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HUNGARIAN HELSINKI COMMITTEE

Briefing paper for the periodic visit to Hungary by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

February 2009

The Hungarian Helsinki Committee (HHC) wishes to respectfully call the CPT's attention to the following problems which the HHC has observed in the course of its activities regarding police cells, penitentiary institutions and alien policing jails.

I. Police cells and penitentiary institutions

1. Police cells – Problems of general nature

Most of the police cells have been closed down during the past years due to the large decrease in the number of detainees referred to these detention facilities as a consequence of the new regulation[1] limiting the period of pre-trial detention in police cells to 60 days. In general we can say that apart from sporadic exceptions there is one police cell in each county where all the pre-trial detainees of the given county are held if placed in police cell. Corresponding to the heavy decrease in the number of detainees in police cells the HHC also narrowed its activities concentrating on police cells. However, on the basis of the almost 100 visits all around the country during the past three years, the problems experienced can be summarized as follows.

1.1. Physical conditions

The biggest police cell, the Central Holding Facility of the Budapest Police, is still in a very bad state of repair, even though the CPT emphasized the need to remedy the deificiencies[2]. The average number of detainees is high, ranges between 50-60, the lighting and the ventillation is poor, there is no toilet and running water in the cells. In other police facilities the situation improved, two of them were completely renovated. The lack of clothing, especially underwear reserved for the detainees in police cells constitutes a problem as well.

1.2. Medical examinations, recording of injuries

Despite the CPT's recommendations[3], medical examinations of detained persons are systematically still carried out as a rule in the presence of police officers, even when the person examined has to strip naked. (The HHC wishes to stress that this statement is also valid with regard to pre-trial detainees and convicted prisoners; the HHC's observers noted this practice in penitentiary institutions.) As the HHC has pointed out in its comments on the CPT's report from 2006, this practice raises serious concerns also from the aspect of personal data protection.[4]

[1] Article 135 (2) of Act XIX of 1998 on the Code of Criminal Procedure (CCP)
[2] 2006 CPT Report on Hungary, 37.
[3] 2006 CPT Report on Hungary, 17. and 24.
[4] According to Article 2 point 2. a) and 3 (2) of Act LXIII of 1992 on Personal Data and the Disclosure of Public Interest Data, data concerning illness or medical status are qualified as sensitive data, and as such, can only be processed (obtaining a data qualifies as data procession as well) if an Act of Parliament prescribes so or the person to whom the data refers (the data owner) gives a written permission. The situation described clearly infringes these provisions.

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Furthermore, the right of detained persons to be examined by an independent physician is still not guaranteed. This applies to the case of alleged ill-treatment as well: a detainee making allegations of ill-treatment does not have the right to be examined by an independent medical expert, and - despite the CPT's recommendation[5] - the practice of taking statements from detained persons presenting injuries has not been reviewed, consequently, the chance of undue pressure put on detainees in this regard still exists. As an example for this, in the course of one of the visits of the HHC to the Central Holding Facility of the Budapest Police a detained person claimed that his visible injuries were caused by the police officers when arresting him, whereas the medical record issued by the internal physician contained no reference to the injuries.

1.3. Situation of those in short-term arrest

At present the most problematic issue in the field of detention by police is short-term arrest (*előállítás*).[6] The legal framework regulating the status of persons under short-term arrest is unclear as when amending the previous Ministerial Decree on the Service Regulations of the Police the lawmaker simply forgot to regulate this legal institution in details. The previous ministerial decree ruled that the rights and obligations of people under short-term arrest shall be governed by the same provisions as those of persons under a 72-hour detention and pre-trial detainees held in police cells. However, this sentence is missing from the new Service Regulations[7], therefore, at this moment no legal provisions govern the rights and obligations of people under a short-term arrest. (The National Police Headquarters tried to bridge this gap by issuing a circular on how to handle short-term detainees.) Beyond legal uncertainty the police officers do not pay enough attention to the supervision of these detainees, usually out of ignorance or due to a lack of human resources. i

1.4. Access to a lawyer

The CPT recommended that Hungarian authorities shall „take steps to ensure that persons in police custody benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty".[8] In accordance with this suggestion, the so-called Investigation Decree[9] was amended as of 1 June 2007, to prescribe that if the suspect's detention is ordered, it shall be guaranteed that he/she can retain a lawyer before the first interrogation.[10] Furthermore, if the suspect claims before the interrogation that he/she has retained a counsel, and requests the notification of the counsel, the investigating authority shall notify the counsel about the interrogation by fax, e-mail, or if this is not possible via telephone.[11]

This however still may not mean that the counsel actually has the chance to be present because there is no obligation on the investigating authority to actually wait for him/her, although under the Investigation Decree, with the exception of urgent investigative acts, the counsel shall be notified in due course, at least 24 hours beforehand about all the investigative acts that he/she may attend.[12] If however, the notified counsel fails to show up, this has to be communicated to the suspect and he/she shall also be informed that the absence of the counsel does not prevent the interrogation from taking place (since even the mandatory nature of defence does not require the presence of the defence counsel at individual procedural actions in the investigation stage. Thus, if the notified counsel fails to show up for any reason, it will not prevent the investigative authority from

[5] 2006 CPT Report on Hungary, 18.
[6] Under Article 33 of Act XXXIV of 1994 on the Police (Police Act), a person may be taken into a so-called short-term arrest – inter alia – if he/she is caught in the act of committing a crime; is under an arrest warrant; is suspected of having committed a crime; cannot identify himself/herself or refuses to do so; who is required to give a blood or urine sample in order to prove a criminal or a petty offence; who fails to stop a petty offence when called to do so; etc. A short-term arrest may not last longer than "necessary", but shall not exceed eight or (in exceptional cases) twelve hours.
[7] Decree of the Minister of Justice and Law Enforcement no. 62/2007. (XII. 23.) on the service regulation of the police
[8] 2006 CPT Report on Hungary, 23.
[9] Article 4 (4) and 6 of Joint Decree of the Minister of Justice and the Minister of Interior no. 23/2003. (VI. 24.)
[10] Investigation Decree 6
[11] Investigation Decree 9 (1)
[12] Investigation Decree 9 (2)

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interrogating the defendant.) The facts concerning the notification, presence or absence of the counsel shall be recorded in the minutes of the interrogation.[13]

If we wish to assess the practical possibility of the access to a lawyer, a difference has to be made between retained and appointed lawyers.

