHF delegation was received and escorted by Marianna Nagy (Head of the Facility) and her Deputy, Richárd Jóljárt. Ms. Nagy was appointed to this position just one week before the visit, so she resorted to the long-time experience of her Deputy. For the sake

of the visit they had to do four hours overtime. We had some problem with entering the building because one of the members of our group did not have the official authorization for the entrance. However, the staff was flexible and permitted the interpreter to enter.

2.2.1 The facility

The building was constructed in 1920 and has been functioning as a police facility ever since. The latest renovation took place three years ago. The jail consists of four floors (ground floor and three stories). The ground floor is for the detention of suspected perpetrators of petty offences, the other three floors are for pre-trial detainees. The Central Police Holding Facility is Hungary's largest police jail.

2.2.2 Inmate and staff data

The capacity of the building is 111 persons (with 51 cells for two and three cells for three detainees); at the time of the visit there were 57 inmates, two of them were women, and one of them a juvenile offender.

All the detainees have the same regime. Inmates are allowed to wear their own clothes, to wash themselves, to get medicine free of charge, to have a shower for 10 minutes every day. If a detainee does not have a change of clothes he/she will be provided with that by the facility, but underwear is not held in the store.

Since **there are no toilets in the cells**, each person goes to the toilet with an escorting guard. Two guards are on duty in a corridor where in average 20 detainees are placed. As according to the internal rules, only one detainee is allowed to use the toilet at the same time, **it can happen (and in fact it does happen) that some have to wait for half an hour until they get the permission to go to the toilet.**

The full complement of the facility is 177 but at the time of the visit there were only 120 employees. The staff is openly wearing truncheons and handcuffs. The personnel-staff ratio is quite favorable – 1 : 2.1.

2.2.3 Material conditions

The cells are equipped with tables, lockers, single-storied beds, small wardrobe. Cells are divided into smoking and non-smoking types. Cells where smoking is permitted are very smelly, as natural ventilation is not proper. In fact there is not adequate access to natural light either because of the thick windows and the bars on them. This makes it necessary to keep the lights (neon) turned on all day long. The artificial light in the cells is sufficient. Cells do not fulfill the legal regulation concerning free moving space/person (four square meters per inmate). The doors are kept closed all day long.

There is a list of personal belongings which detainees can keep in the cells.

There are call-buttons in the cells so that detainees can signal if they want to use toilet. Yet, in the first cell the delegation visited two detainees (an old and a younger man) stated that they prefer to urinate in the hand-basin in the cell instead of waiting for permission to go to the toilet.

2.2.4 Activities and contacts

Inmates are allowed to go for an open-air walk in one of the six walking yards. The yards are covered with a sort of plastic roof and nets so outdoor exercise is not exactly "outdoor".

Detainees may receive packages (maximum weight 3 kg) at least once a month and maximum twice a week. If they do not get a package they are entitled to ask the staff to purchase necessary things from their deposited money every week.

Inmates are allowed to talk to their relatives through phone (if they have permission from the prosecutor), but if they have no money and no phone card, they cannot use the facility's telephones for free. If they have no money in deposit they cannot even write a letter because they cannot buy a stamp. On the other hand, they are allowed to receive visitors (relatives or others – only one visitor at a time) once a month if they get permission from the prosecutor.

One of the most serious problems concerning pre-trial detention is exactly that prosecutors usually decide on requests for contacts very slowly. The average time for the permission to arrive is around 3-5 weeks, which means that during the first month of their detention inmates may not receive visitors. This is a new phenomenon that emerged only with the coming into force of the new CCP. Namely, the CCP provides that – until the submission of the bill of indictment, based on the permission of the prosecutor, later based on the permission of the judge – detained defendants may contact their family members orally or in person under supervision, or in writing under control. (Interestingly, before July 2003, the fact that keeping in touch with family members was not bound to permission from the prosecutor caused absolutely no problems.)

This solution creates contradiction to the Penitentiary Code's provision that stipulates that the right to correspondence, and receiving visitors and packages may be limited only in the interest of ensuring the success of the criminal procedure. Thus, while under the Penitentiary Code the detained defendant can only be prohibited from contacting his/her family members if the prosecutor or the judge expressly forbids this in the interest of ensuring the effectiveness of the criminal procedure, the CCP provides that pre-trial detainees may not write letters or meet with their relatives without the express permission of the prosecutor or the judge. In practice, it means that until receipt of the permit neither the police nor the penitentiary staff will allow the detainee to maintain contact with family members by written correspondence, by telephone or visits.

The prosecutors do not consider the adjudication of applications for maintaining contacts with family members as their primary task, therefore, weeks or months pass until the application is considered. The different accounts heard by the IHF delegation in different detention facilities were consistent as to the average time it takes for the prosecutors to deliver a decision: 30-60 days. **There is no legally prescribed term for the prosecutor's decision, so prosecutors may not effectively be called to account for any delay.**

Furthermore, the law does not prescribe any format for the prosecutor's decision, so prosecutors are not under the obligation to provide reasons for their decision on the maintenance of contacts. **Consequently, no effective remedies are available against the decision**, so detainees are not able to effectively call into question the prosecutor's decision, as the reasons for the ban or restriction remain unknown to them.

The problem is aggravated by the fact that if at the time of the arrest the detainee does not ask the police to notify one of his/her relatives (because he/she believes that he/she would be released soon, or he/she is told by the police that the detention will not last too long) for one month their relatives will not know where their relative was. In certain cases these factors may add up to *de facto incommunicado*, which is clearly in contradiction with the European Prison Rules.

It needs to be added though that according to the CCP, within 24 hours after the arrest the police has to notify the relatives of the detainee about the fact of the arrest and the place of detention. If the court orders the pre-trial detention of the arrested person and his/her relatives were not notified before, the court ordering the pre-trial detention is again obliged to notify the relatives. The obligation is not dependent on the request of the detainee, if however the detainee does not name a person to be notified

or provides a wrong phone number (as in the case described below), the court is not in the position to fulfill this duty.

The inmates are entitled to keep contact with their lawyers without supervision. The greatest problem is that **many of the ex officio appointed defense counsels do not visit their clients for weeks or months, which leaves the inmates without the possibility of both contacting their relatives via the lawyers and effectively defending themselves.** Finally, there were statements that the **ex officio appointed defense counsels are in the majority of cases not present at procedural acts in the investigation phase of the criminal procedure.** (Most of the complaints HHC receives from detainees in the framework of its prison and police cell monitoring program and the general human rights legal counseling office concern this issue.) **This situation is in contradiction with the relevant norms of the ECHR as well as the CPT Standards.**

The prosecutor supervising the facility comes to visit the institute in every two week.

2.2.5 Medical care and treatment

Before the admission, a medical examination takes place; some of the detainees told us that it was only formal consisting of questions, taking the blood pressure and examining the lungs.

2.2.6 Ill-treatment

Under the Police Jail Regulation,³⁹ if during the admission examination the doctor records notices any injury on the body of the detainee he/she is obliged to ask the detainee about its origin. If the detainee claims that he/she has been ill-treated, the doctor has to prepare a medical record and send a copy to both the organ implementing the detention and the prosecutor's office.

The IHF delegation was told that since alleged ill-treatment has to be reported to the prosecutor, the personnel of the institution cannot provide data concerning the number of recent cases of ill-treatment.

Complaints are almost never addressed to the Head of the Facility – said Ms. Marianna Nagy. The probable reason for this – according to Ms. Nagy – is the fear of retribution by the police. Complaints are either sent to the Hungarian Helsinki Committee or to the prosecutor.

Case #1: Two detainees asked to be placed in another facility because they were afraid of being hurt (or probably murdered) by other inmates whom they have testified against and are now placed in the same facility.

Case #2: A young lady detained for perpetrating a petty offence and allegedly living in a town 200 kilometers from Budapest, claimed that her relatives had not been informed of her whereabouts. The reason for that is that the police did not manage to notify any of her relatives. The police presented us with the document demonstrating that one of the phone numbers provided by the detainee was wrong and the other was not available. We tried to call another number given by the lady, but it was a wrong number as well. The lady also complained about the fact that she had not met her appointed lawyer, and although she was informed about her rights orally and in a written form as well, she does not understand these texts.

Case #3: A young foreign (Romanian) claimed that after he had been arrested he was taken back to his house for searching through his apartment. At that occasion he was not allowed to collect some of his personal belongings.

³⁹ Article 17

2.2.7 Reminder on relevant international norms and recommendations

ECHR, Article 6(3): Everyone charged with a criminal offence has the following minimum rights: (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

European Prison Rules, Article 43: Prisoners shall be allowed to communicate with their families and, subject to the needs of treatment, security and good order, persons or representatives of outside organizations and to receive visits from these persons as often as possible.

CPT Standards, Extract from the 12th General Report [CPT/Inf (2002) 15], Par 41: The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation.

The CPT has also emphasised that the right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to attend – and stay at – a police establishment, e.g. as a “witness”.

2.3. Visit to the Debrecen Jail of the Hajdú-Bihar County Police Headquarters

The IHF delegation visited the police jail of the Hajdú-Bihar County Police Headquarters in Debrecen on 12 May 2005. The delegation was hosted by Police Lieutenant Colonel Gyula Kovács, Head of the Public Security Department of the County Police. The jail is directly supervised by the county police headquarters, while the police force itself is governed by the Ministry of Interior.

2.3.1 The facility

Constructed in the early 1980's, the Debrecen police jail initially served as a barracks for the soldiers of a Soviet tank unit. It was turned into a police detention center in 1992. The building itself has never been renovated, but it was painted in last December.

2.3.2 Inmate and staff data

The capacity of the institution was 99 people, but it was subsequently reduced to 66 in accordance with the revised standards for space per capita. On the day of the visit the facility held six inmates, four of them juveniles, all in a 72-hour detention. If a person is apprehended, the usual procedure is that he/she is first transported to the lock-up of the local police for a short-term arrest that may not last longer than 8 or exceptionally 12 hours.

During this period of time, the police or the public prosecutor may decide if they formally launch a criminal procedure against the person by communicating the suspicion to him/her. If the person is thus officially declared a criminal suspect, he/she may be taken into a 72-hour detention. If this is the case, the suspect will be transported to the county police jail (i.e. the visited facility). Before the 72 hours expire (the term also includes the initial hours spent in short term arrest), the defendant must appear before a judge who decides on whether the pre-trial detention of the defendant shall be ordered. The initial term of pre-trial detention is 30 days. It can be prolonged on a number of occasions for different periods of time. The absolute maximum is three years (two in the case of juveniles). Since the coming into force of Article 135 of the CCP, the maximum length of pre-trial detention that may be spent in a police jail, is altogether 60 days (see above).

With regard to the first 30 days, it is the court that may allow that the pre-trial detention be implemented in a police jail, however, in most cases, this exceptional possibility is not applied, and remand prisoners are placed in county penitentiary institutions in accordance with the main rule (in the specific case of Debrecen, the competent county penitentiary institution is the Hajdú-Bihar Remand Prison located in Debrecen). Mr. Kovács informed the IHF delegation that suspects almost never spend in the police jail more than 72 hours in the beginning, but it happens that they are transported back from the remand prison to the police jail for the purposes of further investigation (this can be ordered by the prosecutor for a maximum of two times 15 days). At the time of the visit, the delegation did not meet any detainee who was transported back from the remand prison.

Since Article 135 of the CCP came into effect, the jail has almost never been filled to its full capacity. The average monthly turnover was 41 persons around the time of the visit. The number of the guards is still tailored to the full capacity of the police jail. There are 31 police officers serving in the jail that now does not hold more than eight inmates on a day.

