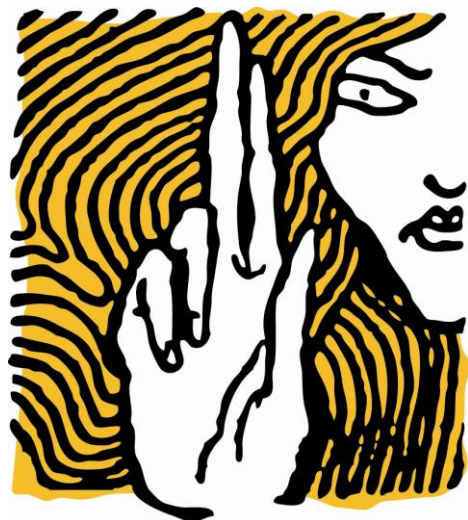

Stuck in Jail

Immigration Detention in Hungary (2010)

*by the Hungarian Helsinki Committee,
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Hungarian Helsinki Committee

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I. Introduction

The Hungarian Helsinki Committee (HHC) is non-governmental organisation, which monitors the enforcement of human rights enshrined in international human rights instruments; provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantees the consistent implementation of human rights norms. The HHC promotes legal education and training in fields relevant to its activities, both in Hungary and abroad.

The Hungarian Helsinki Committee has a long-standing experience in monitoring detention facilities in Hungary. It regularly monitors police jails which was made possible by an agreement concluded in 1997 with the National Police Headquarters. The agreement entitles the HHC monitors to:

- visit any detention facility operated by the Police without preliminary notice;
- examine the conditions of detention and talk to detainees to this end;
- request and be provided with official data by the detention staff;
- report about its findings to the Police, and after consultation with the latter, to the public.

The HHC, as an implementing partner of the United Nations High Commissioner for Refugees (UNHCR), has been providing legal assistance to asylum-seekers and foreigners potentially in need of international protection since 1998. This activity includes regular visits by the contracted lawyers of the HHC to detention facilities where foreigners are held in immigration detention.

II. Background information

II.1. The regulatory framework of immigration detention

Immigration detention¹ in Hungary is primarily regulated by the following legal acts:

- Act II of 2007 on the entry and stay of third-country nationals (hereinafter: Aliens Act);
- Government Decree 114/2007 (V.24.) on the execution of Act II of 2007 on the entry and stay of third-country nationals (hereinafter: Aliens Government Decree);
- Decree of the Minister of Justice and Law Enforcement 27/2007 (V.31.) on the executive rules of alien policing detention (hereinafter: MJLE Decree).

At the time of the monitoring visits the main characteristics of the Hungarian immigration detention regime were the following:

- Immigration detention can be ordered by the alien policing branch of the Office of Immigration and Nationality (OIN), and in specific cases, the Police;²
- Immigration detention can be ordered if the foreigner:
 - absconds or impedes her/his expulsion in any other manner,
 - refuses to leave the country or substantial grounds are shown that she/he delays her/his expulsion,
 - acts repeatedly or seriously in breach of the rules in force at her/his compulsory place of stay,
 - obstructs the alien policing procedure by refusing to present her/himself before the authorities, or
 - has been released from criminal detention;³
- Immigration detention can only be ordered for 72 hours, after which it can be upheld for a further period of 30 days by the first-instance court competent according to the geographic location of the detention facility;⁴

¹ The literal translation of the proper Hungarian legal term is "alien policing detention" (*idegenrendészeti őrizet*)

² Aliens Government Decree, Section 126 (1)-(2)

³ Aliens Act, Section 54 (1)

⁴ Aliens Act, Section 54 (3)

- The maximum period of immigration detention is 6 months (with monthly court reviews), and it should be terminated without delay if it becomes evident that the expulsion order (serving as the ground for detention) cannot be carried out. In addition to the above provision, while performing their tasks authorities shall aim at the shortest possible detention;⁵
- Children cannot be held in immigration detention;⁶
- In the HHC's view asylum-seekers, whose claim has been admitted to an in-merit asylum procedure shall be released from immigration detention without delay – the Police and the Office of Immigration and Nationality never shared this opinion;⁷
- According to the HHC's knowledge the Ministry of Justice and Law Enforcement decided in April 2010 that despite the above concerns of the HHC, alien policing detention should be ordered for asylum seekers as a rule in general;
- Immigration jails cannot be established within penitentiary institutions⁸, the Aliens Government Decree and the MJLE Decree set detailed physical and legal standards, as well as operational rules regarding these facilities.

II.2. The infrastructure of immigration detention and recent changes

Until April 2010, four immigration jails⁹ were in operation in Hungary:

| Location | Capacity |
|------------------|----------|
| Kiskunhalas | 36 |
| Nyírbátor | 169 |
| Győr | 40 |
| Budapest Airport | 27 |

The jails in Kiskunhalas, Nyírbátor and the Budapest Airport have been fully refurbished in recent years from EU funds. In addition to the general improvement of physical conditions, the renovation led to the introduction of a particularly strict detention regime in Kiskunhalas and Nyírbátor (see Section III. 2.).