When – in the course of a research into effective defence – asked about the practice, defence counsels said that those suspects are in a relatively good position who (usually from an earlier case) already have contacts to a lawyer. If this is the case, the investigating authority usually attempts to contact the lawyer, although the notice given is often very short, not to mention instances when a fax or e-mail is sent to the lawyer's office late at night, when the chance for the lawyer to receive the notification is practically non-existent. If the suspect cannot immediately name a lawyer, he/she will not be allowed to call relatives or acquaintances to inquire about a good lawyer. In such cases, the interrogation is conducted and only afterwards does the suspect have the chance to try to arrange the retainer.[14]

The situation regarding appointed counsels is even more problematic. The decision on whom to appoint is made by the appointing authority (the investigating authority at the beginning of the procedure),[15] this cannot in any way be influenced by the defendants. Under the Attorneys Act,[16] the competent bar association keeps a register of those attorneys who can be appointed as defence counsels. The authority conducting the actual phase of the procedure is completely free to choose from this list.

If defence is mandatory because the defendant is detained, the defence counsel has to be appointed before the first interrogation at the latest.[17] Following the appointment, the defendant has to be informed of the counsel's name.[18]

Practice shows that the majority of appointed counsels do not attend first interrogations (and seldom appear at subsequent procedural acts as well). A survey carried out by the Crime Investigation Department of the National Police Headquarters involving the 23 regional investigation units[19] of the National Police and based on targeted data collection carried out during June and July 2006 (hereafter: NPH survey)[20] showed that in 14 out of the 23 regional units, less than 50% of first interrogations were attended by the appointed counsel. In one county only 4.54% of the first interrogations took place in the presence of the appointed counsel (the average percentage was 34.9, meaning that almost two thirds of indigent defendants face their first interrogation without professional legal assistance).[21]

Like in the case of retained lawyers this is partly due to late notifications. The NPH survey provides convincing evidence on the issue. In one county for instance the average time passing between notifications and the beginning of the interrogation was 30 minutes, which in most cases is obviously not sufficient for the lawyer to attend. In 16 counties the notification is sent out on average with an hour before the scheduled time, though in 11 if the lawyer indicates the intention to attend the police are willing to reschedule the act.[22] Obviously if the notification is sent by fax and no attempt to reach the counsel by phone is made (which is often the case), there

[13] Investigation Decree 9 (3) – (4)
[14] Interviews with counsels
[15] CCP 48 (1)
[16] Article 35
[17] CCP 48 (1)
[18] CCP 48 (1) and (8)
[19] The county headquarters, the Budapest headquarters, the National Investigation Office, the Highway Police and the Airport Security Service
[20] The results of the survey are presented by: Zsolt Szabó - Sándor Szomor: Fegyveregyenlőség (Equality of Arms). In: Rendészeti szemle (Law Enforcement Review), issue 2007/3., pp. 19-41. (hereafter: Equality of Arms)
[21] Equality of Arms, p. 36.
[22] Equality of Arms, p. 35.

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is a good chance that the counsel will not be informed about the interrogation at a time that would allow him/her to try to have it rescheduled.

The other reason for non-appearance is related to systemic problems in the Hungarian appointment system, which pose a threat to – at least – the perception of effective independence. In the investigation phase, the defence counsel is selected by the investigating authority, which is not interested in efficient defence work. For the investigator it is undoubtedly easier to deal with a defence counsel who is not too agile, who does not bombard him/her with questions, remarks and motions, or may not even show up. In addition, it is difficult to trust a counsel who was selected by the person who is in charge of the investigation against the defendant. It seems self-evident that the function of appointment has to be placed with another organisation or the selection must be randomized so that the investigating authority not be able to influence the result of the appointment.

In addition, there are some attorneys who principally base their law practice on appointments. Such lawyers may become financially dependent on the member of the police corps who takes decisions on appointments. According to the NPH survey "in Budapest 12 district police stations regularly appoint the same counsels, most of whom are retired lawyers not running separate offices any more." There are certain counties where "some lawyers [...] »reside« at police station and their practices are based on appointment".[23] Dependence on appointments may obviously create a conflict of interest and is definitely capable of eliminating the trust of the client.

1.5. Further general problems

Even though the CPT recommended that the Hungarian authorities shall "ensure that the possibility to delay the exercise by detained persons of the right to inform a relative or third party of their situation be made subject to appropriate safeguards and strictly limited in time",[24] the relevant legislation remained untouched: the relatives shall be informed within 24 hour from the beginning of the 72-hour detention.[25]

The HHC's observers noted that according to the CPT's recommendation,[26] foreign detainees were provided with sufficient written information about their rights and the police cell's regulations in an appropriate range of languages.

2. Penitentiary institutions – Problems of general nature

In 2007 the HHC summarized its findings gained during the prison monitoring missions in an article published in the official journal of the penitentiary administration. As in 2008 there were only a limited number of visits, we share our findings from 2007 and 2006, most of which will be repetitious in light of our former concerns as the situation did not improve in several aspects.

2.1. Situation of those in pre-trial detention

Pre-trial detainees are held in the county penitentiary institutions as a general rule, which leads to problems deriving from critical overcrowding in these facilities. Furthermore, the pre-trial detainees are facing huge difficulties regarding the possibilities to consult their defense lawyers: the county penitentiaries are harder to reach than local police cells because of the extended distance, and the time reserved for consultation is also limited because of the overcrowding of these institutions. In addition to this, the defense counsels are not allowed to call the detainees.

[23] Equality of Arms, p. 39.
[24] 2006 CPT Report on Hungary, 22.
[25] Article 128 (1) of CCP
[26] 2006 CPT Report on Hungary, 37.

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The average length of pre-trial detentions is considerable: it was 125.6 days in 2006, and 124.8 in 2007.[27] On 31 July 2008, altogether 1,891 persons were in pre-trial detention. Out of this, 278 persons had been detained for a period between 181 and 365 days, and 38 had been detained for over a year. Pre-trial detention is ordered in a large proportion if the public prosecutor's office's sets for a motion for ordering detention.

The practice of initiating and ordering pre-trial detention following the riots in September 2006 has to be addressed. Due to these events 72-hour detention was ordered in 220 cases, and pre-trial detention was initiated in 172 cases. Based on the complaints received by the HHC a conclusion may be drawn that with regard to the majority of the persons arrested in connection with the riots, the prosecutors initiated the ordering of the pre-trial detention in an automatic routine. Based on complaints received by the HHC, it can be stated that the motions were prepared on the basis of the same pattern, without considering the different suspected actions and personal circumstances in merits, by referring to identical grounds. In addition to this, during the 72-hour detention preceding the decision on the pre-trial detention, the prosecution should gather information whether the suspicion against the defendant is sufficiently well-founded to substantiate the motion for pre-trial detention. However, in the cases reported to the HHC the prosecution failed to collect any evidence (even upon the motion of the defense), while in a number of cases by the testimony of neutral witnesses it could have easily been proven that the suspects had not participated in the riots. The courts vested with the task of deciding on the necessity of pre-trial detention also failed to take individual circumstances into account. According to the information provided by the President of the Supreme Court in October 2006, in response to the 172 motions, pre-trial detention was ordered in 145 cases, ban on leaving the defendant's residence or house arrest in 12 cases. It may be said that the first instance court often simply "put a seal of approval" on the prosecutors' motions without examining the motions on the merits. A convincing proof for this statement is the fact that based on appeals, from the 145 pre-trial detentions ordered after the September events, only 31 were upheld by the court of second instance, which means that the higher courts shared the opinion that the first instance decisions lacked the necessary grounds.