2.3.3 Material conditions

A standard cell has three beds made of plastic; there are no pillows, instead the beds are constructed at angle so that the prisoner's head would be elevated when he is lying down on the sponge mattresses.

Windows in all cells are sufficiently large and allow natural light to come in. However, detainees cannot open the windows (nor do they have access to fresh air) since bars are installed on the inner side of the frames.

There are shelves, toilet bowls and washbasins in the cells. **Detainees take their meals seated on the beds, as there are no tables and chairs.** On the bars members of the IHF delegation saw only soap and rolls of toilet paper. All the three juvenile detainees complained they did not get tooth brushes, tooth paste or shaving kits. The Lieutenant Colonel refuted the statement of the juveniles. He claimed that the detainees had received the necessary hygienic items as prescribed in the law. Ten minutes later an officer brought in a piece of paper on which the detainees acknowledged the receipt of the above mentioned things.

The delegation measured the temperature, humidity and the light in the cell. The results seemed to be quite adequate: light – 474, temperature – 22.7 C°, humidity – 30.2.

The IHF delegation was not provided with the exact quantity of calories for every meal. While interviewing the inmates we found out that meals are served three times per day, they have a hot meal during lunch and meat is served every day. A detainee complained that he had not gotten anything to eat during his stay in the lock-up of the city police. By the time he was transported to the county police jail, dinner had already been over. **He was arrested at home before breakfast, and he received his first meal early morning next day, that means he did not get any food for thirty hours.** Mr. Kovács explained that according to the law those in short-term arrest are not entitled to food, as they can be released any time. However, there is an internal measure providing that the police may buy some food for those in short-term arrest if they ask for it. The complainant did not ask for food, and that was the reason for the problem. Mr. Kovács promised to produce a written text of this measure, but it finally did not happen.

2.3.4 Activities and contacts

All inmates are allowed a one hour walk during the day, they have to spend the rest of the time in their cells. The room for walking is a cold room of about 50 sq. meters, its windows have bars. The guards explained to us that inmates from different cells must not meet during the walk, since suspects of the same case shall be separated for the sake of the investigation's success.

The institution is visited on a regular basis by the prosecutor, high ranking police officials, the ombudspersons and labor health care authorities.

2.3.5 Medical care and treatment

Medical checks upon admission are performed by police doctors, who are members of the police staff. During off-hours checks are performed by civilian doctors, who are to be paid subsequently. To reduce costs, the police sometimes delay the examination until a police doctor is available, and the IHF delegation was informed that in at least one case a detainee was not checked upon admission but only on the next day.

2.3.6 Ill-treatment

The IHF delegation asked what procedure is to be followed if the doctor finds injuries on the body of a detainee or if he/she complains of ill-treatment by police officers. It shall be reported immediately to him, Mr. Kovács stated. This information however is not fully accurate. **As it was pointed out above, under Section 2.2.6, the doctor is obliged by the Police Jail Regulation to report simultaneously to the authority responsible for the detention and to the public prosecutor inspecting the detention facility. The Lieutenant Colonel however did not appear to know about the physician's obligation to also report to the prosecutor.**

Case #1: The IHF delegation spoke with a 15-year old inmate who had been in the jail for two days. He was expecting a hearing on the ordering of his pre-trial detention on the day after our visit. He was arrested in Debrecen and an ex officio lawyer was appointed for him but he did not see him and did not know his name. At the time of the visit, the boy had not had a chance to meet his parents. He was examined by a doctor upon admission and on the following day he was examined again (ordinary medical examination). During the two days of his detention he was allowed to take a shower only once. He did not complain of any ill-treatment.

Case #2: The IHF delegation also interviewed another juvenile, 17 years old. He was placed in the jail the day before the IHF delegation's visit. His cell had the same plastic bed with sponge mattress and no tables and chairs. He told the delegation that after his brother had been arrested, he went to the police voluntarily. The boy has an ex officio appointed lawyer who came just to read him the investigation protocol and informed him that hearings were scheduled for the next day. Reportedly, he was psychologically pressed upon admission but was not beaten by guards. He was also checked for infections by a doctor. During these two days he could not meet with parents. He spent the first day in the lock-up, where there was no toilet and the window did not open. There was no heating. Reportedly, it was extremely cold there.

2.4 Visit to the Nyírbátor Alien Policing Jail

The IHF delegation visited the facility on 12 May 2005. The host of the delegation was Mr. Tibor Balogh, Lieutenant Colonel of the Border Guard and Head of the Department of Alien Policing and Petty Offences. In this context 'petty offence' mainly means illegal border crossing.

2.4.1 Background information on alien policing jails

Foreigners detained in alien policing jails are not suspect of any crime. Detention in these jails is not a form of punishment, it is just administrative detention aimed at making foreigners available for deportation. Three forms of detention may be implemented in alien policing jails:

- detention for refusal (in order to implement the readmission agreements)
- detention in preparation for expulsion
- alien policing detention

Detention for refusal may be ordered by the Border Guards for five days, detention in preparation for expulsion and alien policing detention may be ordered by the Office for Immigration and Nationality (OIN) also for five days. After the initial five days, the court is entitled to prolong the detention. In case of the first two types for a maximum of 30 days, in the case of alien policing detention for a maximum of altogether 12 months. The different forms of the detention shall be summed up, but their total length may not exceed 12 months.

According to the Alien Policing Act,⁴⁰ alien policing detention shall be ordered (prolonged) by the court if there is well-founded ground to assume that the foreigner will try to delay or avoid deportation. During the procedure, the foreigner must be heard by a judge, and an interpreter is provided by the authorities.

In terms of the Alien Policing Act,⁴¹ the alien policing detention must be terminated if it becomes obvious that the expulsion of the foreigner cannot be executed. However, this provision is practically never applied by the courts, as according to the judicial practice that has developed in the past years, judges are not in the position to establish whether an expulsion order can or cannot be executed, unless the alien policing authorities declare that the expulsion is not executable.

This interpretation has turned the judicial review of detention into a mere formality: in practice, judges never question the opinion of the alien policing authorities on this issue. The most conspicuously problematic aspect of this problem is the lengthy detention of asylum-seekers.

The question whether an asylum-seeker who enters the country (formally) illegally will be detained for a year in an alien policing jail or he/she will be placed in an open reception centre (operated by the OIN) depends on accidental circumstances and on arbitrary decisions of the authorities. If the asylum-seeker manages to file an asylum application with the OIN before he/she is caught by the Border Guards, he/she will become an officially recognized asylum-seeker who has the right to legally reside in Hungary until his/her application is adjudicated. If however the asylum-seeker (who arrived to Hungary “illegally”) is caught by the Border Guards before that happens, an alien policing procedure will be initiated against him/her before he/she could possibly submit the asylum application. He/she will be expelled from the country, and although the execution of the expulsion will be suspended as soon as he/she submits an asylum application, the pending expulsion will serve as the basis of the alien policing detention.

The Border Guards is entitled to search for illegal aliens in the entire country. Their regular practice is to stop asylum seekers in front of the gates of the reception centers and as the asylum-seekers usually cannot provide evidence that they are staying legally in Hungary, they will end up in alien policing detention, although they were only fifty meters away from the reception center and from submitting their lawful applications.

The problem is that not even in such cases do the courts terminate the alien policing detention on the basis that the expulsion obviously may not be executed, although in terms of the relevant legal norms, asylum-seekers shall not be deported before the final rejection of their asylum-claim. Since such procedures tend to be long, this also means that **the detention of asylum-seekers will certainly last for several months**, unless asylum authorities recognize that a particular asylum-seeker may not be returned to his/her country due to the principle of *non-refoulement*, in which case the detention is terminated.

Rules on the implementation of detention in the Border Guards’ jails is regulated by the Alien Policing Detention Decree. The rules were modeled after the rules of detention facilities for those in pre-trial detention operated by the police.

⁴⁰ Article 46 Paragraph (1)

⁴¹ Article 46 Paragraph (8)

For each inmate the authorities have to provide 5 square meters of free moving space and 15 cubic meters of air space; three meals a day (10,900 joule), toilet and running water, time for open air exercise and access to sports, TV and cultural facilities if they are available on the premises of the detention centre.

The inmates can make phone-calls at their own cost but the conversation can be controlled, except for calls to their lawyer. Inmates can also correspond, send and receive parcels and, with an agreement in advance, they can have visitors.

Before entering the jail, the detainees have to go through a medical check. Detainees with an infectious disease may not enter the jail.

If the inmate complains about ill-treatment or has injuries from violence, the detainee has to testify about it in the presence of two witnesses. This protocol and the medical record must be forwarded to the public prosecutor.

The National Border Guards Headquarters issued an order claiming that the doors of the cells must be closed all day, except for the time of the meals and the daily one hour open air exercise. This means that the rules of maximum-severity penitentiaries are applied to aliens who did not commit any crime. This is so in spite of the fact that due to the dramatic decrease in the number of asylum seekers, the eight detention facilities of the Border Guards set up for more than 500 inmates are almost empty. The average number of inmates is between 80 and 100. Hence, alien policing jails run on 20% of their capacity on average.

2.4.2 The facility

The detention facility is run by the Nyírbátor Border Guards. In 2001, the average daily number of inmates was 483. On the day of our visit there were ten inmates in the jail: 4 Georgians, 2 Russians, 1 Indian, 1 Algerian, 2 Vietnamese.

On the other hand, the number of officers is still tailored to the full capacity of the facility. **There are 104 officers serving in the jail, a team intended for 169 inmates despite the fact that there are only ten inmates.** Hence, the extraordinary ratio (1 inmate: 10.4 personnel) becomes senseless and counterproductive (see below, under Section 2.4.6).

2.4.2 Material conditions

As the facility is designed for 169 inmates there is plenty of space. However, **inmates are not allowed to leave their cells except for the one hour of open air exercise. Sports and cultural facilities do not exist at all.** As smoking in the cells is forbidden, smokers are allowed to get out of the cells for a few minutes every hour. Toilets are outside the cells, so inmates have to knock on the door if they need to use the toilet. They can wash their hands and brush their teeth in the cells. They can take a shower twice a week. Inmates complained that the water is too hot, and that it cannot be regulated. The guards explained that the showers are computer operated, and the temperature cannot be changed by the inmates. The temperature is regulated by EU norms, and was determined in Brussels, a guard said.

The inmates complained that the food was bad and insufficient. A border guard insisted that it met the 10,900 joule requirement.

2.4.4 Activities and contacts

In the visitors' room inmates are separated from visitors by a plastic window with perforation. These rules – the permanently closed doors and the physical separation of inmates from visitors are characteristics of the strictest level of imprisonment or remand prisons. In the medium-severity

penitentiaries cell-doors are open in the day time, and inmates can move freely between the cells inside their designated area (though this rule is violated in several prisons). **So the situation of the foreigners detained in the alien policing jail is worse than that of inmates in medium-severity prisons, although the foreigners committed no criminal offense.**

These strict rules are not set out by the Alien Policing Detention Decree. They were introduced up by the National Border Guards Headquarters and by the Nyírbátor Border Guards Directorate. When responding to the objection that these rules are like those applied in the most severe prisons, the officers said that the General Prosecutor's Office did not raise any objections regarding the application of these rules.