Between April and July 2010, 11 new immigration jails were opened in different locations all over Hungary:

| Location | Operating as immigration jail as of | Capacity |
|----------------|-------------------------------------|-------------|
| Baja | 16 April 2010 | 19 persons |
| Csongrád | 22 May 2010 | 22 persons |
| Debrecen | 30 April 2010 | 62 persons |
| Eger | 1 June 2010 | 24 persons |
| Kiskunhalas | 21 April 2010 | 24 persons |
| Nyírbátor | 12 May 2010 | 107 persons |
| Salgótarján | 18 April 2010 | 51 persons |
| Sopron | 17 May 2010 | 20 persons |
| Székesfehérvár | 21 May 2010 | 20 persons |
| Tatabánya | 9 July 2010 | 44 persons |
| Zalaegerszeg | 26 May 2010 | 28 persons |

⁵ Aliens Act, Section 54 (4) and Section 126 (5) Aliens Government Decree

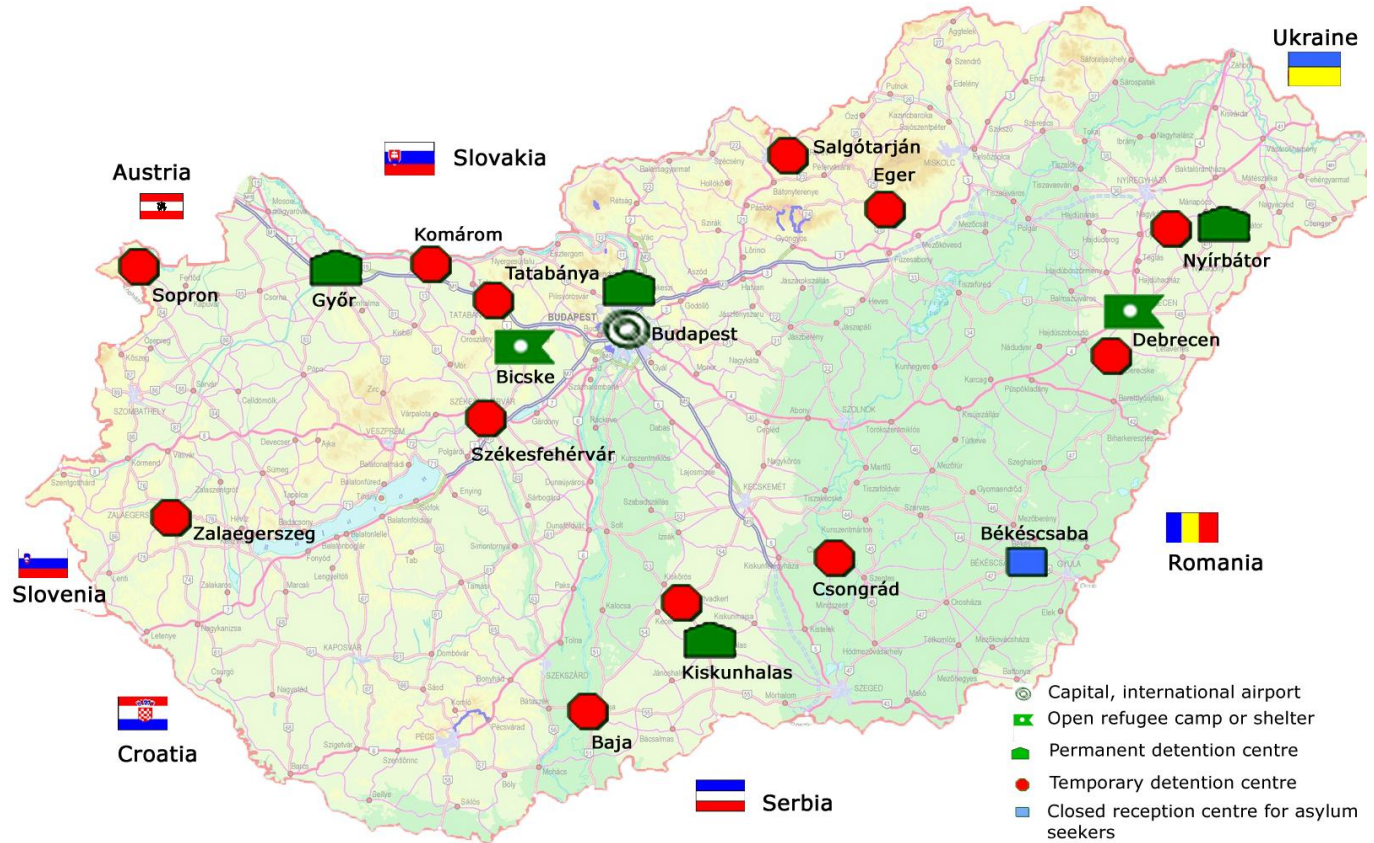
⁶ Aliens Act, Section 56 (1)

⁷ Act LXXX of 2007 on asylum, Section 55 (3)

⁸ Aliens Government Decree, Section 129 (2)

⁹ The official term for immigration jails in the Hungarian legal terminology is "guarded shelter" (*őrzött szállás*). This euphemism is particularly misleading, given the strict detention regime applied at these facilities. The present report uses the two terms as synonyms.

Nine of these facilities used to operate as police jails; many of them were closed down years ago and have not been in use since then. In Nyírbátor, a former open community shelter was transformed into a place of detention. Some of these jails were opened alongside larger immigration detention centres in operation for several years (Kiskunhalas, Nyírbátor). Through this operation, the Police multiplied by 2.5 the maximum capacity of immigration jails (from 282 to 698 persons). The following map shows the geographical location of each old and new immigration jail as of August 2010:



The Police consequently referred to the freshly opened immigration jails as “temporary”, and most of these facilities have indeed been closed down since the visit of the HHC. However, this process was not accompanied by any official communication. We are not aware of any plans concerning the re-opening of any of the closed jails in case irregular migration became more important.

It is important to note that before or during the period in which the new immigration jails were opened:

- there was no amendment whatsoever in the regulatory framework of immigration detention (already in force since 2007); and
- no radical changes in migratory trends could be witnessed either.

Following the parliamentary elections in April 2010 the previous socialist government was replaced by a conservative cabinet. A draft bill published in August has demonstrated the new government’s intention to introduce a much harsher immigration detention policy (the maximum duration of which was extended to 12 months, allowing the immigration detention of minors and families for 30 days and the prolonged detention of asylum-seekers as a general policy, etc.).