2.2. Overcrowding

Overcrowding is still an existing problem, although some improvement can be experienced in this respect. Two new penitentiaries were opened (Tiszalök and Szombathely, capable of holding 1,200 inmates in total) and the number of prisoners also decreased. Still, the overcowding rate was 132% in 2007, and 118% in 2008. According to our experiences, the most overcrowded institution is the Baranya County Penitentiary Institution where there are cells with less then 0.5 square meter free moving space per inmate. In Balassagyarmat and in Vác there are also cells with 0.5-0.7 square meter per inmate, and with under 1 square meter per inmate in Unit III of the Metropolitan Penitentiary and in the Borsod-Abaúj-Zemplén County Penitentiary. In addition to this, the low prison staffing level[28] is a still existing problem.

2.3. Physical conditions

Some of the pentientiaries (Baracska, Sopronkőhida) underwent significant reconstruction during the past years, however, in some of them the circumstances are still terrible. The worst instituions visited during the past years were Pálhalma and Balassagyarmat. The cells of the Balassagyarmat Penitentiary Institution are especially run-down, dirty and crowded. The toilets in the cells do not have independent ventilation, furthermore, in some cases they are only separated with curtains from the rest of the cell. The lack of ventilation and separation of toilets constitutes a problem in some cells in almost all institutions visited by the HHC, namely in Szeged, in the Heves County Penitentiary, in Vác, in the Budapest Prison, in Unit II of the Metropolitan Penitentiary Institution, and in the Vas County Penitentiary Institution. The lack of natural light was also noted by the HHC's observers in some of the institutions.

2.4. Ill-treatment by prison staff

[27] Source: Unified Police and Prosecutors Criminal Statistics (ERÜBS) and Prosecutors Statistical Information, Database no. 1522.
[28] 2006 CPT Report on Hungary, 108.

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The observers received a notably high number of complaints in the Szeged prison regarding ill-treatment by prison staff. These coherent, repetitious complaints have to be taken seriously, with special regard to the fact that in 2006 a prison officer was found guilty of ill-treatment of detainees, and another such proceeding was initiated against a prison officer in the course of 2007. The number of complaints regarding ill-treatment was especially high in Vác penitentiary as well. The complaints showed a great degree of consistency as to the type of ill-treatment and the member of personnel committing these instances. As a result of he HHC's report, this member of staff was transferred to another unit within the penitentiary administration. (With regard to ill-treatment by prison staff, see also individual cases.)

2.5. The right of access to a lawyer

There are certain institutions where the detainees' right to call their lawyers is strictly limited. The practice is that in the internal regulations of the given penitentiary the number of phone calls per week is determined, and the number also includes the calls to one's lawyer. This means that if a prisoner may make two calls a week and called his/her mother and wife/husband, he/she cannot call a lawyer, which seriously infringes the right of the defendant to effective defense. The HHC's observers noted for example in Unit II of the Metropolitan Penitentiary Institution that defendants were allowed to make altogether three phone calls a week. When the HHC raised the problem, the head of the institution and the National Prison Administration both argued that this practice is not infringing the law. In the Balassagyarmat prison the similar regulation was changed after the HHC's visit.

2.6. Visiting the defendants in penitentiary institutions

In its 2006 report[29] the CPT stressed that the minimum duration and frequency of visits is not sufficient, and called upon the Hungarian authorities to increase the visiting entitlement substantially. In spite of these recommendations, the minimum number of visits is still one per month,[30] and the minimum visiting time is still only thirty minutes, which may be extended to one hour[31]. Some defendants in the Vác and Szeged penitentiary claimed that visits are allowed only on weekdays, which makes it difficult for some relatives, especially children attending school to visit them. In Szeged all the prisoners interviewed by the HHC's observers complained about the fact that physical contact is not allowed between the detainee and his/her visitors, without a reasonable ground (they sit on two sides of a table with a 10 cm tall "wall" in the middle, or – in the other unit – they are separated by grid or plexi wall from their relatives). Physical contact during visits is not allowed in the Borsod-Abaúj-Zemplén County Penitentiary Institution either. In the latter institution and in Vác the prisoners claimed that they are examined naked after visits on a regular basis.

2.7. Grade 4 prisoners placed in special security units or cells

Although the relevant law[32] expressly provides that placement in different security groups may not have any impact on the detainees' rights, in practice those qualified as Grade 4 prisoners[33] (most severe regime) suffer disadvantages. These prisoners may be placed into special security units or special security cells,[34] which means that they are under constant supervision; they may move within the territory of the institution only with permission and under supervision; they are always handcuffed when leaving their otherwise always closed cells; their participation in community (sport or cultural) activities is restricted, so they practically may not meet any other prisoner, e.g. spend their one-hour outside activities in a separate yard which is much smaller and not even open-air in the true sense of the word; the range of objects and articles the inmate may keep with him/herself

[29] 2006 CPT Report on Hungary, 112.
[30] Article 36 (1) c) of Law Decree 11 of 1979 on the execution of punishments and measures
[31] Article 89 (1)-(2) of Decree of the Minister of Justice no. 6/1996. (VII. 12.) on the execution of imprisonment and pre-trial detention (Penitentiary Rules)
[32] Article 44 of Penitentiary Rules
[33] According to Article 42 of Penitentiary Rules, upon his/her reception to the penitentiary institution, the inmate is placed in one of four security regimes according to the threat he/she poses to the security of detention. 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 right 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.
[34] Article 47 of the Penitentiary Rules

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may be restricted etc. Those placed in a special security cell may be subject to even more severe rules (their cells are smaller, they are placed alone having no contact with other detainees at all).

A special case of placement is when an inmate is placed in a special security cell not because he/she is considered dangerous, but in order to protect him/her from others.

The admission committee of the given penitentiary institution may order that the inmate will be placed in a special 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 special security cell is well-grounded.[35] The admission committee may order the placement of the inmate in a special security unit for a maximum of six months, which can be prolonged (the law does not clarify, for how long). It should be examined once in every six months whether placement in the special security unit is well-grounded.[36]

Even though the CPT called upon the Hungarian authorities to provide the defendants "written information on the reasons for the measure as well as the opportunity to express their views on the matter"[37] and in spite of the decision's above listed impacts on detainees' rights, in most cases no reason is communicated to the prisoner as a justification of the decision regarding his/her grading, since the law prescribes that the reasons may be revealed only if that does not threaten the safety of the detention. Consequently, the effectiveness of the defendant's general right of remedy is severely reduced due to the lack of any reasoning which he/she could challenge. Furthermore, it is up to the penitentiary institution to decide whether a Grade 4 prisoner is detained under general circumstances or in a security unit or cell, and the procedure is informal in the sense that there is no formally regulated procedure or placement decision communicated to the affected prisoner. There is no effective legal remedy against the placement, and it is not possible for the inmate to initiate the review of his/her isolation. Furthermore, it can be stated that the CPT's recommendation[38] concerning the review of the policy of the application of means of restraint to prisoners placed under a special security regime was not taken into consideration.