2.4.5 Medical care and treatment

The doctor is a civilian contracted by the Border Guards, while his aid, a paramedical, is a border guards officer. However, there is no laboratory and there are no X-ray tests, so illnesses go undiagnosed unless the detainee has visible signs of his/her illness or he/she informs the doctor. There are no tests for HIV, or for tuberculosis. The doctor can prescribe medicines for sick inmates. Those who are traumatized or mentally ill get tranquilizers. In case of a serious illness they will be transported to the local hospital.

There are no specific rules for severe or long lasting somatic illnesses or psychiatric problems of those who are detained in an alien policing jail. Remand prisoners or convicts will be transported in such a case to the Central Prison Hospital in Tököl, or to the Forensic Observation and Psychiatric Institution (IMEI) in Budapest. Those in alien police jails may not be transported to these institutions, because they are not suspects, defendants or convicts. In practice they will be transported into the local hospital and permanently guarded by border guards officers. This is a burden for the Border Guards, as 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 in their wards. In case of mental problems, after some days of medication, the hospital will send the patients back to the detention facility, where they usually refuse to take the medicine, and their mental disturbance starts again. **The only solution would be to interrupt the alien policing detention in cases of serious illness, and to place the foreigners either in a civilian hospital or in a reception center for asylum seekers, depending on the severity of their health condition.**

2.4.6 Discipline

The psychological atmosphere among the detainees seemed worse than in a prison. People who are sentenced usually know that they committed a crime for which they are being punished. Foreigners here do not understand why they were detained, as they came to Hungary to apply for asylum, which is their right under international law. The Georgians said that after they had crossed the border, they themselves had been looking for border guards officers so that they can submit their asylum claim. The border guards officers deny that, and insist that the Georgians were discovered and arrested after they had crossed the border illegally.

In the case of Mr. Sardara Singh, an Indian asylum-seeker, there is no doubt that he wanted to apply for asylum before he was arrested. **In the decision of the OIN's Asylum Directorate it was noted that Mr. Singh was arrested by border guards directly in front of the gate of the reception center in Debrecen.** His expulsion and his detention were ordered by the OIN's Alien Policing Directorate, while the same authority's Asylum Directorate was processing his asylum claim.

These senseless, irrational detentions create bad psychological conditions and permanent tension between inmates and guards. This situation is worsened by the fact that the parties cannot communicate. Most border guards officers do not speak any language other than Hungarian. Because of the lack of understanding, the hostility between guards and inmates is greater than it is in an average prison.

The hostility is also increased by the extremely high number of guards, as well as by the fact that the guards permanently carry truncheons. This martial appearance of the guards also generates violent reactions from inmates.

2.4.7 Ill-treatment

As it is the case in most detention facilities in Hungary, **the doctor at Nyírbátor seemingly knew nothing about the procedure to be followed in alleged cases of ill-treatment** (see above, under Section 2.4.1). He said that he had to forward the medical records to the Commander of the Border Guards Directorate, and it is his responsibility to decide whether or not he reports about the case to the prosecutor.

2.5 RECOMMENDATIONS ON THE MINISTRY OF INTERIOR FACILITIES

2.5.1 Specific recommendations concerning the Central Police Holding Facility of the Budapest Police Headquarters

1. Cells should have adequate natural ventilation and real access to natural light.
2. Prompt access to toilet should be guaranteed for detainees either by reconstructing the cells or by employing additional staff.
3. The prison administration should take steps to ensure that even detainees with no money could have phone contact.
4. Underwear should also be kept in stock in police jails so that pre-trial detainees who do not have family contacts could be supplied with it.

2.5.2 Specific recommendations concerning the Debrecen Jail of the Hajdú-Bihar County Police Headquarters

1. Prison administration should put chairs and tables in the cells, even if in the lack of statutory prescriptions regarding the equipment of police jail cells, it is not mandatory under the law.
2. Prison administration should provide for a more adequate space for the outdoor exercise.
3. Police officers serving in the emptied police jails should be relocated to the prison administration.

2.5.3 Specific recommendations concerning the Nyírbátor Alien Policing Jail

1. The regime in alien policing jails should be less severe than the one in low-severity penitentiaries, because detainees kept here have not committed a crime. Detained aliens should be allowed to watch TV at any time, read books, leave their cells during the days, move freely in a designated area of the jail, including the possibility to go out to the courtyard.
2. The Border Guards should provide chairs and tables in the cells,
3. Prison administration should allow inmates to have some physical contact with their visitors, especially with their children.

2.5.4 General recommendations concerning Ministry of Interior facilities

1. The IHF delegation recommends that the system of authorizing pre-trial detainees' contacts with the outside world be revised either by reinstating the old system, whereby pre-trial detainees were automatically allowed to maintain contacts their relatives unless the prosecutor expressly forbade this, or by setting a very strict and short deadline (a maximum of 5 days) for the prosecutor to deliver a decision on the issue.
2. The regime of pre-trial detention in a police jails is in many aspects more severe than detention in a maximum-severity penitentiary (e.g.: no toilet or water in the cells, doors are always closed, no possibility for working, no education, no library, etc.), whereas in line with the presumption of innocence one would expect pre-trial detainees to be restricted only as much as it is required by the

purpose of the detention (i.e. the guaranteeing of the procedure's success). Therefore, the IHF delegation strongly recommends that the conditions of pre-trial detention in police jails be significantly improved, and the restrictions decreased.

3. The Hungarian State should devise a system to monitor and guarantee the appropriate performance of ex officio appointed defense counsels.

4. It should be set out in the law that detainees who spend more than four hours in short-term arrest be provided with food

5. Acknowledging the improvement brought along by the coming into force of Article 135 of the CCP, the IHF delegation believes that the maximum of 60 days that a pre-trial detainee may spend in a police jail is still too long. The delegation recommends that the maximum length of custody to be implemented in a police facility be reduced to 72 hours.

6. The medical services of police jails should be fully integrated with the national health system. Doctors and medical staff should be given an independent status and supervised only by medical authorities.

7. The Hungarian government should not treat alien policing detention as a form of punishment. It is a measure used to keep people available for the execution of the expulsion (deportation) order, therefore the rules pertaining to foreigners in such detention should be much less severe than the ones concerning criminal suspects or convicts.

8. Asylum-seekers should not be detained except when they refuse cooperation with the asylum authority or severely violate the order of a reception centre.

9. The maximum duration of alien policing detention should be further reduced to six months.

10. Seriously ill foreigners in need of longer medical treatment should immediately be released.

3. FACILITIES UNDER THE MINISTRY OF YOUTH, FAMILY, SOCIAL AFFAIRS AND EQUALITY

3.1 Background information

In the Hungarian penal system, juveniles can (i) be held in pre-trial detention, (ii) they can be detained because the court ordered their reformatory education, or (iii) they can serve their prison sentence. A prison sentence can only be served in juvenile penitentiary institutions, pre-trial detention can be served in either a reformatory institution or a juvenile penitentiary, while reformatory education can only be implemented in a reformatory institution.

Therefore, two types of detention are implemented in juvenile reformatory institutions: reformatory education and pre-trial detention. According to the Penal Code,⁴² the court may sentence a juvenile offender to serve time in a reformatory institution (reformatory education) if it regards this as necessary for the juvenile offender's development. Under the Penitentiary Code,⁴³ and the CCP,⁴⁴ the court ordering pre-trial detention of a juvenile, may order that the pre-trial detention be implemented in a reformatory institution.

Under the Penal Code,⁴⁵ the minimum time spent in a reformatory (in the framework of reformatory education) is 1 year, the maximum time is 3 years. No parole is possible before 1 year is served. The maximum length of pre-trial detention in the case of juveniles is 2 years.⁴⁶

Juvenile reformatory institutions are under the Ministry of Youth, Family and Social Affairs and Equality. The Ministry of Justice performs professional supervision concerning the implementation of judicial decisions.

There are four reformatory institutions in Hungary: two in Budapest (one serving for implementing pre-trial detention of males, and one serving for the implementation of both reformatory education and pre-trial detention of females), one in Aszód (serving for the implementation of reformatory education of males) and one in Debrecen (serving for the implementation of both reformatory education and pre-trial detention of males).

The detailed rules pertaining to both reformatory education and pre-trial detention implemented in reformatories are contained by the Juvenile Reformatory Regulation. The main rules are set forth below.

Admission

Upon admission to the reformatory, the juvenile shall be informed about the rules pertaining to reformatory education, his/her rights and obligations, the system of rewards and punishments and the house rules of the institution. As a rule, this information shall be provided in writing. If the juvenile is not able to read, the information shall be provided orally. The fact and the acknowledgement of the provision of this information shall be recorded.

With the permission of the institution's director, the juvenile may wear his/her own clothes. If he does not have or does not wish to wear his/her own clothes, the institution shall provide him/her with clothing.

Placement

⁴² Article 118

⁴³ Article 116

⁴⁴ Article 454

⁴⁵ Article 118

⁴⁶ under Article 455 of the CCP

The institution shall operate an admission group, where the juvenile may be placed for a maximum of one month. After the admission period, the juvenile shall be placed in a so-called "group" (the basic unit of education). One group may consist of no more than 12 persons. A group shall have sleeping and study rooms and a community room. In each sleeping and study room at least five square meters per inmate shall be provided, whereas the community room shall be at least 30 square meters large.

The institution has a statutory obligation to establish a medical unit, a dining room, premises for cultural activities (e.g. library), a sports field, visiting facilities, premises for religious activities, and education facilities (class rooms, workshops, etc.).

In each institution there shall be a special facility for the security confinement of juveniles who are dangerous for themselves or their environment. Placement in this facility may not last longer than 24 hours. The length of placement shall be decided by the doctor. If no change is achieved in the juvenile's behavior, a psychiatrist shall decide whether the treatment of the juvenile shall be continued (i) in the special facility; (ii) in the medical unit; (iii) in a civilian hospital. The length of continued psychiatric treatment in the special facility may not exceed 48 hours.

Provision for needs

Juveniles shall be provided with five meals per day (including one warm meal). The cleaning and repairing of the clothing is the institution's task, but juveniles are obliged to participate in the performing of this task. Juveniles are entitled to a monthly allowance determined by the director based on the juvenile's behavior. Its minimum amount is 15%, its maximum amount is 20% of the minimum old age pension.

Education and work

The educator shall prepare an individualized education plan with regard to each juvenile. If the juvenile requires psychological care, the psychologist prepares a psychological treatment plan. These documents serve as the basis of the juvenile's reformatory education.

Formal elementary schooling is compulsory for those who have not finished their elementary studies and have not reached the so-called compulsory schooling age. After the juvenile has passed this age, the institution shall provide him/her with the possibility to participate in elementary education, if he/she requests so.

If the juvenile has not accomplished his secondary education, upon his/her request, he/she shall be provided with the possibility to accomplish his/her studies as a so-called "private student". The director may permit that the juvenile conduct his/her studies outside the institution.

Juveniles are obliged to participate in the cleaning of the institution and their clothes. They do not receive a fee for such activities. They may work on a voluntary basis, for which they are entitled to receive hourly wages that may not be less than 30% of the actually pertaining minimum hourly wage. The director may permit that the juvenile perform work outside the institution.

Disciplinary issues

The juvenile commits a disciplinary offense if he/she violates his obligations or the internal rules of the institution. Escape from the institution qualifies as a disciplinary offense.

Disciplinary punishments shall not be humiliating. Corporal punishment, deprivation of or restrictions on food and clothing are strictly prohibited by law. Collective punishment is forbidden as well.