It should be pointed out though that:

- the amendments only entered into force on 24 December 2010; and
- the amendments did not touch upon the norms regarding the physical and other conditions of detention.

II.3. Methodology

The Hungarian Helsinki Committee visited 9 new, temporary immigration jails in August 2010. Altogether 8 staff members participated in the monitoring visits, which were carried out in teams of 3 or 4 people, always led by a senior staff member with long-standing experience in monitoring detention facilities.

| Location of jail | Date of visit |
|------------------|-------------------|
| Tatabánya | 5 August 2010 |
| Székesfehérvár | 10 August 2010 |
| Salgótarján | 11 August 2010 |
| Eger | 11 August 2010 |
| Sopron | 16 August 2010 |
| Csongrád | 16 August 2010 |
| Baja | 17 August 2010 |
| Debrecen | 26 August 2010 |
| Nyírbátor | 27 August 2010 |
| Zalaegerszeg | 26 September 2010 |

The commander of the new immigration jail in Kiskunhalas denied access to the facility with reference to an arson attack that took place 2 days before the HHC's visit and due to which all detainees had to be transferred to other detention centres.

All monitoring missions applied a single methodology and questionnaire, based on the relevant domestic regulation, the standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: CPT)¹⁰ and the long-standing practical experiences of the HHC. The monitoring teams primarily looked into the following issues:

- general information (capacity, composition of detainee population, circumstances of the opening of the jail, etc.);
- general physical conditions (space, light, etc.);
- movement within the facility;
- access to fresh air and outdoor activities;
- hygienic conditions;
- nutrition;
- medical attention;
- psycho-social care;
- the treatment of vulnerable detainees;
- daily routine;
- communication with the outside world (telephone, correspondence, etc.);
- the occurrence of violent acts, self-harm and other "extraordinary events";
- potential cases of unlawful detention.

All visits followed the same scenario:

1. Discussion with the jail commander;
2. Visiting the jail facilities (including all common areas and some cells);
3. Discussion with the detainees (the HHC monitoring teams could communicate in English, French, German and Serbian with the detainees and always requested an explicit permission from the person concerned to use the information provided for reporting purposes).

¹⁰ <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

The present report is based entirely on the information collected within the framework of the above-described monitoring visits.

III. Main Findings

III.1. An unprepared and unjustified change

As explained in Section II.2, the circumstances did not justify such a radical change in the immigration detention policy of Hungary. In addition, no feasibility study was prepared and discussed with stakeholders; there was no political or professional debate about this major restructuring. The real costs of the new system are not yet known (see Section III. 10.). The UNHCR and the NGOs active in the field were not informed in advance about the opening of the new immigration jails (which could have enabled for example the gradual adjustment of legal counselling services to the new situation).

The opening of new immigration jails was also kept as a secret within the Police structure. It is particularly striking that the commanders of the jails concerned were all informed about the transformation of a police jail or an unused police facility into immigration jail only one or two days (!) before this was due to take place. In Debrecen for example the staff had only half a day to prepare for the opening of the immigration (alien policing) jail, whereas in Székesfehérvár and Baja the preparation time was one day, in Tatabánya and Salgótarján it was 2 days, in Eger and Sopron it was 3 days. The commanders of other jails could be informed only a few days or weeks before the transformation/opening actually took place.

The staff of most new immigration jails was not provided with any preparatory training, even though

- the vast majority of them¹¹ do not speak any foreign language, or even if they do, it often means only basic communication skills and/or is limited to a language usually not spoken by detainees (typically German);
- they have never worked in a multicultural context and have never received any intercultural training; and
- many of them have not even worked in a detention context before.

Only the staff of the Tatabánya, Csongrád, Salgótarján and Baja jail reported a short preparatory presentation but these sessions were insufficient for obtaining the necessary legal, intercultural and conflict resolution skills.

This situation was clearly contrary to the recommendation of the CPT, which "places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action."¹² And as a minimum at least some of them should possess the necessary language knowledge.

The strikingly short preparation period and the lack of training indicates that the decision about the opening of a dozen new immigration jails was unprepared and lacked any sort of professional oversight. This strategy resulted in the blatant unpreparedness of both the facilities and their staff to such a difficult task and may double the chance of human rights abuses and violent conflicts occurring during detention. It shall be re-emphasised that no particular recent change in legislation or in migratory trends could be evoked in order to justify this policy. The personnel of the jails also expressed vivid discontent regarding this change, as many interviewees complained about the lack of preparation, training, financial resources and specific skills.

III.2. "Treated as criminals"

Hungarian law qualifies illegal border-crossing as a petty offence (*szabálysértés*), and not as a criminal act.¹³ The vast majority of foreigners held in immigration detention have never committed a crime. Nevertheless, several immigration jails severely limit the movement of detainees even within the facilities.

- The detention regime applied at the time of the monitoring visits in the "old" immigration jails of Kiskunhalas and Nyírbátor resembled high-security prisons (*fegyház*), as detainees were locked into their cells during the entire day and were only allowed to stay in community areas (watching TV, smoking) for

¹¹ The proportion is between 80% and 100% at all the facilities.

¹² <http://www.cpt.coe.int/en/documents/eng-standards.pdf>, p. 39

¹³ Government Decree 218/1999 (XII.28.) on certain petty offences, Section 22

a few hours a day and during meals. There was maximum one hour per day provided for open air exercise in a bleak courtyard and even that was reportedly often significantly shorter.