Special security units are operated in Sopronkőhida and Sátoraljaújhely. The HHC submitted a complaint against Hungary to the European Court of Human Rights, representing a prisoner placed in a special security unit in Sátoraljaújhely (see individual cases). For the regulation concerning special security unit and cell, see the annex.

2.8. Actual life-long imprisonment

According to the Criminal Code in force, the institution of actual life-long imprisonment still exists in Hungary. When drafting the new Criminal Code, it seemed that the legislators intend to abolish the institution: the first versions of the draft contained long reasoning in favor of ceasing the possibility of actual life-long imprisonment. However, according to the last version of the bill, the new Criminal Code will continue to allow judges to impose this kind of punishment. Ten of the prisoners sentenced to actual life-long imprisonment are detained in Szeged, whereas three of them are detained elsewhere (HHC submitted to the National prison Administration a request for information on this, but has not received an answer to date).

The situation concerning the placement of actual life-long prisoners did not change since the CPT's last, ad hoc visit to the Szeged prison. For the regulation concerning the so called "HSR" Unit, where those sentenced to a long-term imprisonment, exceeding 15 years, and those sentenced to life-long imprisonment may be placed,[39] see the annex.

[35] Article 47 (5) of the Penitentiary Rules
[36] Article 47 (6) of the Penitentiary rules
[37] 2006 CPT Report on Hungary, 64.
[38] 2006 CPT Report on Hungary, 66.
[39] Article 47/A. (1) § of Penitentiary Rules

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2.9. The Central Penitentiary Hospital in Tököl

Complaints concerning the general and medical treatment and the physical conditions in the central hospital in Tököl are of a constant nature. The HHC noted that some prisoners having health problems even try to avoid to be placed in the hospital, which behavior is a clear indicator of the serious problems in the institution. (See also individual cases.)

2.10. Judicial and Observation Psychiatric Institute (IMEI)

Regarding the Judicial and Observation Psychiatric Institute, the HHC proposes to contact the Mental Disability Advocacy Center (website: www.mdac.info, telephone number: +36-1-413-2730).

See also the individual case regarding forced medical treatment.

2.11. Report of the Parliamentary Commissioner for Civil Rights on juvenile penitentiaries

In 2008 Ombudsman Máté Szabó conducted an investigation into conditions prevalent in juvenile penitentiaries following the alleged suicide of an inmate at the Juvenile Penitentiary of Tököl in late 2007. The Ombudsman conducted fact-finding missions to the juvenile penitentiaries in Tököl, Kecskemét, Szirmabesenyő and Pécs and also visited the juvenile correctional facilities in Debrecen, Budapest and Rákospalota (Budapest).

The physical conditions in the juvenile penitentiary of Pécs, which was built in 2006 from funds provided by PHARE were naturally much better than those found in the other institutions. The cells were well-equipped and modern – all had separate showers, toilets and TVs, some contained refrigerators –, the food served was found to be very good. The Ombudsman experienced a relatively relaxed and friendly attitude among the inmates there. The layout and state of the juvenile penitentiary of Kecskemét were satisfactory, but the shower blocks as well as the toilets of the cells required urgent repairs. The juvenile penitentiary of Szirmabesenyő was converted from a normal penitentiary in 2002. The number of inmates here regularly exceeds the maximum capacity of the building and individual placement is virtually non-existent, with only two isolation cells available compared to the twelve at the Tököl institution. All cells were in a state of neglect and were in dire need of renovation.

The juvenile penitentiary of Tököl is the oldest and largest institution of this nature in Hungary with a capacity of 192 inmates. The juvenile penitentiary accounts for about a quarter of the penitentiary of Tököl which has a total capacity of over 800. The two psychologists are gravely insufficient for the 700 inmates held there on average as are the four guards who perform the night duty. The atmosphere of the juvenile penitentiary here was the worst experienced anywhere during the investigation. Tököl was the only institution that did not provide daily warm showers and there were many complaints concerning the quality of food served there.

According to statistics the number of aggressive acts between inmates rose sharply in 2007 throughout the penitentiary system and especially among juveniles. Serious acts of violence were mainly committed in the juvenile penitentiaries of Tököl and Szirmabesenyő. No such acts were reported in Pécs or Kecskemét.

The Ombudsman's report concludes that the two- to three-person cells and lower capacity institutions are capable of guaranteeing the rights and special needs of juvenile inmates held there. The investigation also encompassed juvenile correctional facilities, which were found to be much better equipped and in better state than the juvenile penitentiaries. The Ombudsman did, however, express worry over the conditions experienced in facilities for pre-trial detention where an average overcrowding of 200% was found in the course of this investigation.

3. Individual cases

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4. Ill-treatment by the police

4.1. Ill-treatment by the police in October 2006

Police behavior in dealing with the large scale antigovernment demonstrations and riots in autumn 2006 is still a subject of concern. These events resulted in injuries to 326 demonstrators and 399 police personnel, and police was criticized for using rubber bullets and employing other inappropriate procedures. Due to a legislative amendment, the use of rubber bullets is not possible in the course of riot control since 1st January 2008.

The outcomes of the investigations into police ill-treatment cases are symptomatic of the situation.

The prosecutor's office received altogether 200 reports on criminal offences committed by law enforcement officials in connection with the riots. In 7 cases the report was rejected, in 159 cases the investigation was terminated. In most cases the reason for this was that the perpetrator could not be identified. Only in 19 cases could the prosecution press charges. A number of proceedings are still in progress.[40]

In connection with this, the head of the Budapest Prosecutorial Investigation Office said to the press with tangible frustration that while the top echelon of the police had properly assisted their investigations, lower ranking leaders were not helpful at all. Unit commanders for instance claimed on a number of occasions that they could not recognize the members of their units on video recordings. In a given case, all officers of a unit testified that they had been running in the second or third row of the units, and could not remember who were the ones in the front row. Officers often testified that they only witnessed the incidents, but they could not identify the perpetrators. (Most officers wore helmets without identification numbers, or even masks.)

At the same time, the HHC is of the view that the prosecutor's office could have pressed more charges with more courageous interpretation of the law. Judicial case law is available according to which police officers witnessing ill-treatment committed by their fellows, and doing nothing to stop them, are coactors of the ill-treatments, but this possibility was neglected by the prosecution.