Possible punishments are:

- warning by the director
- exclusion from collective activities (for a definite period of time)
- exclusion from short term leave (for a definite period of time)
- exclusion from long term leave (for a definite period of time)
- exclusion from vacation (for a definite period of time)
- placement in the closed unit

Punishments (with the exception of placement in the closed unit) are imposed by the Disciplinary Committee. The juvenile may file a complaint against the committee's decision with the institution's Director.

If the juvenile severely violates the institution's order, the Disciplinary Committee proposes that the Director summon the so-called Institutional Council. Based on all the circumstances of the case and the files of the juvenile, the council may propose that the juvenile be placed in the closed unit. If the juvenile is placed in the closed unit he/she may not participate in activities taking place outside the institution, may not go on a short term or a long term leave or a vacation.

The educator in charge of the unit makes a monthly report on the juvenile's behavior and makes a suggestion concerning the maintaining or the termination of the placement. Based on the suggestion the institutional council makes a proposition to the director who decides on the issue.

Contacts with the outside world

Forms of contact with the outside world are the following:

- correspondence
- telephone
- receiving packages
- visits
- short term leave
- long term leave
- vacation

The frequency of correspondence and the length of the letters may not be restricted. Visits are permitted at least once a month. At one time the juvenile may receive four visitors.

Short term leave may be allowed once a week and its duration may not exceed ten hours. Long term leave may be allowed six times a year for a maximum of five days on each occasion. A vacation may be allowed twice a year: for a maximum of 12 days in the winter and a maximum of 21 days in the summer. These forms of leave qualify as rewards.

The director may allow that the juvenile leave the institution if a close relative of the juvenile is seriously ill or has passed away. Such an extraordinary leave may not last longer than five days (including travel).

Special rules concerning pre-trial detention implemented in reformatories

Until the submission of the bill of indictment the prosecutor, after the submission of the bill of indictment the judge decides on the checking and the potential restriction of the juvenile's correspondence and visits.

Personal contacts with the defense counsel, members or employees of organizations aimed at the protection of fundamental rights, representatives of churches and consular authorities and the appointed probation officer may not be controlled in any way. Correspondence with the authorities, the defense counsel, organizations aimed at the protection of fundamental rights and consular authorities shall not be censored.

Juveniles in pre-trial detention may not take part in education and work outside the institution, may not participate in out-of-the-institution activities, and may not go on a short term or a long term leave or vacation. Visits to severely ill relatives or attending the funeral of close relatives may only be permitted with escort.

For investigation purposes and based on a judicial permission, the juvenile may be transferred to a penitentiary institution or a police jail for a maximum of five days. Before the submission of the bill of indictment, the public prosecutor may also order that the juvenile pre-trial detainee be transferred to a penitentiary institution or a police jail for a maximum of 24 hours.

3.2. VISIT TO THE REFORMATORY INSTITUTION FOR JUVENILE OFFENDERS, BUDAPEST

The IHF delegation visited the facility on 12 May 2005. The delegation was hosted by Mrs. Karanadev, Director of the institution.

3.2.1 The facility

The facility is located in a residential area of Budapest. It was established in 1996 for minors (males, aged 14-19) who are in pre-trial detention. The facility can accommodate 100 juveniles.

3.2.2 Inmate and staff data

There were 56 boys placed in the facility on the day of the visit. According to the Director, around 90 per cent of the juveniles were Roma. There were orphans as well. The boys admitted to the facility had most often committed group robbery, car thefts and rape.

According to the Director, the average length of detention is about 8-9 months, although there are boys who have been in the institution for 2 years. At the time of admission practically all boys show signs of emotional disturbances. Most of them come from problematic family and social backgrounds. In the school they are being treated without any differentiation based on the offence which they allegedly committed. According to the Director, the juveniles start with "clean sheets" after the admission. The boys and the educators are divided into small, family-type groups: 2-3 teachers and educators work with 12-13 children every day. The children are supervised constantly till 10 p.m., when they go to sleep.

The staff consists of 136 persons, including 50 teachers, three psychologists and one doctor. Within each designated group, the staff appoints a group leader, whose role is to mediate between the boys and the staff. One of the pedagogic methods applied in the institution is to educate the boys by using concentrated care.

The inverted ratio (1 juvenile : 2.4 staff) is unique and praiseworthy.

3.2.3 Material Conditions

There are 4-5 separate buildings in the facility: dormitories, a school, a dining-room, workshops. The area for outside activities consists of a wide court yard, subdivided into an enclosure for sheep, a football playground, a small swimming pool and a garden area. The equipment of the reformatory was in a very good state. The buildings, bedrooms and clubs are equipped with all required furniture. There were bunk beds in the rooms with pillows, mattresses and blankets. In each room 3-4 boys are placed. The walls of the rooms are covered with posters of girls and other photos chosen by the boys.

The school building consists of three floors. The classrooms are well furnished and equipped with teaching materials.

The boys eat five times a day. The quality of the food is good and the quantity is enough for the boys. The employees eat the same food as the boys.

3.2.4 Activities and contacts

The juveniles move in the area of the facility in lines and salute staff in military fashion. All day long they are engaged in different activities under the permanent observation and control of the educators. According to the Director, there is a strong relationship between the teachers, educators and the boys. In the staff's opinion, this is why there are no cases of aggressive behavior, suicidal attempts, sexual abuse, bullying or other type of abuse among juveniles. The role of the teacher is to compensate for the absent parents. There are no coercive measures in cases of violation. Instead of punishments the staff uses therapy and the method of persuasion. Occasionally, there are problems with boys who had been abused in prisons before coming to the reformatory. If the persuasion does not work, the punishment is, most frequently, prohibition of playing football or watching television for a certain period of time.

In the school the boys study the same curriculum as mainstream school students, but it is adapted for 3, 6 and 12 month periods since the boys stay in this facility for different periods of time. They can study English and German languages. There are educational programs attended by the boys, a few of whom are illiterate. Some boys have slight learning difficulties.

There is also a range of therapies on offer, including dance, working with animals, gardening, carpet weaving, machine and beadwork. Almost all the inmates have used drugs before, but there are no drug-addicts. All boys undergo personality assessments which are provided to the court as this is required for their court proceedings.

The therapies in the facility are:

- Dancing – the Director told the IHF delegation that the facility even managed to stage a 50-minute long program at a theatre in Budapest
- Taking care of animals – an underground room (30 sq.m.) was equipped with aquariums with turtles, fish, frogs, etc. and cages with parrots where children might spend their time watching and feeding the animals. Besides there were two goats and two sheep that lived in the yard of the facility and were looked after by the boys
- Gardening – a farm with vegetables and flowers
- Carpet weaving – a separate room with two looms
- Beads arts – there was a room where moppets of cloth were hanged and there were also sewing machines
- Sports – a basketball and football playground and a fitness hall

There is a room for visits where the boys can meet their relatives twice a month. Most of them (except for two inmates) have families. Several boys have siblings in other institutions/prisons.

According to the staff, the letters of the juveniles are randomly checked by educators. The facility has two telephones and the boys have access to them twice a month.

Those juveniles who are orphans do not receive parcels, because there is no one that could send them articles. Others receive parcels twice a month.

Most of the detained boys receive food during the visit of their relatives on the first and the third Friday of every month.

3.2.5 Discipline

The interviews with the boys in private revealed that they practically never disobey the rules and that the most frequently applied “disciplinary measure” is the educator talking to the offender (this happens if for example one refuses to perform a duty or a task). The boys looked well fed and cared for though they seemed to be scared to talk freely with the monitors.

The interview in private with a 17 year-old-boy showed that in the two years before his placement in the reformatory he had not attended school. He was aware of the internal regulations of the facility and said that it was impossible not to obey the rules because the rules were good and it would make no sense to disobey. He did not share with the monitors any complaint regarding the attitude of the staff. He said that only cleaning was used as a form of punishment in the school (which is contrary to the information received from the head of the institution, see above). He is visited by his parents twice a month. Some of the activities are paid, but the work in the laundry (three times a week for 3.5 hours) is not paid.

The Director told that juveniles work 3 days a week for which they are paid. The amount of salary (which is extremely low, EUR per month) is covered by selling the products the juveniles make.

3.2.6 Ill-treatment

Boys may approach the Director with their complaints any time, but the Director said that there were no complaints cases. A prosecutor visits the facility every two weeks and there are also regular inspections from the Ministry of Justice.

3.3 RECOMMENDATIONS ON THE FACILITIES UNDER THE MINISTRY OF YOUTH, FAMILY, SOCIAL AFFAIRS AND EQUALITY

1. It should be made clear that on what ground juveniles in pre-trial detention are placed in Tököl or the Budapest Reformatory. The Director told the IHF delegation that she does not know about any rules regulating the selection of juveniles who are placed her institution. The problem is that juveniles with the same legal status (namely those in pre-trial detention) receive completely different treatment and live under entirely different (even physical) conditions. This difference in treatment might amount to discrimination.
2. The IHF delegation suggests that the Hungarian authorities should make a comparison between the Tököl Penitentiary and the Budapest Reformatory, and balance the inequality between the situation of the juvenile pre-trial detainees placed in the two institutions, by applying the good practices of the Budapest reformatory Institution.

4. FACILITIES UNDER THE LOCAL COUNCILS

4.1 BACKGROUND INFORMATION

4.1.1. Psychiatric hospitals

The main rules concerning psychiatric hospitals (and psychiatric wards of general hospitals) are set out in the Health Care Act.

The Health Care Act differentiates between three forms of psychiatric treatment:

- voluntary psychiatric treatment;
- urgent treatment of patients displaying a directly menacing behavior;
- compulsory treatment ordered by court.

Voluntary treatment

Under the Health Care Act,⁴⁷ the psychiatric treatment is voluntary if it is agreed in writing by the patient or – if the patient has restricted legal capacity or no legal capacity – by certain persons listed in the Health Care Act⁴⁸ (primarily the patient's statutory representative, if there is no statutory representative, the patient's spouse, if there is no spouse, the patient's child, if there is no child, the patient's parent, and so on).

The court shall review the necessity of the treatment and the validity of the agreement. If the agreement is signed by the patient, the court does so upon the request of the patient (or the persons listed above), whereas if the agreement is not signed by the patient, review shall be done by the court ex officio, based on notification sent about the commencement of the treatment by the psychiatric institution.

The court review shall be done within 72 hours. Before delivering its decision, the court shall hear the patient, the head of the institution (or a doctor appointed by the head of the institution), and shall acquire an expert opinion by a forensic psychiatrist expert not participating in the patient's treatment.

If treatment is not necessary, the court orders the release of the patient. If the court establishes that the agreement is not valid, it orders the patient's release or – if necessary and the legal requirements are in place – his compulsory treatment (which is not the same as forensic compulsory treatment – see the Section on IMEI).

If the psychiatric treatment is voluntary, the patient shall be released upon his request. If the patient does not have legal capacity (or does have restricted legal capacity), the patient shall be release upon the request of the persons listed above.

If however during the treatment the patient displays menacing or directly menacing behavior (see below), the institution turns to the court and requests the ordering of compulsory treatment.

The court shall perform regular review of the treatment's necessity every 30 or 60 days (depending on the type of institution).

Urgent treatment of patients displaying a directly menacing behavior

In terms of the definition given by the Health Care Act,⁴⁹ a *patient with menacing behavior* is someone who – due to the disturbance of his/her psychological condition – may pose a threat to his/her or others' life, physical integrity or health but whose urgent treatment is not necessary as a

⁴⁷ Article 197

⁴⁸ Article 16

⁴⁹ Article 188

result of the nature of the illness. *A patient with directly menacing behavior* is someone who – due to the disturbance of his/her psychological condition – poses immediate and severe danger to his/her or others' life, physical integrity or health.