- In the immigration jail of Salgótarján detainees were locked up in their cells for the entire day when the HHC visited the facility. They could in principle request a guard to let them out to watch TV, smoke or use the bathroom at any time except for the meals and the sleeping hours. However, detainees at Salgótarján concordantly complained that they often have to wait for long (sometimes even half-an-hour) before they were actually let out. This is a particularly grave problem in this detention facility, as the cells did not have any toilet facility (see Section III. 3.).
- In the temporary detention facility of Tatabánya, cell doors were in principle open between 8.30 and 11.30 AM, 2 and 6 PM and 7.30 and 9.30 PM. However, detainees concordantly claimed that in reality they were let out for much shorter periods (20-30 minutes) during these periods of time.
- In the immigration jails of Debrecen, Sopron, Eger, Csongrád, Baja and in the new facility of Nyírbátor detainees were allowed to move relatively freely within the detention facility during a significant part of the day and cell doors were not routinely locked at the time of the monitoring visits.

The severe regime applied in the "old" facilities of Kiskunhalas, Nyírbátor and the "new" immigration jail of Salgótarján is unreasonable and unjustified, both in legal and practical terms. The CPT has repeatedly emphasised that the detention of irregular migrants should reflect a non-criminal character and therefore such detainees "should be restricted in their freedom of movement within the detention facility as little as possible".¹⁴ Findings published on 8 June 2010 in the report of the CPT regarding the lack of meaningful recreational and outdoor activities in Nyírbátor still remain valid.¹⁵ The UNHCR has also repeatedly criticised this practice in recent years. Such a severe limitation of movement for several months and without any legal ground results in extreme frustration, which generates psychological and medical problems, as well as an aggressive attitude. The correlation experienced by the HHC between the severe limitation of movement and the frequency of violent conflicts, self-harm and protests is therefore not surprising.

A considerable part of immigration detainees are asylum-seekers, with regard to whom Article 7 (1) of the EU Reception Directive¹⁶ stipulates that "Asylum-seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive." Holding asylum-seekers in a locked cell for the vast majority of the day is in breach of this provision, most particularly when the basic hygienic facilities (toilet, sink) are not available within the cell (as it was the situation in Salgótarján).

III.3. Unacceptable physical and hygienic conditions

Section 129 of the Aliens Government Decree stipulates that immigration jails shall have:

- at least 5 square metres of space to move and 15 cubic metres of air-space per detainee;
- a community area for eating and leisure purposes (and all these areas shall have a window with access to fresh air);
- toilet and shower facilities as adequate with regard to the number of detainees.

Certain temporary immigration jails failed to fulfil even these basic requirements:

- In Salgótarján, the cells visited by the HHC monitors were not larger than 13 square metres and yet had to host 3 detainees. The space between the beds was only approximately 60 centimetres. This means that the space where 3 detainees could actually move around in the cells was not more than 6-7 square metres.
- In Baja, the cells visited by the HHC monitors were not larger than 10 square metres and yet had to host 3 detainees (meaning only 4 square metres for movement for 3 persons in each cell). The cells were not sufficiently clean at the time of the visit and the ventilation was inadequate because the windows could not be opened sufficiently.
- There was no toilet and sink in the cells of the Salgótarján immigration jail. Only 3 (!) toilets were available for a maximum of 51 detainees (44 on the day of the HHC monitors' visit). One of them was situated in the shower room and was not separated with any material from the rest of the room, meaning

¹⁴ <http://www.cpt.coe.int/en/documents/eng-standards.pdf>, p. 50

¹⁵ <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf>

¹⁶ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers

that when the toilet was used, it could be seen by other detainees having a shower and guards standing at the door of the room. The two other toilets were situated in another room and were only separated with an approximately 80-centimetre-high "wall" from each other and from the rest of the room, and only on one side. Therefore these toilets could not be used either with granting a minimum level of privacy. Detainees were always escorted to the toilet by a guard, who "kept an eye on them" while using the toilet facility, as the HHC monitors were told, "in order to avoid that they hang themselves up". Several detainees complained, in addition, that they had to wait for long (even 20-30 minutes) until they were let out from the cell to use the toilet, due to which they were often obliged to urinate in a plastic bottle in the cell (mostly during the night).

- Cells in the new immigration jail in Nyírbátor do not have toilet facilities either. Detainees complained that during the night (when the cell was closed and they needed to call a guard to let them out to use the toilet) they sometimes had to urinate "through the open window", due to the lack of any other possibility (if the guard did not let them out or did not hear the call).
- In Baja, there was only one toilet for 18 detainees, situated in the common bathroom, separated by a wall from the showers.

The HHC notes with great concern that the physical and hygienic conditions of immigration detention at the Baja and Salgótarján jail were in breach of international standards and explicit rules set by Hungarian law. Detention for several months at such facilities may easily amount to inhuman and degrading treatment.

III.4. Lack of due medical and psycho-social care

The HHC monitors experienced in almost all of the visited facilities that detainees were usually examined by a physician only if they asked for an appointment, thus there was no regular medical control. One of the detainees in Nyírbátor claimed that he was epileptic, and did not receive any treatment. Medical care was not available on a daily basis in Csongrád and in Baja either.

In most of the alien policing jails no psychological help was available, even though it is obvious that it would be of key importance. For instance in Nyírbátor, one of the detainees claimed that even though he would need regular psychological treatment, he could only see the psychologist once a month, which was not sufficient. He also told the monitors that he used to have regular access to a psychologist in a different detention facility on a bi-weekly basis. In Tatabánya the detainees were theoretically allowed to consult the psychologist of the Police, however, they stated that the only thing that had happened after the consultation was that they had received medication (sleeping pills, tranquilizer, pain killers) from the guards charged with the distribution of medicaments.

Social workers did not visit immigration jails at all, thus no social care was provided.

In the Sopron and Debrecen jails there were no separate cells for those having infectious diseases.

III.5. Insufficient nutrition

In most of the jails visited by the HHC detainees reported that they were not receiving sufficient food. They also told the monitors that they are seriously concerned about the quality of the food given to them. When confronted with the statements of the detainees commanders of all jails admitted that there are problems with the nutrition.

