



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

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### *Hungarian Helsinki Committee UPR Fact sheet 8*

## ALIEN POLICING DETENTION OF ASYLUM SEEKERS AND IRREGULAR MIGRANTS

Currently, a significant proportion of **asylum-seekers and most irregular migrants are routinely detained**, with the exception of unaccompanied minors and those coming from a country which is considered *prima facie* inadequate for return (e.g. Somalia).

According to the relevant provisions in Hungarian law detention should cease immediately if it becomes evident that expulsion cannot be carried out. In practice this hardly ever happens, as irregular migrants (including asylum seekers) are **usually detained for the maximum period of time**. Alien policing detention is to be **reviewed** and can only be prolonged by a local court (every 30 days). However, this remains a **mere formality**. Local courts issue basically identical decisions in all cases, the reasoning of which is short and laconic, lacking proper fact assessment and individualisation. A recent amendment of the Aliens Act<sup>1</sup> prolonged the maximum period of detention from 6 months to 12 months.

Irregular migrants and asylum seekers **with special needs** (such as pregnant women, elderly persons, single women, or those suffering from post-traumatic stress disorder (PTSD) or other psychological problems) do not receive adequate differentiated treatment in alien policing detention.

Despite the explicit prohibition of putting unaccompanied minors in alien policing detention, the HHC is aware of some cases from 2010-2011 where **minors were nevertheless detained**. There is **no appropriate age assessment** in such cases; doctors reportedly limit themselves to look at the torso of allegedly under-age detainees.

With the recent amendment of the alien policing detention, the **detention of irregular migrant families (including asylum seekers) with children** has become possible for up to 30 days. The law provides that this measure can only be applied when no other less restrictive means can be used in order to secure the deportation of the family (such as the seizure of travel documents or designating a compulsory place of residence). However, in practice this measure is applied in a **quasi-automatic** manner, without considering any alternatives and regardless of the child's best interest.

### **? Questions:**

- Why are asylum seekers held in detention without having committed a crime?
- What is being done to redress the shortcomings in medical services and what measures will be taken to ensure access to psychological and psychiatric support for persons detained in immigration jails?
- Why are unaccompanied minors being detained and what is being done to redress the criticism of age-assessments of unaccompanied minors?
- How can the shortcomings in the judicial review of lawfulness of detention be justified?
- What measures will be taken to address the special needs of vulnerable groups in immigration jails?
- What measures will be taken to ensure access to free legal aid in immigration jails?

### **! Recommendations:**

<sup>1</sup> Act II of 2007 on the entry and stay of third country nationals



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- The current restrictive detention policy should end and detention has to be applied only if other less coercive measures cannot be applied effectively and “if there is a significant risk of absconding”. Children and vulnerable persons should not be held in alien policing detention.
- Age assessment should be conducted properly, on a thorough scientific and methodological basis, and the benefit of the doubt should be applied in case of the alleged minors until the age assessment is conducted.
- Proper, state-funded medical care and psycho-social care should be made available in immigration jails.
- Adequate training for jail staff should be ensured, including language, intercultural communication and conflict resolution training.
- The judicial review of alien policing detention should be made effective and should verify on its merits whether the grounds and conditions for the prolongation of detention are met.
- Free legal aid scheme should be improved in order to ensure that all detainees in immigration jail have access to it.