If a patient displays directly menacing behavior and the danger may only be averted through treatment in a psychiatric institution, the physician detecting the danger shall immediately see to it that the patient be transported to such an institution. The police shall provide help if requested. The head of the psychiatric institution shall, within 24 hours, notify the court and initiate judicial review of the measure. Prior to delivering the decision the court shall hear the patient, the head of the psychiatric institution, and the opinion an independent forensic psychiatric expert. If the court orders the treatment of the patient, this decision shall be reviewed by the court every 30 days.

Compulsory treatment ordered by court

Under the Health Care Act,⁵⁰ if a psychiatrist establishes that a patient displays a not directly menacing behavior, he/she shall notify the court in order to initiate the compulsory treatment of the patient. The court will make a decision about the motion within 15 days from receipt of notice. Prior to delivering the decision the court shall hear the patient, the head of the psychiatric institute, and the opinion an independent forensic psychiatric expert shall be acquired. If the patient fails to appear before the court, the court may order that he/she be escorted to the court by the police, but no other coercive measures may be used. If the court orders the compulsory treatment but the patient fails to appear in the designated psychiatric institution within three days from receiving the decision, the psychiatrist initiating the procedure shall see to that the patient be transported to the institution. For this purpose psychiatrist may seek help from the police.

Joint procedural rules for the three above cases

The Health Care Act⁵¹ dictates that in all three procedures the sufficient representation of the patient shall be guaranteed before the court. Based on an authorization from the patient or his/her statutory representative, the patient may be represented in the procedure by the “patients’ rights officer.” (The patients’ rights officer is an official, who – in accordance with the Health Care Act⁵² – is vested with protecting the patients’ rights and assists the patients in getting to know and asserting their rights. The patients’ rights officer is employed by the National Welfare and Health Service.) If the patient does not have a statutory representative or a proxy, the court and/or the curator ad litem representing the patient in the procedure will contact the patient prior to the hearing, obtain information about the circumstances of his/her placement in the institution, and inform him/her about his/her procedural rights.

Restraints against psychiatric patients

The Health Care Act⁵³ limits the restriction of personal freedom in any way (by physical, chemical, biological or psychological means or procedures) to those people with a menacing or directly menacing behavior (see above). Only the attending physician can order the use of restraints. As an exception, in specifically justified cases, a specialized nurse can also order temporary restraint, but must immediately inform the physician, who must approve the restraint within two hours. In the absence of this approval, restraint must be ended immediately.

4.1.2. Psychiatric social care homes

The main rules concerning this type of institution are set forth by the Social Welfare Act.

⁵⁰ Article 200 of the

⁵¹ Article 201 (4)

⁵² Article 30

⁵³ Article 192

Under the Social Welfare Act,⁵⁴ placement in psychiatric social care homes is based on the request of the patient or (if the patient does not have legal capacity) the patient's statutory representative. In most cases the local council decides on the request. In case of privately run care homes, placement is based on the contract concluded between the institution and the patient (or his statutory representative).

Rights of the patient in psychiatric social care homes

The main rights are the following:⁵⁵

- Right to full provision
- Right to be informed about the most important data concerning the care home's operation (this refers primarily to financial data, such as the data concerning the annual costs of the home's operation, state support received by the home per patient, etc.)
- Right to equal treatment
- Fundamental rights (such as the right to human dignity)
- Right to the protection of personal data
- Right to holding and using personal belongings (with the exception of objects that may be dangerous to the physical integrity of people living in the care home – such objects are listed in the house rules)
- Right to free movement within and out of the care home: specific rules shall be outlined in the house rules
- Right to maintain contacts with the outside world: visiting times and conditions of visits (as well as rules of visits outside regular visiting hours) shall be regulated in the house rules
- Right to setting forth complaints: head of the care home shall notify the complainant in writing about the result of the complaint procedure within 15 days. If he/she fails to do so, or complainant disagrees with the decision, he/she may turn to the maintainer of the care home

Rules pertaining to restraints

If the patient displays a menacing or a directly menacing behavior, the relevant rules of the Health Care Act (see above) shall be applied. The rules concerning restraints are very similar to the ones set forth by the Health Care Act. There are additional guarantees, such as the obligation of the doctor ordering the application of restraint to notify the head of the social care home. The head has further obligations to notify the patients' rights officer and/or the statutory representative. The patient or the statutory representative may file a complaint with the head of the care home against the restrictive measure. The head shall acquire the opinion of a psychiatric expert when deciding on the complaint.

4.2 VISIT TO THE PSYCHIATRIC WARD OF THE SZENT JÁNOS HOSPITAL, BUDAPEST

The IHF delegation visited the institution on 12 May 2005. The delegation had discussions with dr. Tamás Kurimay (who has been the ward's Director since 2001), the chief nurse and some patients of the hospital, mainly in the women's wards. The participants of the IHF delegation were allowed to speak in private with the patients and to review some placement documents.

Szent János hospital is a teaching hospital and several students from Budapest have internships with the hospital every year.

4.2.1 The facility

The building of the hospital was built in 1906. The hospital has different wards but the IHF's visit was focused only on the psychiatric ward. After the Second World War the wards of neurology and psychiatry were unified, but after 2001 the two departments were divided again.

⁵⁴ Article 93

⁵⁵ These rights are outlined in Articles 94/E and 94/F of the Social Welfare Act.

Since the building is old, it needed profound reconstruction, and – according to information provided by the Director – finally in 2005 the Ministry of Health managed to allocate HUF 80 million (EUR 320,000) for reconstruction. The reconstruction was supposed to start in mid-July 2005. After the reconstruction is over, the sub-wards could be clearly divided into acute and rehabilitation sectors, and the patients on each floor could be mixed in gender, which is not the situation now.

The psychiatric ward is divided into two wards – male and female. Juvenile patients are also admitted to the hospital if they are physically too strong to be admitted to a psychiatric ward for children. Within the wards (physically located respectively on the first and second floor of the building), there are acute and rehabilitation sectors. The acute wards have 56 beds and the rehabilitation wards have 55 beds.

4.2.2 Patient and staff data

The hospital's catchment area covers around 350,000 residents of the Buda side of Budapest (the 1st and 2nd districts and villages close to Buda). Patients are referred to the psychiatric ward by their general practitioners and outpatient psychiatric services, while some are placed in the hospital upon their will. The ward used to be of a closed type for a long time before the appointment of the present Director. Now the policy of the ward is oriented towards the promotion of community psychiatry with particularly emphasis on the role of the family in the treatment of the patients. However most of the patients are homeless and without families interested to care for them. Therefore, some of the patients in the rehabilitation wards are on a waiting list for social care homes. Social workers deal with them with the help of some foundations for the homeless. According to the Director, most of the former patients of the hospital experience many social problems, suffer from isolation and the lack of ability to adapt, which is the reason for their frequent readmission.

The ward's capacity is 111 beds. At the time of the visit they all were occupied. Another rehabilitation unit of the hospital with 100 beds is located also in Budapest and was not visited by the IHF delegation. On the other hand, the care staff comprises 12 psychiatrists, two social workers, four part-time psychologists, a social therapist (a psychologist by training), and 30 nurses (20 of whom have special psychiatric training). The director explained to the IHF delegation that due to the reduction of the number of psychiatrists in Hungary (there are only 800 psychiatrists), it is hard to find and hire specialists in the hospital. The overall staff-patient ratio 1:2.3 (worse than in the Central Prison Hospital /1:1.7/ or at IMEI /1:1,6/).

4.2.3 Material conditions

The IHF delegation went to see the acute and the rehabilitation ward for women on the first floor. There was no clear distinction between the two wards. The patients were lying on their beds, sitting on chairs in the corridor, or in the living room where the TV set was placed. No patients were permitted to go outside to the yard.

The atmosphere in the wards was pleasant – it was warm, cozy, the rooms were clean, tidy and light. However, the smell of urine was strong, especially in the rooms where the patients with dementia were placed. There were five rooms with four patients in each. There were lockers, many personal belongings and clothes of the patients, even wardrobes in some of the rooms. The walls looked like they had been painted recently. The floor was covered with tiles or linoleum so that it was easily cleaned. In the corridor along the walls there were benches, chairs and tables where many of the patients were sitting.

There were four toilets in the ward and a bathroom in a good state of repair.

The beds, chairs, tables were also fine. The sheets, mattresses, pillows and blankets were clean. The patients were allowed to wear their own clothes.

4.2.4 Activities and contacts

The Director estimated that approximately one-third of all patients were under compulsory treatment although this was hard to establish even when the IHF delegation checked the medical files of the patients. The average stay of an involuntary patient is 6-7 weeks. Very rarely is this period extended with 30 more days for compulsory treatment.

The interviewed patients themselves were not able to explain whether they arrived at the hospital upon their own will or not. Physical examinations take place upon admission. A report is made, and the patient is instructed how and to whom he/she can complain.

The average stay of the patients in the acute wards is 14-15 days depending on the diagnosis and the actual condition of the patient. It was not clear how long the average length of stay at the rehabilitation ward is. According to the director the wards for women in the hospital are not closed at all and those for men are closed sometimes. The patients are not allowed to leave the hospital without permission. If a patient under compulsory treatment leaves the hospital he/she is usually sought at home and the doctors would ask the relatives to send him/her back. In some cases police ambulance is sent to the home of the patient. The director explained that patients help each other and monitor each other for escape.

A special Committee sits at the hospital two times a week. The members of the Committee are: an independent psychiatrist (who does not work in the hospital), a treating psychiatrist from the hospital, a judge and an ex officio appointed lawyer. The director explained that the judges are not appointed on a case-by-case basis, but for a certain period of time one and the same judge tends to attend the Committee meetings. Usually these judges are pensioners. The Director claimed that since 2001 altogether five judges had come to the hospital to order and then to review compulsory treatment. The independent psychiatrist, the ex officio lawyer and the treating psychiatrist are paid from the state budget. The patient must be present before the committee.

4.2.5 Medical care and treatment

According to the Director, there are different kinds of therapies provided for the patients in the hospital – individual and group psychotherapy, family therapy (the director himself had specialized in the field of family therapy) and art-therapy. The hospital works with a rehabilitation company to ensure work for those patients who express a will to work. The joint project envisages the establishment of a protected home within the hospital where 25 former patients would live and work in a family-like environment. They would be trained in sewing and computer literacy. However it was not clear to the IHF delegation how this arrangement would be considered as “community-based”.

The rehabilitation company the hospital concluded a contract with (named “Lutex”) has already established 100 shelters for homeless and disabled people throughout the country. The patients interviewed by the IHF delegation did not speak about or reflected on the above-mentioned therapies, though some of the patients mentioned that they draw or watch television with the staff.

Electro-convulsive therapy was not applied in the hospital in 2004 and 2005. Since 2001, ECT had been applied only three times.

Regarding medication, the director explained that the ward does not experience any problems with the funding – 40 % of the medicines prescribed in the ward are paid by the Health Insurance Fund and the remaining 60 % are paid by the pharmacological companies. This is how new and modern medicines are available in the hospital without restrictions and they are prescribed in line with Hungarian best practice rules (called “the protocol”).

Informed consent

The director explained that informed consent is always asked from the patients. If the person is not competent to give informed consent, it is the task and right of a close relative to do so. And if the person has no relatives, the court is obliged to appoint a representative for the patient to give informed consent on behalf of the patient. Reviewing the placement documents of the patients on compulsory treatment the IHF delegation did not see specific reference to informed consent of the patients.