- The HHC was informed that in Eger the budget of the jail only allowed 700 Hungarian Forints (HUF) per day (equal to 2,5 € per day) for nutrition, which was clearly not sufficient to provide acceptable food in sufficient amounts.
- In Baja detainees reported food-poisoning because of insufficient hygienic conditions. The HHC monitors saw that plates were supposed to be washed by the detainees themselves without proper equipments and detergents that might have caused bacterial infections especially during warm summer months. It was confirmed by the jail staff that some of the detainees had to be examined by the physician because of the suspicion of food-poisoning.
- Contrary to other facilities both the detainees and the jail staff in Sopron and Csongrád told the HHC monitors that there were relatively few problems related to the nutrition of the detainees. The reason might have been that more financial means were available for this purpose, in Sopron it was approximately 1600 HUF (5,7 €) per day while in Csongrád it was 1200 HUF (4,3 €) that allowed the provision of dairy products and fruits to the detainees on a regular basis.

III.6. Forced inactivity and deprivation of outdoor stay

According to the relevant Hungarian legal provisions, alien policing jails may be established only in premises where outdoor stay can be ensured,¹⁷ and third-country nationals in detention shall have the right to stay outdoor for at least one hour per day.¹⁸ However, circumstances in certain immigration jails were clearly in breach of these provisions.

- In the Sopron, Salgótarján, Csongrád, Debrecen, Székesfehérvár and Tatabánya jails there were no open-air courtyards at all. In these facilities outdoor stay was “ensured” in community rooms without glass in their windows on the same floor where cells were situated. This meant a total deprivation of proper outdoor stay for several months.
- In Baja, detainees were previously allowed to go out to the courtyard every day and play football there, however, since a detainee escaped during the outdoor stay, they were allowed to have a walk in the courtyard only once a week.
- Outdoor activities could only be performed in Nyírbátor amongst the temporary alien policing jails, monitors saw a group of detainees playing football

The lack of outdoor activities caused a serious problem in all visited facilities. In most cases watching TV was the only recreational activity available for detainees.

- With the only exception of Nyírbátor there was no possibility to do sports for the majority of detainees. At the same time indoor table tennis was available in Sopron and in Székesfehérvár.
- In most immigration jails no books or newspapers were provided.
- A television was available in all of the jails visited, however, in Debrecen, Salgótarján, Nyírbátor and Csongrád there were only Hungarian TV channels; in Tatabánya the choice of TV channels was decided by the guards, while in Baja the television was placed in the corridor in a way that only maximum three detainees were able to sit down and watch it through the bars, the others needed to stand behind.

The HHC monitors found that the religious needs of Muslim detainees were more or less taken into consideration, however, there was no separate room for prayer in Nyírbátor and in Baja, while the prayer room in Salgótarján had no ventilation. In general access to a copy of the Koran is not automatic in alien policing jails.

III.7. Detention of vulnerable persons

As a major shortcoming, the Hungarian alien policing legislation does not set forth differentiated rules applying for vulnerable persons with specific needs in alien policing detention. Section 126 (6) (b) of the Aliens Government Decree only foresees that detention shall be terminated immediately if it becomes evident that the expulsion order cannot be executed, in particular, if the person subject to expulsion need prolonged hospital treatment. This provision, however, does not allow favourable treatment for detainees with other specific needs than prolonged medical treatment in a hospital, for reasons of psychological distress, age, pregnancy or disabilities for instance.

During its monitoring visits the HHC found in all facilities that a large number of detainees had psychological or psychiatric problems due to an untreated previous trauma, bad detention conditions and/or forced inactivity. The HHC interviewed an eight-month-pregnant (!) woman in Kiskunhalas whose detention was prolonged and she was only released when giving birth to her child.

The results of the monitoring visits confirm the findings of a recently published report by the Jesuit Refugee Service, stating that due to the negative effects of detention on human beings, detainees lacking pre-existing vulnerabilities also become vulnerable in detention.¹⁹ Most of the detainees interviewed did not have sufficient language capacities to communicate, were not sufficiently aware of the immigration proceedings they were subject to, and their state of mental health was gradually deteriorating.

¹⁷ Aliens Government Decree, Section 129 (1)

¹⁸ Aliens Act, Section 61 (3) h)

¹⁹ Becoming vulnerable in detention, Jesuit Refugee Service, June 2010, available at:

http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_28Jun10.pdf

III.8. Unlawful detention of minors and asylum-seekers

Despite the fact that the Aliens Act explicitly prohibits the immigration detention of unaccompanied minors (persons under 18), the HHC monitors found two unaccompanied minors in detention.

- The HHC monitors met an Algerian unaccompanied minor in the Sopron immigration jail. He claimed to be 17 years old, but as a medical “expert” at the request of the OIN had previously established earlier that he was “approximately 20-22 years old”, he was therefore kept in alien policing detention. All HHC monitors present agreed that the boy was very likely to be a minor (e.g. he hardly has any facial hair), or at least would deserve the application of the benefit of the doubt principle. Right at the time of the visit, he received from home a faxed copy of an identity document proving his age. The HHC was later informed that he was later released from detention and accommodated in the shelter for unaccompanied minor asylum seekers in Bicske.
- During the visit to the Salgótarján immigration jail the HHC monitors met another unaccompanied minor of Afghan nationality. The minor claimed that he was sent back from Finland to Hungary under the Dublin II Regulation in June and he maintained his asylum claim in Hungary after the transfer took place. All monitors were convinced that the boy could not be older than 17-18 years being particularly thin and short, without any facial hair. Despite the intervention of the HHC aiming at releasing the minor, he is still held in detention in another jail in Zalaegerszeg that was not yet visited by the HHC. According to the HHC’s position his detention for 3 months was unlawful on grounds of both being a minor and being an asylum-seeker.