Even in those cases, when charges were pressed and the perpetrators found guilty, some courts followed the judicial traditions of handling offences committed by officials very leniently. In a case of suspended imprisonment the court has the legal possibility to exempt the convicted perpetrator from the consequences of an unclear criminal record. This in turn means that the convicted police officers can remain on the force. If no such exemption is given, even a suspended imprisonment prevents the perpetrators from keeping their jobs with the police. The case described below (of Imre Török) shows that even ill-treatment causing serious injuries may not be severe enough for the Hungarian courts to refrain from exempting police officers (even ones who had been found guilty of ill-treatment before).

Angel Mendoza, a Peruvian citizen left his apartment located in the proximity of the streets in Budapest where the riots took place with a 14-year old son of a friend, and upon return, they stopped at the entrance of the house for a while to check the events. After a few minutes, a number of policemen broke into the house and arrested the man and the kid, without any incident of ill-treatment, and transported them to a police department. While waiting in handcuffs, seated in the hall of the department, one member of the officers' group entering the department started to abuse Mr Mendoza verbally, and then physically. The other members of the group joined in the ill-treatment, kicked and beat him; he fell off the chair several times. His nose was broken with a police stick, and his ribs with a kick. The court of first instance convicted one of the two accused officers (one-year prison sentence suspended for three years), while the other was acquitted for lack of evidence. Upon appeal, the court of second instance modified the first instance decision: it repealed the judgment and ordered retrial in the case of the acquitted officer, while the first instance decision concerning the other defendant was aggravated by not

[40] Official information by the Chief Public Prosecutor's Office

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exempting the officer from the consequences of conviction, which means that he cannot remain on the police force.

In the second case, two police officers charged with ill-treating Imre Török during the September 2006 events were found guilty by the first-instance court despite the fact that the victim could not identify the attackers. (Mr Török was walking in a street near the premises of the riots in the 6th district of Budapest when a group of rioters entered the street, followed by two police vans. The police officers instructed everybody to lie down, but Mr Török failed to do so, and turned his back, when police officers grabbed him, forced him to the ground with his face down. At least four policemen started to kick and beat him on his back, arms and legs, he also received a kick in his right eye. He was wounded so badly, that after he was handcuffed and arrested, he had to be hospitalized.) The court sentenced the defendants to prison with suspending the execution of the sentence, and exempted the defendants from the negative consequences of being found guilty in advance (which means that – in case the second instance court maintains the verdict - the defendants will not have a criminal record, therefore they may stay on the police force). As an explanation for the latter part of the decision, the court referred to the lack of training of the police officers for such situations, the lack of experience in handling such riots (though the defendants were members of a special police unit specially designated for such purposes, and regularly giving duty at – among others – high-risk football matches), and the fact that on the given day they had been on duty for many hours. In the second-instance decision, the sentence of one of the defendants was eased, whereas the suspension of the other defendant's sentence was abolished, which means that he has to serve his prison sentence. The reason for this was that this officer had been found guilty of ill-treatment before.

In case of Á. G., the prosecutor's office terminated the investigation with the explanation that the perpetrators, who ill-treated the man upon his apprehension during the 2006 September-October riots could not be identified. 5-6 policemen were involved in the interception of this university student, who admittedly committed violent acts during the riots. Though the reporters of a major tv-channel recorded the apprehension, none of the participating police officers could be identified visually, therefore, only the three policemen signing the report on the apprehension were drawn under suspicion. They identified themselves on the recording as those not taking part in the ill-treatment but carrying out the handcuffing of the man, and claimed that they could not identify the other officers. The other members of the unit that was acting as an apprehension team in the area did not identify either themselves as taking part in the actual apprehension or the actual perpetrators. However, the prosecutor did not examine the statements of the victim that he did not suffer his visible and recorded injuries during the apprehension (during which he was also ill-treated), but after being handcuffed and escorted to a police carrier vehicle, though he stated that one of the suspects (the commander of the unit) grabbed his arms while other officers beat him. A complaint was filed against the decision on terminating the investigation to the second-instance prosecutor's office, which was rejected. Following this, the HHC's lawyer submitted a supplementary private indictment. The case is pending.

According to the HHC's experiences, officers accused of ill-treatment are practically never suspended during the proceeding, and even convicted officers can remain on the force – even if a suspended prison sentence is imposed, the court has the legal possibility to exempt the convicted perpetrator from the consequences of an unclear criminal record. Out of the four cases HHC took up after the riots of 2006, in two it was revealed that some of the accused officers had been sentenced for ill-treatment before.

4.2. Independent Police Complaints Board

The amended Police Act introduced the Independent Police Complaints Board, which, as of 1 January 2008 and under Article 92 of the Police Act, investigates violations and omissions committed by the police and border guards, provided that such violations and omissions substantively concern fundamental rights. Based on the investigation, if the violation is established, the Board makes a recommendation to the National Chief of Police, who delivers the decision on the individual complaint but may only divert from the Board's recommendation on the basis of detailed argumentation. Judicial review of the Chief of Police's decision is available. The Board is functionally external to the police authorities.

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II. Detention of migrants

1. Detention of asylum-seekers

According to the new act on asylum effective as of 1 January 2008[41], alien-policing detention of asylum-seekers is limited to the first 15 days of the asylum procedure. According to the asylum act, in case the application – after completing the first, so-called eligibility stage – is admitted to the second (in-merit) stage, the asylum-seeker's detention must be terminated without exception, regardless of the reason of detention or whether the asylum-seeker applied for asylum before or after placed in detention.

Contrary to the clear provision of the law, the practice of the Office of Immigration and Nationality (OIN, responsible for immigration as well as asylum cases) shows that this „automatic" termination is not applied as a general rule, as in many asylum cases the OIN fails to initiate the termination of the detention upon admitting the application to the in-merit stage, without providing any reasons for acting so. This results in the asylum seeker staying in detention for an indefinite term, until the end of the in-merit procedure, or in several case during the court appeal procedure as well, the only limit being the legal maximum of this type of detention, i.e. 6 months.

In this case therefore the OIN simply overrides a clear legal provision that excludes discretion upon deciding on the termination of the detention. The omission of initiating the termination of the detention cannot be contested by a legal remedy in the asylum procedure, nor there are any reasons contained in the admittance decision concerning the omission. (The detention itself is regularly reviewed by the court, but according to our current knowledge, the scope of review is usually limited to the legality as per the immigration law, and as mentioned before, the provision on termination is contained in the asylum act.)

2. Conditions of detention in alien policing detention facilities

In 2007 new legislation on immigration entered into effect, and the definition of "alien policing jail" was amended to "guarded accommodation facility". Furthermore, mainly due to the introduction of a new asylum procedure system as well as Hungary's admittance to the Schengen Zone, the number of alien policing detention facilities dropped to four for the entire country.

The replacement of the legal term, however, has not brought any significant change concerning the conditions of detention. The legislation contains only some basic stipulation as far as fundamental rights and daily routine are concerned; details are subject to the internal rules.