4.2.6 Restraint and seclusion

The Director stated that the hospital had never had caged beds. Physical restraint is applied very rarely. It can be prescribed by a doctor, and shall be approved by the Director of the hospital within 24 hours. To restrain patients, the nurses and doctors use sheets and rarely belts, if the sheets would not be sufficient. The director claimed that they receive training on how to perform restraint. He added that most commonly it is drug addicts admitted to the hospital with whom restraint measures are necessary.

Aggressive patients are restrained mainly by immediate application of medication.

4.2.7 Individual Cases

The IHF delegation spoke to some of the patients about the placement procedure, the regime, the material conditions and treatment in the hospital. No allegations of ill-treatment were heard and the patients were pleased to be in the ward in general. However, the interviews with the patients highlighted some problems regarding the placement procedure and the safeguards existing for patients on compulsory treatment.

Case #1: A woman (R. A. J.) was placed in the ward involuntarily. She said she had been admitted to the hospital a month before the visit (around mid-April 2005) from another clinic where she had stayed to have an urgent operation of her nose, because she fell off the stairs and it was hurt. She was married to a Canadian man and had two children. Her mother and father live in Budapest. In her opinion, it was probably them who initiated her placement in the hospital. The woman was a medical doctor in sports medicine. She was parted from her children by the Canadian Social Welfare and Protection of the Child Services. The patient complained of the treatment in the hospital – she wanted to be given less medicines since she felt sleepy and suppressed all the time. She also wanted to leave the hospital but was not aware whether she gave consent to her placement there or she was involuntarily placed in the hospital.

The IHF delegation asked for the medical file of R.A.J. in order to find out whether she is under compulsory treatment. The chief nurse provided the file. It was kept in the nurses' room. Among the documents stating her name, date and place of birth, her occupation, actual address, medication (Haloperidol, Rivotril, Tegretol), there was a document issued by the hospital explaining her status upon admission. This document supported her statement that she had been admitted to the hospital from another clinic where she had an operation. Her diagnosis was "schizoaffective psychosis, acute form". This diagnosis was written by the psychiatrist who examined her initially in the Szent János Hospital's psychiatric ward. The same doctor stated that the patient agreed to stay in the hospital for treatment, though there was not any written statement from the patient. The above mentioned document was sent to the judge within 72 hours after the admission (on 17 March 2005). There were no documents from the court about the compulsory placement and treatment in the file. When asked about the reasons, the nurse told the IHF delegation that the decisions had not arrived from the court (on 12 May 2005).

Then the nurse called some of her colleagues and 10 minutes later she brought from another room a court decision dated on 15 April 2005, on the judicial review of the patient's compulsory treatment. **The decision was very short and formal.** It only stated that at the hearing (at which the patient, a psychiatrist appointed by the Director of the ward and the judge were present) enough evidence was presented to substantiate that the patient is still dangerous and according to Article 199 of the Health

Care Act, she should be placed under compulsory treatment. **The decision does not explain the reason for the treatment, it does not mention any act or behavior of the patient that could be deemed as menacing, and nor does it refer to any evidence as to whom the patient would be dangerous for. The decision could be appealed in 8 days after it was issued.**

When asked about the initial decision for placement, the nurse again called a colleague and after 5 minutes she came back with a decision dated 18 March 2005. Its content, except for the date, was exactly the same, as that of the decision from 15 April 2005. On neither of the two decisions was there any indication that they were communicated to the patient.

Case #2: Another woman (K. E. K.) in the female ward was not aware of the reason why she was placed there. But she liked the hospital and the medicines she was taking as well as the attitude of the nurses and the doctors towards her. She explained that she was brought to the hospital at the beginning of February 2005 because she had bipolar disorder and was in her maniac period. Since 1998 she had been hospitalized many times. She used to live in a social care home before she was admitted to the hospital. Before that she used to work as a bar tender or a waitress. She stated that she was pleased with the medications – Rivotril, Neurotop and Zyprex. She did not go out of the hospital because she was afraid of subways, lifts, etc.

The patient was present at the judicial review of her placement in the hospital at the end of April. She was not under guardianship although she claimed that soon her 21-year-old son would become her guardian. She stated that she had had a lawyer at the hearing, but she did not understand what he was talking about. The treating psychiatrist stated that the patient needed further treatment, because she had started to be treated with new medication, and its effect needed to be monitored.

The woman claimed that she had a place to go after her release of the hospital: it was a social care home where she would be allowed to stay for one more month. After that she planned to rent a flat with her son and to work to pay the rent. She said that the patients were allowed to make phone calls on the telephone in the living room and in the yard. The patients should have a card to use the phone. She also explained her daily routine that did not include any therapy except for speaking to the psycho-pedagogues for 10 minutes a day.

According to her file, K. was brought to the hospital on 25 April 2005 as an urgent case from another hospital's traumatology ward where she was placed because she had taken 10 Rivotril pills. On 21 April 2005, K. was initially placed in Szent János Hospital but left the hospital without permission. Then she was taken to the other hospital, and from there again admitted to Szent János Hospital. Before that she used to live in a social care home but she often hit the other patients. And this is how she was settled in a crisis centre for homeless people, where she was placed.

Case #3: A 45-year-old woman was brought to the hospital on the day before the visit, by her mother and brother, because of alleged alcoholism and depression. "I feel as if I am in a jail. Prisoners have better conditions" – was her general impression of her stay in Szent János Hospital. She had been examined by a doctor but no medication had been prescribed for her at the time of the visit. It seemed that her workplace also advised her family that she should be subjected to treatment, but she felt her condition was not sufficiently serious to require hospitalization. She did not like sharing the room with 10 other women, many of whom feel the same way. She had been hospitalized once before, two years earlier, for three weeks. At that time a lawyer came and asked her to sign some papers without any explanation. She had not been heard by any review committee. She thought that problems with her brother and mother are at the root of her hospitalization. She was involved in group therapy lasting an hour two times a week. Everyone talks about being an alcoholic, but the therapist does not say anything and she finds the exercise useless. She was equally skeptical about art therapy classes which are also available once a week. She found those classes childish.

Case #4: A woman of similar age, who had suffered from maniac-depression for 19 years, had been in the hospital for two and a half weeks at the time of the visit. She was brought for treatment, when her

sister decided to call an ambulance. When asked about the way in which she was informed about her rights, she replied that the rights of patients were displayed on the wall of the corridor. The patients are not specifically informed about these. She began her current treatment in October 2004 and was discharged for Christmas. She was readmitted after the holidays and again discharged in late February 2005.

She had been asked by the review committee if she had been aware of her condition and the need for treatment. After she was discharged in February and during March, she was on medication and kept in touch with her doctor. But in late April the medication did not have an effect, anymore and she again started to have problems sleeping. Her mother had asked her to come to live with her. She had worked as a teacher. When she left the job she was declared 50% disabled. She received a pension and was not allowed to work. At the hospital she attended art therapy every Tuesday for an hour and 20 minutes relaxation sessions two times a week.

Case #5: A patient who had frequently been subjected to compulsory treatment stated that she was no longer heard by the review committee. Although she joined the queue of patients waiting to be summoned before the committee, she was told by the judge that she did not need to come before the committee, as she had not sufficiently recuperated.

Case #6: A 76-year-old patient (V. T.) was brought to the hospital by an emergency psychiatric unit on 16 March 2005. When her medical file was checked, the delegation found no decision for placement in it. When asked, the nurse brought a decision on the review of the compulsory treatment, dated 15 April 2005. The IHF delegation then asked for the initial decision on placement and it was also brought by the nurse 10 minutes later. It was dated 17 March 2005. The contents of both decisions were the same. Before the delegation looked into the file, the chief doctor claimed the patient was on voluntary treatment. The patient herself did not know why she was in the hospital.

4.3 VISIT TO THE PSYCHIATRIC SOCIAL CARE HOME IN DEBRECEN

The institution was visited on 12 May 2005. The IHF delegation interviewed the institutional personnel: the Director, Mrs. Margit Bajzák Fekete, a nurse manager and an executive working for the Debrecen Municipal Social Care Centre. The staff was most cooperative and met all of the IHF delegation's demands.

4.3.1 The facility

The Psychiatric Social Care Home in Debrecen is the town's oldest social care institution. Three buildings that presently accommodate residents were built back in 1848 as stables on the land belonging to Hungarian nobility of the time. The fourth building, constructed in 1986, is the central building, which houses the administration, a main hall with workshops and classrooms, and several dormitories. Only this building provides accommodation to both men and women without any mobility problems. The institution's complex includes yet another, freshly renovated building accommodating eight women residents able to look after themselves. The staff visits them just occasionally. The building has a kitchenette so that the residents can prepare their own food.

The entire complex is surrounded by a park and situated in a quiet part of the town. Benches and seesaws are available to the residents in the park.

4.3.2 Patient and staff data

The institution's capacity amounts to 280 persons and is presently fully occupied. Actually, it accommodates 140 men and 140 women, while 27 persons are on the waiting list. Out of the total number of residents, 186 are under complete guardianship, while the rest are under partial guardianship. The majority of residents have been assigned guardians before admission to the institution, while the rest got their guardians only after admission. Guardians usually come from

residents' families. Guardians to those who have no families are assigned from the ranks of local governmental officers, who are professional guardians. No member of the institution's staff has been appointed a guardian to a resident (due to reasons of incompatibility). To be admitted to the institution a resident or his/her guardian has to submit a request to the Municipal Committee for Mental Health, and is admitted only if the latter decides so.

The institution is supposed to cater for persons with mental disorders unable to look after themselves or for those who either have no families or if they do have, their families are in no position to care for them. And yet, the institution accommodates a number of residents with various forms of mental retardation (moderate, severe and profound), as well as persons suffering from different forms of dementia such as senile dementia, Alzheimer's disease, etc. They are trying to "clean the profile" of the institution but it takes time, said Mrs. Fekete. They do not take people with mental retardation any more but they have to care for those who are already in the institute. The age of the residents with dementia averages 44.5 years. The problem is that due to family circumstances, a number of mentally disabled persons had nowhere else to be accommodated. Some 60 of them had been institutionalized ever since they were born. Duration of guardianships averages 13 years.

The residents are accommodated in several wards. They are classified by gender and locomotion. Out of the total number of residents, 20 are bedridden, 31 move with much difficulty, 35 are slightly limited in their movements, while 194 have no problems of mobility. Further, 50 patients are with incontinence – 34 of them only at night. Twenty patients suffer from urinary incontinence.

On the other hand, the institution engages on a full-time basis one psychiatrist, one specialist in general medicine, 67 nurses (head nurses) specifically trained in dealing with psychiatric patients and 11 officers allocated to the so-called group for mental hygiene. The latter possess various qualifications and are tasked with conducting occupational and educational therapies. The director is a woman with a long career in the institution. A part-time psychologist visits the institution twice a week. Most nurses are specialized in social care and it is them who take care of residents.

The nurses work in three shifts. At night, two nurses watch over bedridden patients, while five nurses care for the rest. Head nurses work morning shifts only, from 6:00 a.m. to 2:00 p.m. The so-called group for mental hygiene is on duty from 7:30 a.m. to 4:00 p.m.

4.3.3 Material conditions

Though varying from ward to ward, material conditions and hygiene are generally adequate. As referred in the paragraphs above, the residents are placed in several wards, i.e. facilities, all of which are connected. The rooms are large enough, each averaging 30 square meters. Though furnished with six beds each, the rooms do not seem overcrowded, given that cupboards for personal belongings are placed in the hall. Windows are large and look onto a park. The rooms are maintained at a high level of hygiene.