In the past two years the HHC witnessed an increase in the number of asylum-seekers detained in alien policing jails. In contrast to the legal provisions, which entered into force on 1 January 2008 (and was only modified on 24 December 2010), whereby asylum seekers whose claim is assessed in the in-merit asylum procedure should be released from detention into an open reception centre, the OIN began not to order the release in case of many asylum seekers in 2009. In order to challenge this practice the HHC turned to the Chief Prosecutor's Office on 9 February 2009. The response of the Chief Prosecutor's Office, dated 22 April 2009, fully concurred with the HHC's legal position. The unlawful detention of asylum-seekers is explicitly mentioned by the US State Department's human rights report of 2009 and 2010.²⁰

Later in 2009 and 2010, the HHC saw asylum seekers increasingly remaining in detention beyond the preliminary assessment phase of the asylum procedure, and several detainees reported to be in this situation during the monitoring visits as well. Lawyers representing detained asylum seekers challenged the detention in court procedures, but without success, as courts reviewing detention appear to carry out a purely formal assessment of whether there is a legal basis for it, without examining if detention is “lawful” in the sense of Article 5 of the European Court of Human Rights (with not a single case in past years where the lack of a legal ground for alien policing detention would have been established). The HHC decided to turn to the European Court of Human Rights representing two asylum seekers who were unlawfully detained for almost 6 months in Nyírbátor. The application has been admitted to procedure and is pending at the time of writing this report.

III.9. A growing frequency of violent acts and self-harm

Protests, violent acts and self-harm were frequent at some immigration jails during the few weeks or months that passed between the opening of these facilities and the HHC’s monitoring visit.

- Hunger strikes took place at the immigration jail of Salgótarján (34 detainees for a week), Debrecen (27 detainees), Eger (one person for more than 10 days), Csongrád (16 detainees) and Baja.
- Suicide attempts occurred in Debrecen and Tatabánya, without lethal consequence.
- Disciplinary measures (handcuffing, physical force) were used in Székesfehérvár, Nyírbátor, Salgótarján and Tatabánya.
- Detainees at the Tatabánya facility were protesting on a July evening by hitting cell doors and making noise, as they wanted to go out to walk and smoke in the courtyard after dinner. Hearing the noise, the jail guards called for reinforcement, after which a number of local police officers arrived and entered the

²⁰ “On April 21, the prosecutor general determined that the Office of Immigration and Nationality (OIN) was unlawfully detaining certain asylum seekers. The prosecutor general sent a notice to the OIN demanding that it immediately enforce the law by releasing all asylum seekers whose applications had been admitted into the final asylum procedure. The OIN challenged this notice at the Ministry of Justice and Law Enforcement, suggesting an amendment to the law. The HHC reported that the unlawful practice continued at the end of the year despite the prosecutor general's intervention.” US State Department 2009 Human Rights Report on Hungary available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136035.htm> and <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154428.htm>

detention facility. They were reportedly wearing masks. They reportedly handcuffed the “trouble-makers” and beat one of them with a truncheon. The scars allegedly caused by the beating were still visible three weeks after the event, when the HHC monitors interviewed the detainee. In addition, it should be noted that according to the official daily routine, detainees were in principle allowed to move around within the facility between 7.30 and 9.30 PM (after dinner), it is therefore unclear why detainees were locked into their cells during this period on that particular day. This information may confirm detainees’ statements, according to which the actual “walking period” is much shorter in reality than it is foreseen by the daily routine.

- The HHC monitors were told in Nyírbátor that after some detainees managed to escape, the guards ill-treated detainees with truncheons in their beds at 6 AM, as a form of “collective punishment”. Several detainees in this jail stated that guards were making fun of them imitating the voice of a donkey while they were praying. This was also confirmed by a guard, who was of the opinion that “the detainees over-reacted to the situation”. Detainees also informed the HHC monitors about two cases when guards emptied a bottle of orange juice and the biscuits bought by the detainees, allegedly onto a copy of the Koran.
- The number of violent acts was particularly high in Salgótarján and Nyírbátor. In Salgótarján a group fight took place on 9 and 10 June, the second one left 8 persons injured. On 9 June, an Afghan man bit the arm of another detainee. Cases of self-harm were also reported: on 20 May, a detainee hit his head into the iron door of a cell as an act of protest, after which guards gave him a sedative injection. On 2 August, a detainee cut his own head with a razor blade in order to protest against his desperate situation. Several detainees concordantly told the HHC monitors that guards usually use gas sprays against detainees in these situations. Also, 15 incidents were reported by the jail staff in Nyírbátor, including the use of physical force (handcuffs, truncheons, gas spray), hunger strikes, fights among detainees and with the guards and self-harming incidents.
- The most spectacular act of protest took place in Kiskunhalas on 14 August, when some detainees planned an arson attack setting some mattresses on fire. According to the information received from the commander of the jail two detainees were arrested and later put in pre-trial detention. Other detainees reported that the guards were rude and violent towards them. When the HHC’s visit took place in Kiskunhalas the ambience was extremely tense and cold, detainees seemed to be frightened.

The occurrence of violent acts, self-harm and protests show a clear correlation with the physical conditions and detention regime applied in different jails. Facilities with a severe detention regime (with detainees locked in their cells most of the day) and/or extraordinarily bad physical/hygienic conditions, such as Salgótarján, experienced a high number of violent acts. Meanwhile in jails with a more flexible regime (cell doors open most of the day), better hygienic conditions (e.g. toilet in the cells) and a more “cooperative” jail personnel, like in Sopron or Csongrád, such events hardly ever took place.