As a result, detainees in the majority of the detention facilities are subject to conditions equal to the maximum severity level of a prison sentence *(fegyház)*, for apart from the one-hour open-air exercise and meals, the detainees are kept closed in their cells, no free movement is allowed in the premises, minimal or no community and/or personal activities are available.

It is to be noted that in one of the facilities the dining room was refurbished in a way that no seating was established; detainees had to consume meals while standing at a counter-like piece of furniture.

3. Detention of asylum seekers in Békéscsaba Reception Centre

Despite the favourable changes introduced by the Asylum Act, the policy and the practice concerning the detention of asylum seekers of the Office of Immigration and Nationality needs to be reviewed in order to ensure its full compliance with the law in effect.

[41] Act LXXX of 2007 on asylum (Asylum Act)

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The closed reception facility, the Békéscsaba pre-screening reception centre is run by the OIN and accommodates asylum seekers whose asylum application is under the admissibility examination as well as asylum seekers who fall under the scope of the Dublin regulation[42] while the asylum authority determines the member state responsible for examining their claim. According to Article 47 (2) of the Asylum Act the pre-screening phase of the refugee status determination procedure has to be terminated within 15 days therefore asylum seekers cannot be placed in Békéscsaba longer unless the Dublin regulation appears to be applicable in the case.

Article 49 (5) of the Asylum Act foresees that asylum seekers may be detained 72 hours prior to being transferred to another member state responsible for examining the asylum application. Contrary to the above provision of the Asylum Act currently asylum seekers are de facto detained in the Békéscsaba during the entire Dublin procedure since practically they are not allowed to leave the territory of the reception centre.

The duration of the detention in Békéscsaba may amount up to several weeks or months depending on intensity of the coordination between the Hungarian asylum authority and the foreigner counterpart. In our view, such restriction of the freedom of movement of asylum seekers (subjected to Dublin procedure) is to be considered detention, which lacks proper safeguards and legal basis, therefore it is unlawful.

4. Breach of Article 33 of the 1951 Geneva Convention – "*non-refoulement*" [43]

4.1. Hungary being a party to the 1951 Geneva Convention relating to the status of refugees has to avoid the breach of Article 33, which practically means that the principle of non-refoulement has to be respected.

In the light of the following cases it shall be noted that although the Geneva Convention only uses the term "refugee" Article 33 has to be also applied to asylum seekers who already expressed their intention to seek asylum in Hungary. The HHC became aware of some cases where under aged Somali and Afghan (potentially asylum seeker) separated children were forcibly returned from Hungary to Ukraine by the Hungarian police. It appears that these minors tried to submit their asylum applications in Hungary but the police did not consider their statements as such and did not let them access to Hungarian territory and asylum procedure. One of these returned minors who is a Somali citizen stated that upon his transfer to Ukraine he was severely beaten by the Ukrainian Border Police and detained in an alien policing detention facility for six months in poor conditions that may occasionally amount to inhuman treatment.

HHC was informed about these potential refoulement cases by the UNHCR Regional Representation in Hungary but is able to provide further and more accurate information regarding the case of the separated Somali child as mentioned above.

The above cases regard the OIN as well since the return was ordered by the police on the basis of the OIN's background information stating that the persons in question would not be exposed to torture or inhuman or degrading treatment or punishment or to any danger to their life or freedom (under Article 33 of the 1951 Geneva Convention).

4.2. In the framework of the HHC's border monitoring project (in partnership with the police and the UNHCR Regional Representation) further refoulement cases were identified by the HHC's monitor at the Budapest International Airport. Our experience shows that in some cases Iraqi or Afghan persons or families with small children and/or special needs were returned from Budapest to their city of departure when the police noticed that their travel documents or visas might have been forged.

[42] 343/2003/EC regulation
[43] Article 33 of the 1951 Geneva Convention foresees that "no Contracting State shall expel or return ("refouler") any refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

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These potential asylum seekers were placed in the airport's transit zone for a short period of time and then sent back mostly to Damascus, in Syria. The return was formally in line with the legal framework as the police is not obliged to carry out further investigation or hearings to clarify the person's situation, his/her reason to arrive in Hungary or if he/she wishes to seek asylum here. However, it is obviously a shortcoming of the system (regarding the legal provisions and the police's practice as well) whereas these persons were not identified as vulnerable persons by police officers and the situation they faced in Damascus upon return was not examined at all, which raises the question that the Article 33 of the 1951 Geneva Convention might have been violated.

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Annex: Regulation on the special security unit and cell

A szabadságvesztés és előzetes letartóztatás végrehajtásáról szóló 6/1996. (VII. 12.) IM rendelet

6. §

(1) Ha jogszabály másként nem rendelkezik, a fogvatartottnak a fogvatartással összefüggő ügyében - hivatalból vagy kérelemre - azon intézet kijelölt szervezeti egységének a vezetője dönt, ahol a fogvatartott a büntetés vagy intézkedés végrehajtása céljából tartózkodik. A fogvatartott a fogvatartással összefüggő ügyében - a kérelem, bejelentés tárgyának a megjelölése nélkül - személyes meghallgatást kérhet az intézet szervezeti egységeinek a vezetőitől vagy a parancsnoktól, hozzájuk írásban közvetlenül is fordulhat.

(2) A fogvatartott az (1) bekezdés szerinti döntés (intézkedés, határozat) ellen, vagy annak elmulasztása esetén panasszal fordulhat a parancsnokhoz. Ha a döntést a parancsnok, vagy jogszabályban meghatározott esetekben a Büntetés-végrehajtás Országos Parancsnoksága (a továbbiakban: Országos Parancsnokság) kijelölt szervezeti egységének a vezetője hozta, a panaszt az országos parancsnok bírálja el.

(3) Ha jogszabályban meghatározott esetekben a fogvatartott ügyében első fokon az országos parancsnok döntött, a panaszt az igazságügyi és rendészeti miniszter bírálja el.

(4) A panaszt a fogvatartott a döntés közlésétől, illetve a döntés elmulasztásától számított tizenöt napon belül terjesztheti elő. Ha a fogvatartott a panasz megtételében akadályoztatva volt, a tizenöt napos határidő az akadály megszűnésétől számít.

(5) A kérelmet, illetve a panaszt harminc napon belül - ha az ügy jellege szükségessé teszi, soron kívül - kell elbírálni, e határidő indokolt esetben harminc nappal meghosszabbítható. A kérelem, illetve a panasz elbírálásáról, valamint a határidő meghosszabbításáról a fogvatartottat tájékoztatni kell.

(6) A parancsnok, az országos parancsnok, illetve az igazságügyi és rendészeti miniszter döntése - ha jogszabály kivételt nem tesz - végrehajtható.

(7) Érdemi vizsgálat nélkül el lehet utasítani az ugyanazon ügyben, három hónapon belül, ismételten előterjesztett kérelmet, illetve panaszt, ha az új tényt, adatot nem tartalmaz. Ez a rendelkezés nem alkalmazható a fogvatartott egészségi állapotának kivizsgálására, gyermekének nevelésére, elhelyezésére irányuló, megismételt kérelem, illetve panasz esetében.