A corridor connects this ward with other facilities housing two wards. One of them is set apart for bedridden women or those with limited mobility. This ward accommodates around 50 such residents. Rooms are on the left side of the corridor, while living quarters and a mass hall are on its right side. Windows placed on both sides of the corridor (in sleeping and living quarters) allow sufficient entrance of natural light.

The staff's room partitioned with panes that enable the personnel to control both the living area and the corridor is located at the "crossroads" between this ward and the other one – hospitalizing bedridden patients. The staff's room is equipped with medicine cabinet and medical accessories. This is where medical files are kept, particularly those necessary for each resident's daily therapy. Bathrooms, washbasins and toilet bowls are available to the residents at all times. The rooms in this section are decently furnished, their sizes average 20 square meters and each accommodates 4 residents. The residents are allowed to wear their own clothes. Lockers are placed nearby beds.

The other ward is set apart for men. Its layout is identical to that of the women's ward, including dormitories, sleeping and living quarters. The only exception is a corridor and two rooms nearby the entrance hall, accommodating the residents with psychiatric disorders, mentally disabled persons and those with dementia. There is yet another ward wherein 50 bedridden residents are placed. Overcrowding plagues this ward for the residents with no mobility problems. Rooms have around 25 square meters and each accommodates 6 residents. They are furnished with cupboards for personal belongings.

Though the entire ward is neither dirty nor neglected, its general level of hygiene is not as adequate as that of the women's ward. Actually, the rooms are well ventilated, relatively clean and kept from bad smell. Furniture is modest, but not dilapidated. Woodwork is in good shape, the same as sanitary installations, showers and washbasins. The latter are located in the basement so as to be available to the residents with limited movement or those in wheelchairs.

The residents are served 3-4 daily meals. Due attention is paid to their dietary needs. No interviewed resident complained of the quality, quantity or preparation of the food. The residents may buy additional articles of food in the institution's canteen.

4.3.4 Activities and contacts

Specialists from the group for "mental hygiene" conduct occupational therapy and are tasked with residents' education. The IHF delegation toured several rooms used for the purpose. One of such rooms is actually a pottery workshop. A qualified instructor coaches the residents. The residents may also engage in painting or some other similar activity.

There is a classroom wherein residents are also instructed in regular curricula.

Working activities are organized for the residents who are able or wish to work. The institution has 6 hectares of parkland, which makes it possible for the residents to engage in gardening. Some assist in food preparation, laundry, distribution of food, etc., while some others make envelopes or work in the outside community – as receptionists or manual workers in local hospitals or municipal agencies.

However, the latter are not paid salaries for their work, but are given some kind of premium that is not necessarily paid to them. The premium amounts to 20 percent of their pensions and cannot be less than HUF 4,600 (EUR 18.4) per month. All residents receive either social help or pensions. Full guardianship implies that guardians look after residents' finances, while in the event of a partial guardianship a resident may manage 50 percent of his/her earnings. Regardless of the amounts the residents receive, only 80 percent is set apart for full accommodation and treatment, while the rest is given to them. The sum given to the residents may not be less than HUF 4,900 (EUR19.6).

Full accommodation costs HUF 35,000 (EUR140) per month. Even those residents who receive less than HUF 35,000, must pay 80 percent of their earnings to the institution.

The central building has two suites for couples. There are also a meeting room with an adjoining bathroom, a classroom and pottery, painting and needlepoint workshops. The main hall is spacious enough to be used by all residents. This is where the residents receive their families and other visitors. The hall is also used for all kinds of gatherings and ceremonies.

If able and capable, residents may go to the town on their own, see movies, etc. Group visits to some events are also organized, and accompanied by members of the staff.

The Ministry for Youth, Family, Social Affairs and Equality controls and inspects the institution. Non-governmental organizations have not visited or monitored it so far.

4.3.5 Medical treatment and care

Since the psychiatrist was not at the institution's premises at the time of the delegation's visit, the delegation obtained the relevant information from the nurse manager. According to her, neuroleptics are administered to around 90 percent of the residents, while depot-neuroleptics to 20 residents. **The team could not but wonder about this practice, since one half of the institution's residents are with a developmental disability, rather than with an active form of mental illness. Therefore, it is unclear what the reason for the administration of this type of medication would be.**

Some of the neuroleptics administered are those of new generations. The delegation did not notice any extra pyramidal side effects with the residents. Around 30 residents are with epilepsy, accompanied either by other mental diseases or retardation. All of them are given modern anti-epileptic medicaments. All residents were inoculated for flu.

Informed consent

According to the staff, the residents voluntarily take their therapies, meaning that there is no forceful administration of treatments. And yet, no interviewed resident was able to tell the delegation which drugs made up his/her therapy. This indicates that consent to treatment is not exactly the institution's policy.

The institution does not regularly inform guardians about the medicines administered to the residents or about their side effects. Guardians can obtain such information upon request only. If the institution assesses that a resident should be hospitalized, it is not obliged to inform his/her guardian about it in advance. It is only obliged to let the guardian know that the resident has been hospitalized. The residents classified as incapable of making their living and placed under full guardianship cannot leave the institution on their own free will. In the event of partial guardianships, the guardian wanting to take a resident out of the institution needs to obtain his/her consent.

In terms of the Civil Code, in case of partial guardianship (and restrained legal capacity), the court decides in which specific issues, including health issues, shall the capacity of the person be restrained (and would require the advance consent or consequent approval of the guardian). Therefore in the event the court has restrained the person's capacity concerning health issues, the guardian's consent or consequent approval is necessary (and *vice versa*). Otherwise, a person with restrained capacity, but not limited in health issues may bring decisions on his/her own. Diminished legal capacity (and full guardianship) obviously implies the diminished capacity in health issues too, and in such legal state the guardian acts on behalf and instead of the person.

For both types, however, information must be provided to the patient and his/her opinion should be considered to the extent allowed by their mental situation.

It also should be noted that the court decides about the restraint/diminishing of a person's legal capacity, and the guardianship authority appoints the guardian, whose activity is supervised by this authority.

4.3.6 Restraint and seclusion

The institution neither has rooms for isolation nor uses any instruments of restraint. An agitated resident is, as a rule, hospitalized. According to the director, the institution used to have cage beds fitted with netting for immobilization of agitated residents until 2000.

On the other hand, the IHF delegation noticed that residents were unusually quiet. They were either lying on their beds watching TV or calmly sitting. Restlessness typical for such institutions was simply not there. The IHF delegation is concerned that such conduct might be a result of long-term institutionalization and possible overmedication of some residents, as noted above.

4.4 RECOMMENDATIONS ON THE FACILITIES UNDER LOCAL COUNCILS

4.4.1 Specific recommendations concerning the Psychiatric Ward of the Szent János Hospital

1. Every patient should be given upon admission a brochure stating his rights including the right to access to the committee's hearings and participating in them, to the documents regarding his/her placement in the hospital, to appeal the decision of the committee
2. The patients should be informed in a language/way they understand and be assisted in exercising the above-mentioned rights
3. All documents for placement should be kept in the file of the patient
4. Furthermore the staff in the hospital should be aware whether the patients are on compulsory treatment or not
5. The hospital should provide with the full range of effective and active therapies besides medication
6. All patients should be allowed at least two-hour outdoor stay every day.

4.4.2 Specific recommendations concerning the Psychiatric Social care Home in Debrecen

1. The number of residents should be reduced, and the type of institution specialized in dealing with mental disorders should be more clearly defined.
2. The residents' contact with the outside world should be improved.
3. Both the residents and their guardians should be kept fully informed about therapies provided and their possible side effects, and treatments should imply full consent of both.
4. Overmedication the residents should be avoided.
5. All residents engaged in working activities should be properly remunerated.
6. De-institutionalization programs should be developed, and the residents able to live in the outside community should be given full encouragement and support.

4.4.3. General recommendations concerning the situation of psychiatric patients

1. Every patient regardless of the reason for his/her placement in a psychiatric institution should be asked to give an informed consent in a written form, or, if it is not possible for reasons of lack of capacity, patients opinion should be taken into consideration when deciding upon treatment
2. ECT guidelines should be provided for in a legislative act
3. The procedure of deciding upon compulsory treatment and the review of the decisions must not be formal, the patients should be provided with adequate legal assistance, sufficiently grounded reasons for ordering treatment should be included in the court decision explaining why in the given case the patient is dangerous to him/herself or to others.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATIONS ON THE MINISTRY OF JUSTICE FACILITIES

Specific recommendations concerning Unit III of the Budapest Remand Prison

1. The IHF delegation recommends that steps be taken to solve the problems of ventilation and heating in the cells.
2. The IHF delegation recommends that the prison administration exercise closer control on the quality of food provided by the food-contractor.
3. The prison administration should bring its policy in line with the relevant Hungarian legal provisions, and allow that inmates in disciplinary confinement read books other than only religious ones.
4. An information leaflet on rights and obligations at least in the most frequently spoken languages (English, German, Russian, etc.) should be prepared in accordance with the pertaining Hungarian legal regulations.
5. The prison administration should make the gym be available to all inmates and not use it as a form of reward.
6. The prison administration should bring its practice followed in cases of alleged ill-treatment into line with the relevant Hungarian legal provisions, and notify the prosecutor in each case when a detainee claims that he/she has been ill-treated in either in Unit III or another facility. The notification of the prosecutor shall not be seen as the task of the other detention facility, and shall not be made dependent on the outcome of any internal investigation.

Specific recommendations concerning the Sátoraljaújhely Maximum- and Medium-Severity Penitentiary

- 1. The IHF delegation strongly recommends that the regime in the maximum security ward (“special corridor”) be substantially reviewed in order to offer more activities and human contact to the prisoners detained there, because due to the aggregation of different factors (isolation, prolonged periods of time spent and a possibility for arbitrary placement), the conditions in the ward can be described as inhuman.
- 2. Material conditions in disciplinary cells should be significantly improved.
- 3. The IHF delegation recommends that the system of sub-grouping inmates be revised to make sure that it does not "overrule" the penal court's decision on the severity of the imprisonment.
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Specific recommendations concerning the Tököl Penitentiary for Juveniles

1. The material conditions in the disciplinary cells should be improved significantly. There is no justification for the striking lack of natural light in these cells. Running water should also be made available. The IHF delegation recommends that the use of these cells be suspended until the necessary changes are made.
2. The prison administration should introduce proper night supervision in order to prevent rapes being part of the everyday life of the inmates.
3. The prison administration should prevent inmates in the special group from harassing those in the therapeutic group – if necessary, by moving the cell of the therapeutic group into another wing of the unit.
- 4. The IHF delegation recommends that the system of sub-grouping inmates be revised to make sure that it does not "overrule" the penal court's decision on the severity of the imprisonment.
- 5. The IHF delegation firmly believes that the primary aim of the detention of juveniles shall be reintegration into society, therefore, it suggests that the institution's management review its policy, and perform a shift from seeing imprisonment of juveniles as retribution against criminals towards an approach that places resocialization into its focus.

Specific recommendation concerning the Central Prison Hospital

The IHF legation recommends that the use of the walking yard known as the “cage” be terminated, and patients of the hospital be allowed to take their 1-hour daily walk in a more spacious area.

Specific recommendation concerning Unit K

The IHF team calls on the Hungarian authorities to revise the practice of mandatory segregation of HIV patients.