III.10. The real cost of an ineffective detention system

In addition to the grave human rights concerns, the detention regime examined (given the small size and dispersed location of jails and the particularly strict detention regime) is absolutely ineffective from a financial point of view, and is particularly labour-intensive. For instance, the immigration jail in Eger at the time of the visit employed 28 persons at the time of the monitoring visit, while it could hold maximum 24 detainees. Proportions were not much better at most new immigration jails. As health care services were not sufficiently available at most facilities, usually two guards had to escort each detainee needing medical treatment to the hospital and stay there with her/him sometimes for several days (!), while the detainees underwent treatment. According to the estimates of the HHC (based on information provided by the staff of the immigration jails), the system examined required the employment of 300-400 persons, including commanders, guards, cleaning staff, etc.

Interpreters were often not available at most places where immigration detention was carried out. In general most immigration detainees speak languages which are uncommon in Hungary (Arabic, Farsi, Albanian, Urdu, etc.), and there are languages for which hardly any interpreter is available (such as Somali). In the lack of significant immigrant communities in the country, most interpreters are concentrated in Budapest and in some other larger cities. As detainees have the right to use the language they speak in all procedural acts (and to be informed about decisions in that language), interpretation is regularly needed in immigration jails. However, due to the lack of qualified local interpreters this service is extremely costly (as the travel costs and the availability of interpreters should also be remunerated) and access to it may be limited, causing serious delays in procedures. In addition, it is doubtful – given all these difficulties – whether detainees can indeed have access to all the relevant information regarding their case in a language they understand.

In addition, the detention regime examined in 2010 contained a set of other hidden costs, such as the fixing of jail facilities and equipment after the damaging acts of protest or the increased costs of medical treatment and medicine for detainees with health problems and psycho-somatic symptoms (due to the forced inactivity and bad hygienic conditions). The unreasonable "reshuffling" of some detainees (reported both by themselves and the jail personnel) also caused significant transportation costs. All these factors appear to have been disregarded when the current system was designed; ignoring the serious financial and budgetary consequences.

IV. Recommendations

The Hungarian Helsinki Committee addresses the following recommendations to the competent Hungarian authorities.

1. Children and vulnerable persons shall not be held in immigration detention.

The HHC urges that children be never detained for reasons related to their immigration status, illegal entry or stay as well as persons whose exact age cannot be assessed properly. The current detention facilities and regimes are inappropriate for children, not offering leisure activities, access to education, psycho-social care and playing etc.

Vulnerable persons with special needs including pregnant women, torture victims, elderly people and persons with a mental and physical disability should not be detained unless it is an inevitable measure of last resort.

2. Asylum seekers should only be detained in well justified cases.

The OIN is urged to use this measure as a last resort only in a limited number of justified cases in compliance with the current legislation. Ordering or prolonging alien policing detention should not be automatic and it should always take individual needs and vulnerabilities into consideration in every case.

3. Physical conditions of detention shall meet international standards.

Detention should only be carried out in facilities where proper conditions can be ensured. The HHC therefore recommends the refurbishment of all immigration jails and proper equipment suitable for lengthy detention periods as well. This would include the significant improvement of hygienic standards (toilet and sink facilities in all cells), at least 5 square metres of moving space in the cells and community areas made available for all detainees in a flexible regime. The practice of locking immigration detainees in their cell for most of the day should be avoided, all immigration jails should be suitable for the application of a regime enabling more free movement inside the facilities. This makes the occurrence of violent acts less frequent.

4. At least one hour of outdoor stay has to be granted daily.

The only way to reduce tension and the occurrence of violent acts is to provide meaningful daily activities for the detainees. In HHC's opinion it is indispensable to allow at least one hour of outdoor stay and activity for the detainees. All jails should be transformed in a way that there was a suitable courtyard for sport activities on its territory.

5. Psycho-social care should be made available.

Access to proper social and psychological care should be made available on a permanent basis in all immigration jails, and cooperation between the Police and the non-governmental sector should be strengthened.

6. Sufficient nutrition needs to be provided.

The HHC strongly recommends that according to the relevant legal provisions²¹ the Police provide sufficient and appropriate nutrition to all immigration detainees. The dietary needs and traditions of detainees should be better observed in this respect. Thus it would be important to increase financial resources and also to employ dietary experts with relevant experience.

7. Proper medical care must be provided.

In order to avoid the deterioration of the detainees' physical conditions regular medical checkups have to be carried out by independent and available physicians that detainees trust. The practice of providing detainees only with tranquilizers and sleeping pills has to be stopped immediately.

²¹ 10900 Joule/day set out in Decree no 27/2007

8. Meaningful recreational activities have to be ensured.

Relevant legal provisions have to be respected in order to provide recreational activities for the detainees. Libraries, foreign TV channels, games and sport equipments have to be purchased and provided in all detention facilities especially that the maximum time of immigration detention was raised to 12 months in Hungary from 24 December 2010.

9. Adequate training for jail staff should be ensured.

Police and security staff needs to be trained effectively and on a regular basis in order to better know and respect relevant human rights obligations and to improve their intercultural and conflict resolution skills. It would be useful if the Police cooperated with NGOs and the UNHCR and other external experts in this respect.