(8) Jogszabályban meghatározott esetekben a döntés ellen a fogvatartott a büntetés-végrehajtási bíróhoz (a továbbiakban: bv. bíró) fellebbezhet, illetve keresettel fordulhat a bírósághoz.

7. § A fogvatartott a fogvatartásával kapcsolatos ügyében - a 6. §-ban foglalt jogorvoslati lehetőségek mellett - közvetlenül fordulhat

a) a büntetés-végrehajtás törvényességi felügyeletét ellátó ügyészhez, kérheti az ügyész általi meghallgatását; [...]

42. §

(1) Az elítéltet a befogadási bizottság a fogvatartás biztonságára való veszélyesség növekvő mértéke szerint az I., a II., a III., illetve a IV. biztonsági csoportba sorolja.

(2) A biztonsági csoportba való besorolásnál

a) az elkövetett bűncselekményt (annak jellegét és körülményeit), a szabadságvesztés időtartamát és végrehajtási fokozatát, a szabadságvesztésből még le nem töltött időt, a feltételes szabadságra bocsátás esedékességének az időpontját,

b) az elítélt személyiségét, előéletét, egészségi és fizikai állapotát, kapcsolattartását,

c) új büntetőeljárás indítása esetén az ennek alapjául szolgáló magatartás jellegét és körülményeit,

d) az intézet, illetve a foglalkoztatás biztonsági szempontú sajátosságait

kell figyelembe venni.

(3) A (2) bekezdésben foglalt szempontok értékelése alapján

a) az I. biztonsági csoportba lehet besorolni azt az elítéltet, aki az intézet rendjét várhatóan betartja, szökésétől vagy más bűncselekmény elkövetésétől nem kell tartani, és a biztonságos fogvatartás általában ellenőrzéssel is biztosítható;

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b) a II. biztonsági csoportba lehet besorolni az elítéltet, ha arra lehet következtetni, hogy veszélyeztetheti az intézet rendjét, a biztonságos fogvatartás azonban felügyelettel vagy ellenőrzéssel is biztosítható;
c) a III. biztonsági csoportba az elítélt akkor sorolható, ha arra lehet következtetni, hogy az intézet rendjével tudatosan szembehelyezkedik, és a biztonságos fogvatartás csak őrzéssel vagy felügyelettel biztosítható;
d) a IV. biztonsági csoportba kell besorolni azt az elítéltet, akinél alapos okkal arra lehet következtetni, hogy az intézet rendjét súlyosan sértő cselekményt, szökést, a saját vagy mások életét, testi épségét sértő vagy veszélyeztető magatartást fog tanúsítani, illetve ilyen cselekményt már elkövetett, és a biztonságos fogvatartás csak őrzéssel, kivételesen felügyelettel biztosítható.
(4) Ha a biztonsági csoportba való besoroláshoz szükséges adatok, ismeretek hiányosak, azok megszerzéséig az elítéltet a III. biztonsági csoportba kell besorolni.

43. §
(1) Az elítélt biztonsági csoportba sorolását legalább évenként, a III. biztonsági csoportba soroltaknál legalább hat hónaponként, a IV. biztonsági csoportba soroltaknál legalább három hónaponként a befogadási bizottság felülvizsgálja.
(2) A besorolás alapjául szolgáló körülmények változása esetén a befogadási bizottság - halaszthatatlan esetben a parancsnok - az elítélt biztonsági csoportját az (1) bekezdés szerinti határidőktől függetlenül is köteles megváltoztatni.

44. §
(1) A biztonsági csoportba való besorolás az elítélt törvényben meghatározott jogait nem érinti, a különböző biztonsági csoportokban a jogok gyakorlásának módját és rendjét az intézet házirendje határozza meg.
(2) A biztonsági csoportba való besorolás indokairól az elítélt csak akkor tájékoztatható, ha a tájékoztatás a fogvatartás biztonságát nem veszélyezteti.

47. §
(1) A IV. biztonsági csoportba sorolt elítélt különleges biztonságú zárkába, illetve körletre helyezhető.
(3) A különleges biztonságú zárkában, illetve körleten elhelyezett elítélt
a) állandó felügyelet alatt áll,
b) az intézet területén engedéllyel és felügyelettel mozoghat, zárkáját zárva kell tartani,
c) munkát a különlegesen kialakított körletrészen belül, illetve a parancsnok által kijelölt helyen végezhet,
d) az elítéltek öntevékeny szervezeteiben nem vehet részt,
e) az intézet csoportos művelődési, sportolási és szabadidő eltöltésének lehetőségeit csak a különlegesen kialakított körletrészen belül, illetve a parancsnok külön engedélyével veheti igénybe, önképzést folytathat,
f) saját ruhát - a (2) bekezdés alapján különleges biztonságú zárkába, illetve körletre helyezett elítélt kivételével - nem viselhet,
g) magánál tartható tárgyainak köre és mennyisége korlátozható.
[...]
(5) Az elítélt különleges biztonságú zárkába helyezését a befogadási bizottság legfeljebb három hónapra rendelheti el, melyet két alkalommal, három-három hónappal meghosszabbíthat. Ezt meghaladó időre az országos parancsnok által kijelölt bizottság (a továbbiakban: bizottság) rendelheti el a különleges biztonságú zárkába helyezés fenntartását. Az elhelyezés indokoltságát a bizottság hat hónaponként felülvizsgálja.
(6) Az elítélt különleges biztonságú körletre helyezését a bizottság legfeljebb hat hónapra rendelheti el, melyet az elhelyezés indokának fennállása esetén meghosszabbíthat. A különleges biztonságú körleten történő elhelyezés indokoltságát a bizottság hat hónaponként felülvizsgálja.
(7) A különleges biztonságú zárkába, illetve körletre helyezést az elrendelő haladéktalanul megszünteti, ha annak indokai már nem állnak fenn.
(8) A rendelet alkalmazásában
a) különleges biztonságú zárka: olyan sajátos szabályok alapján működtetett, speciálisan kialakított és felszerelt helyiség, ahová az (1) és (2) bekezdésben meghatározott elítéltet egyedül kell elhelyezni. Az intézetek különleges biztonságú zárkaként működtetett zárkáit az országos parancsnok intézkedésben határozza meg;

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b) különleges biztonságú körlet: az országos parancsnok intézkedésében kijelölt intézetnek az e célra kialakított, különleges biztonságú zárkákból és a hozzájuk tartozó helyiségekből álló, elkülönített része, ahová az (1) és (2) bekezdésben meghatározott elítélt végrehajtási fokozattól függetlenül helyezhető el.