Specific recommendations concerning IMEI

1. With regard to the specifically noted inappropriate medical treatment and care, particularly the observed practices of inadequate medication and examinations, the IHF team recommends the Ministry of Health and the Ministry of Justice to issue appropriate instructions and make available to IMEI adequate resources that would ensure that all patients receive appropriate care and treatment, including pharmacotherapy.
2. The IMEI or the competent authority should develop guidelines for the enforcement of all procedures concerning the contacts of the patients with the outside world and train the staff for their meaningful implementation.
3. The IMEI should develop specific guidelines for the implementation of restraint and seclusion and, if it is the case, should cease the practice of "under cover" use of seclusion rooms.
4. In view of the specific needs of IMEI patients, the IHF delegation considers that the staff to patient ratio at IMEI is insufficient and staff numbers should be increased.
5. The IHF delegation regards the IMEI patients' obligation to wear uniforms as not conducive to strengthening personal identity and self-esteem. International standards point out that individualization of clothing should form part of the therapeutic process.
6. The IHF delegation believes that the continuation or termination of compulsory psychiatric treatment shall not be influenced by social considerations. Patients shall not be kept under such treatment on the sole basis that they would have nowhere to go if they were allowed to leave IMEI.
7. The IHF delegation calls on the IMEI management to review the case of the patient with AIDS, who receives neuroleptics despite his lack of any diagnosed psychotic disorder.
8. The Hungarian authorities need to consider, as a matter of some urgency, along with the need to reform IMEI services, to transfer all patients to facilities that would be appropriate and conducive to patients' needs and treatment, including the provision of the full range of therapies and activities appropriate for their rehabilitation.

General recommendations concerning Ministry of Justice facilities

1. The Commander of the National Prison Administration should immediately amend the Order prescribing that inmates in disciplinary confinement and disciplinary isolation shall be handcuffed each time they leave their cell. The provision is not fully in line with the Hungarian legal norms, and is in absolute contradiction with international standards pertaining to the detention of juveniles.
 - 2. The Hungarian authorities should introduce due process guarantees for placement in any type of administrative isolation.
 - 3. The prisoners who work should be able to get retirement benefits for their work. Furthermore, the IHF delegation believes that the law and practice that makes it generally accepted that inmates get the one-third of the previous year's minimum wage for their fulltime work, violate the "equal pay for equal work" principle, and should be amended in order to guarantee equal respect for the work performed by detained people.
4. Medical services in the prison should be fully integrated with the national health care system. The IHF delegation believes that the status of medical personnel in penitentiary institutions ought to be reconsidered by the Hungarian authorities and legislators, and the double dependence of medical staff in penitentiary institutions shall be terminated.
 - 5. The relevant law should contain exact prescriptions for the number and length of phone calls available for each regime;
 - 6. With regard to medical treatment of inmates in disciplinary confinement the Hungarian legislation shall be fully brought in line with the European Prison Rules: the daily visit of a medical officer shall be set out with regard to prisoners undergoing such punishments.
 - 7. The system of the Lenient Executive Rules and practice of short term leaves should be restored; they are not awards but means to help the convicts to find the way back to the society.

8. The Hungarian authorities should take all necessary steps to decrease the rate of overcrowding (and thus the continuous breach of prisoners' rights) in Hungarian penitentiaries.

• 9. Prisoners in disciplinary confinement should be allowed to use mattresses during the day. Solitary confinement in itself should be seen as punishment. The IHF delegation regards further restrictions (such as the prohibition of using the mattresses) as unnecessary. "Side-effects" of disciplinary confinement, such as the restriction of contacts with the outside world, are in contradiction to international norms pertaining to the detention of juveniles for instance.

10. The Hungarian authorities should take immediate steps to ensure that Penal Procedure provisions regarding placement and review of people in forensic psychiatric institutions, as well as appropriate institutional regulations, are in line with international human rights standards, particularly with regard to the provision and effective enforcement of safeguards for the basic rights of people concerned.

11. The Hungarian authorities should take immediate steps to ensure that minors, in all detention facilities, including in forensic psychiatric institutions are afforded the special protection required by international standards

12. The Ministry of Justice should the Disciplinary Decree, so that the time spent in disciplinary isolation would be deducted from the term of the disciplinary confinement. This way disciplinary isolation could not be used to prolong the legally limited length of disciplinary confinement.

13. The Disciplinary Decree should also exclude the possibility of placing someone in disciplinary isolation during the disciplinary proceeding if the nature of the disciplinary offense he/she is charged with makes it unlikely that as a result of the proceeding he/she will be punished with disciplinary confinement.

14. The Hungarian authorities should take steps to decrease the average length of pre-trial detentions, and comply with the CCP's provision prescribing fast track procedure in the case of remand prisoners.

RECOMMENDATIONS ON THE MINISTRY OF INTERIOR FACILITIES

Specific recommendations concerning the Central Police Holding Facility of the Budapest Police Headquarters

1. Cells should have adequate natural ventilation and real access to natural light.
2. Prompt access to toilet should be guaranteed for detainees either by reconstructing the cells or by employing additional staff.
3. The prison administration should take steps to ensure that even detainees with no money could have phone contact.
4. Underwear should also be kept in stock in police jails so that pre-trial detainees who do not have family contacts could be supplied with it.

Specific recommendations concerning the Debrecen Jail of the Hajdú-Bihar County Police Headquarters

1. Prison administration should put chairs and tables in the cells, even if in the lack of statutory prescriptions regarding the equipment of police jail cells, it is not mandatory under the law.
2. Prison administration should provide for a more adequate space for the outdoor exercise.
3. Police officers serving in the emptied police jails should be relocated to the prison administration.

Specific recommendations concerning the Nyírbátor Alien Policing Jail

1. The regime in alien policing jails should be less severe than the one in low-severity penitentiaries, because detainees kept here have not committed a crime. Detained aliens should be allowed to watch TV at any time, read books, leave their cells during the days, move freely in a designated area of the jail, including the possibility to go out to the courtyard.
2. The Border Guards should provide chairs and tables in the cells,
3. Prison administration should allow inmates to have some physical contact with their visitors, especially with their children.

General recommendations concerning Ministry of Interior facilities

1. The IHF delegation recommends that the system of authorizing pre-trial detainees' contacts with the outside world be revised either by reinstating the old system, whereby pre-trial detainees were

automatically allowed to maintain contacts their relatives unless the prosecutor expressly forbade this, or by setting a very strict and short deadline (a maximum of 5 days) for the prosecutor to deliver a decision on the issue.

2. The regime of pre-trial detention in a police jails is in many aspects more severe than detention in a maximum-severity penitentiary (e.g.: no toilet or water in the cells, doors are always closed, no possibility for working, no education, no library, etc.), whereas in line with the presumption of innocence one would expect pre-trial detainees to be restricted only as much as it is required by the purpose of the detention (i.e. the guaranteeing of the procedure's success). Therefore, the IHF delegation strongly recommends that the conditions of pre-trial detention in police jails be significantly improved, and the restrictions decreased.

3. The Hungarian State should devise a system to monitor and guarantee the appropriate performance of ex officio appointed defense counsels.

4. It should be set out in the law that detainees who spend more than four hours in short-term arrest be provided with food

5. Acknowledging the improvement brought along by the coming into force of Article 135 of the CCP, the IHF delegation believes that the maximum of 60 days that a pre-trial detainee may spend in a police jail is still too long. The delegation recommends that the maximum length of custody to be implemented in a police facility be reduced to 72 hours.

6. The medical services of police jails should be fully integrated with the national health system. Doctors and medical staff should be given an independent status and supervised only by medical authorities.

7. The Hungarian government should not treat alien policing detention as a form of punishment. It is a measure used to keep people available for the execution of the expulsion (deportation) order, therefore the rules pertaining to foreigners in such detention should be much less severe than the ones concerning criminal suspects or convicts.

8. Asylum-seekers should not be detained except when they refuse cooperation with the asylum authority or severely violate the order of a reception centre.

9. The maximum duration of alien policing detention should be further reduced to six months.

10. Seriously ill foreigners in need of longer medical treatment should immediately be released.

RECOMMENDATIONS ON THE FACILITIES UNDER THE MINISTRY OF YOUTH, FAMILY, SOCIAL AFFAIRS AND EQUALITY

1. It should be made clear that on what ground juveniles in pre-trial detention are placed in Tököl or the Budapest Reformatory. The Director told the IHF delegation that she does not know about any rules regulating the selection of juveniles who are placed her institution. The problem is that juveniles with the same legal status (namely those in pre-trial detention) receive completely different treatment and live under entirely different (even physical) conditions. This difference in treatment might amount to discrimination.

2. The IHF delegation suggests that the Hungarian authorities should make a comparison between the Tököl Penitentiary and the Budapest Reformatory, and balance the inequality between the situation of the juvenile pre-trial detainees placed in the two institutions, by applying the good practices of the Budapest reformatory Institution.

RECOMMENDATIONS ON THE FACILITIES UNDER LOCAL COUNCILS

Specific recommendations concerning the Psychiatric Ward of the Szent János Hospital

1. Every patient should be given upon admission a brochure stating his rights including the right to access to the committee's hearings and participating in them, to the documents regarding his/her placement in the hospital, to appeal the decision of the committee

2. The patients should be informed in a language/way they understand and be assisted in exercising the above-mentioned rights

3. All documents for placement should be kept in the file of the patient

4. Furthermore the staff in the hospital should be aware whether the patients are on compulsory treatment or not

5. The hospital should provide with the full range of effective and active therapies besides medication
6. All patients should be allowed at least two-hour outdoor stay every day.

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2. The residents' contact with the outside world should be improved.
3. Both the residents and their guardians should be kept fully informed about therapies provided and their possible side effects, and treatments should imply full consent of both.
4. Overmedication the residents should be avoided.
5. All residents engaged in working activities should be properly remunerated.
6. De-institutionalization programs should be developed, and the residents able to live in the outside community should be given full encouragement and support.

General recommendations concerning the situation of psychiatric patients

1. Every patient regardless of the reason for his/her placement in a psychiatric institution should be asked to give an informed consent in a written form, or, if it is not possible for reasons of lack of capacity, patients opinion should be taken into consideration when deciding upon treatment
2. ECT guidelines should be provided for in a legislative act
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ANNEX: list of DELEGATION members

Mr. András KÁDÁR, Hungarian Helsinki Committee

Mr. Andrzej KREMPLEWSKI, Helsinki Foundation for Human Rights in Poland

Ms. Anna BALOGI, Hungarian Helsinki Committee

Ms. Antonia PAPADOPOULOU, Greek Helsinki Monitor

Mr. Balázs TÓTH, Hungarian Helsinki Committee

Mr. Ferenc KŐSZEG, Hungarian Helsinki Committee

Mr. Gábor GOMBOS, Mental Disability Advocacy Center

Mr. Gábor GYŐZŐ, Hungarian Helsinki Committee

Ms. Irina SERGEEVA, Moscow Helsinki Group

Mr. Ivan FISER, International Helsinki Federation for Human Rights

Mr. Krassimir KANEV, Bulgarian Helsinki Committee

Ms. Lamija MUZUROVIC, International Helsinki Federation for Human Rights

Ms. Marijana OBRADOVIC, Helsinki Committee for Human Rights in Serbia

Mr. Saško TODOROVSKI, Helsinki Committee for Human Rights of the Republic of Macedonia

Ms. Slavka KUKOVA, Bulgarian Helsinki Committee

Mr. Stanimir PETROV, Bulgarian Helsinki Committee

Mr. Tamás FAZEKAS, Hungarian Helsinki Committee

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