V. Remarks added by the Police

Under the existing cooperation agreements between the Hungarian Helsinki Committee and the Police the National Police Headquarters requested adding the following text to the report on 14 February 2011:

Currently the cooperation between the Hungarian Helsinki Committee and the National Police Headquarters (Police) is based on three cooperation agreements:

- *the Cooperation Agreement signed on 11 August 1997 concerns the monitoring of the enforcement of detainees' rights held in police custody,*
- *the Agreement signed on 6 September 2002 relates to keeping in contact with foreigners subject to alien policing detention,*
- *the Tripartite Agreement concluded on 28 December 2006 (to which the UNHCR Regional Representation for Central Europe is the third contracting party) concerns the modalities of mutual cooperation and coordination which further the ability of asylum seekers to access the territory of the Republic of Hungary and the asylum procedure. Under this agreement, the attorneys working for the Hungarian Helsinki Committee are permitted to visit the alien policing detention facilities as well.*

Since the report examined the detention ordered under immigration law and implemented in temporary detention facilities, in the Police's view referring to the two latter agreements in the introductory part would have been the appropriate basis for the visits mentioned in the report. During the discussion about the report between the Hungarian Helsinki Committee and the Police on 14 January 2011, we mentioned the possibility of concluding a new agreement, that would regulate the cooperation relating to the detention of foreigners both in criminal proceedings and in alien policing procedure in one instrument. This agreement would also take the special nature of these two distinct forms of detentions and the institutional and legal changes introduced after the conclusion of the original agreements into account.

The average daily number of detainees in alien policing jails in 2009 was 133. Due to the pressure on Hungary posed by the compositionally changed illegal migration from Serbia, and the detention of persons taken back under the Dublin regulation from other Member States – who have applied for asylum in Hungary and departed for an unknown destination, which resulted in the termination of their asylum procedure, and who were therefore again subject to alien policing procedure – in 2010 an average of 364 foreigners were placed in the detention facilities per day, while this number exceeded 600 during the summer months. The capacity of the permanent alien policing detention facilities was 282 persons (Kiskunhalas 36, Nyírbátor 169, Győr 50, Budapest 27 persons). The permanent detention facilities were filled by the end of April 2010.

The Police wanted to comply with its legal obligations, therefore experts have been looking for buildings with an increased capacity, which could be used as permanent or temporary detention centres. The condition of available facilities did not make the immediate housing of foreigners possible, but the emerging situation called for immediate measures. Therefore the Police decided to create regionalized police jails, and transferred persons in police custody to the designated jails. This way some jails became empty and these jails thereafter functioned as temporary alien policing detention centres. This procedure ensured the complete separation of persons detained in criminal proceedings and in alien policing procedure. The term „temporary” meant to highlight, that the Police maintains these facilities as alien policing jails only until the facilities with larger capacity become available, or as

long as the migratory situation requires it. The Police, making the best use of the available means and the facilities' potentials, tried to provide all those conditions at the temporary detention centres, which they would normally provide at the permanent detention facilities (possibility to spend time outdoors, communal areas for spare time activities, television, opportunity to use the phone, taking special religious dietary requirements into account etc.).

In the temporary detention centres the Police tried to accommodate detainees sharing the same language and culture within the same facility, in order to facilitate communication among the detainees and between the detainees and the personnel of the detention facilities. In order to resolve possible problems with interpretation, each county's list of interpreters has been made electronically available for the other counties. This arrangement was put in place to make finding the nearest interpreter in a given language easier

In case of detentions ordered in alien policing procedure the reception of the detainees – including medical reception – took place in the permanent alien policing jails. Persons found not in need of further medical supervision were placed in the temporary detention centres, where medical and psychological care was also available upon request. Relocation to another detention facility took place on multiple occasions for security and medical reasons taking the interests of the detainee into consideration.

In order to close the small temporary immigration detention facilities with limited capacities which had been established in police jails, and to better utilize the financial and human resources, the Police has by mid-September 2010 established a building with the capacity of 102 persons in Kiskunhalas, near the permanent immigration detention centre. In September, October and November 2010 all temporary detention facilities which were formerly functioning as police jails have been closed. In addition to the permanent detention centres two temporary alien policing jails are still in operation at present (Nyírbátor 107 persons, Kiskunhalas 102 persons). The refurbishment of the refugee camp in Békéscsaba is in progress aiming at turning the camp into a temporary alien policing detention facility –, given that the modification migration law effective from 24 December 2010 make the detention of families with minor children also possible. The facility in Békéscsaba is suitable for ensuring more humane housing conditions. The Police also wish to accommodate here foreigners belonging to other vulnerable groups. Under the existing legislation ordering the detention of unaccompanied minors in alien policing procedure is still not possible.

The above mentioned migration law amendment which entered into force on 24 December 2010 affected the execution of detention in several respects.

Considering the amended legislation and the recent experiences the Police has implemented the following measures:

- *In compliance with statutory obligations the immigration detention facilities are hereafter operated in an open prison system. The Police has applied for funding under the European Return Fund to reinforce external security systems, to enhance internal free movement and to ensure better conditions and to provide for useful spare time activities. The application is currently under evaluation.*
- *In a joint project with Menedék – Hungarian Association for Migrants, also supported by the European Return Fund, social workers will be working at the detention centres to deal with the mental deterioration of detainees. Within the same project computers and internet access will be provided for detainees in order to ensure their continuous access to information and to offer some useful spare time activity. The Association's social workers have been relocated from the emptied refugee camp in Békéscsaba to the detention centre in Kiskunhalas, where they provide assistance the detainees.*
- *The Police took steps to contract and train armed security guards to enable the withdrawal of regular guard-escort personnel serving at detention centres. The armed security guards are on duty since 2011. Their training took place with the participation of the Hungarian Helsinki Committee.*
- *The detention centres have applied for funding for intercultural and action-conduct tactics training under the European Return Fund.*
- *The Police and the Hungarian Helsinki Committee submitted a joint application for the enhancement of the knowledge and implementation of human rights norms relating to the return of foreigners. Under this project a special curriculum is being prepared, and with the help of this material the training of 47 police officers is going to take place.*

The Police continuously strives to ensure the provision of all statutory conditions provided for foreigners detained and placed in detention facilities to the maximum extent. Furthermore, it wants to ensure that the right of detainees to human dignity is fully respected, but at the same time the Police has to resolve the unexpected arising from migration trends and to stem the unauthorized mass departure of foreigners for other Schengen Area Member States.