47/A. §
(1) Az életfogytig tartó vagy legalább tizenöt évi szabadságvesztés büntetését töltő elítélt, hosszú időre ítéltek körletére helyezhető, ha a magatartása, a szabadságvesztés végrehajtása során tanúsított együttműködési készsége és egyéni biztonsági kockázatértékelése alapján különleges kezelése és elhelyezése indokolt.
(2) A hosszú időre ítéltek körlete az országos parancsnok intézkedésében kijelölt intézetnek az e célra kialakított, különleges biztonságú zárkákból és a hozzájuk tartozó helyiségekből álló, elkülönített része.
(3) A hosszú időre ítéltek körletén elhelyezett elítéltre a 47. § (3) bekezdés *a)-c)* pontjában meghatározott szabályok vonatkoznak, és
a) az elítéltek öntevékeny szervezeteiben való részvétele korlátozható,
b) az intézet csoportos művelődési, sportolási és szabadidő eltöltésének lehetőségeit csak a körleten belül, illetve a parancsnok külön engedélyével veheti igénybe, önképzést folytathat,
c) magánál tartható tárgyainak köre korlátozható,
d) számára a Bv. tvr. 36. § (1) bekezdés *c)* pontjában és (3) bekezdésében biztosított kapcsolattartás gyakorisága növelhető.
(4) A hosszú időre ítéltek körletén elhelyezett elítéltekre vonatkozó végrehajtási szabályokat a házirend tartalmazza.
(5) Az elítélt hosszú időre ítéltek körletére helyezését a befogadási és foglalkoztatási bizottság legfeljebb hat hónapra rendelheti el, amelyet az elítélt kérelmére alkalmanként további hat hónapra meghosszabbíthat, vagy azt haladéktalanul megszünteti, ha az elhelyezés feltételei nem állnak fenn.
(6) Az elhelyezés megszüntetését követő egy év elteltével az elítélt, ha ennek feltételei fennállnak ismét a hosszú időre ítéltek körletére helyezhető.

A büntetés-végrehajtás országos parancsnokának 1-1/51/2003. sz. OP-intézkedése a fogvatartottak különleges biztonságú zárkába, illetve körletre helyezésének szabályairól

5. A különleges biztonságú zárkában a fogvatartottat egyedül kell elhelyezni.

14. [...] A mozgatást úgy kell végrehajtani, hogy őt lehetőleg más fogvatartott ne láthassa, vele kapcsolatba ne kerülhessen.

18. A pártfogó és a látogatók fogadására külön – egyedi biztonsági szempontok szerint kialakított – látogató helyiséget kell kijelölni [...].

19. Az élelmezést úgy kell megszervezni, hogy az étel elfogyasztása csak a zárkában, vagy a körletrészen belül történhet. Az elkészített étel adagolásában, kiosztásában fogvatartott nem vehet részt.

23. A fogvatartott személyes szükségleteire fordítható összegből való vásárlásra a fogvatartottak részére fenntartott boltból terméklista alapján kerülhet sor.

24. A szabad levegőn tartózkodást úgy kell megszervezni, hogy az egy időben egy fogvatartott vegyen részt.

25. A különleges biztonságú zárkában, illetve körleten elhelyezett fogvatartott más körleten elhelyezett fogvatartottal együtt nem vehet részt sport- és kulturális rendezvényen.

26. A különleges biztonságú zárkában, illetve körleten elhelyezett fogvatartott művelődését (tv-nézés, rádióhallgatás, könyvkölcsönzés), sportolását lehetőleg a zárkában vagy a kialakított körletrészen kell biztosítani.

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27. Különleges biztonságú körleten a sportolásnál elsősorban az egyénileg végezhető tevékenységeket kell előtérbe helyezni.

28. A fogvatartott iskolai oktatásban magántanulóként vehet részt.

29. A fogvatartott részére a vallása gyakorlását a különleges biztonságú zárkában, illetve körleten belül kell biztosítani.

A fenti, 1-1/51/2003. sz. OP-intézkedés mellékletét képező módszertani útmutató

II. fejezet 4.
f) Az asztalt és a széket rögzíteni kell.
k) A bejáratot dupla ajtóval kell elkészíteni.

IV. fejezet 8. A fogvatartottat minden mozgatás előtt és után meg kell motozni, szükség esetén meztelenre is vetkőztethető.

V. fejezet
10. Az orvosi vizsgálatokat a zárkában kell elvégezni megfelelő biztosítás mellett.
15. A [...] fogvatartott zárkájában tisztálkodik.
16. A fogvatartott borotválkozását a zárkában kell megoldani.

VII. fejezet
4. A könyvtári kölcsönzést jegyzék alapján kell megoldani.
9. A fogvatartott elsősorban egyedül sportol.
10. A szabad levegőn tartózkodást az e célra kialakított helyen kell biztosítani.

A Sátoraljaújhelyi Fegyház és Börtön parancsnokának 41/2005. sz. intézkedése a különleges biztonságú körletrész működésének szabályairól

3. (8) A körletrészről fogvatartott csak akkor léphet ki, ha a fogvatartottak elhelyezési körletének II. – III. emeletén a fogvatartottak mozgása szünetel. [...] Amennyiben a fogvatartottat [...] más elhelyezési szintre vagy intézeten kívülre kísérik, illetve szállítják, a körletről kikísérés idejére az egész elhelyezési körleten szüneteltetni kell az elítélt mozgást.
(10) A bilincselést a rácson lévő nyílásokon keresztül kell végrehajtani, a rácsot csak azt követően lehet kinyitni, és a fogvatartottat kiléptetni. A nem bilincselt fogvatartott zárkájába egyszerre legalább 4 fő egyenruhás – kényszerítő eszközökkel ellátott – felügyeletnek kell belépni, a fogvatartott bilincselés után mozgatható. [...] A zárkába visszahelyezés során a fogvatartott vezetőbilinccsel a kezében lép be a zárkába, a belépését a személyzet jelenlévő tagjai biztosítják, a visszafordulását kötelesek megakadályozni.
(11) A fogvatartott a zárkából kizárólag az alábbi esetekben léptethető ki:
a./ szabadlevegőn tartózkodás és sportfoglalkozás (ütemezés szerinti időpontokban);
b./ látogatás, ügyvédi-, ügyészi meghallgatás;
c./ zárkában nem végezhető orvosi ellátás;
d./ szállítás, előállítás, tárgyalás;
e./ az intézet parancsnokának vagy helyettesének erre irányuló utasítása alapján;
f./ biztonsági okok miatt a kijelölt tiszt utasítására;
g./ biztonsági ellenőrzés miatt.

9. (2) A zárkában magántulajdonban lévő eszközök (rádió, tornacipő, hajvágó, sétálómagnó, elemes játék, stb.) tartását nem engedélyezem, ezeket lehetőség szerint az intézet biztosítja.

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13. (1) A fokozottan őrzött fogvatartottak foglalkoztatása lehet:
- hobbi jellegű (gyurmázás, grafika)
- zárkán végezhető munka parancsnoki engedéllyel
- megbízás alapján a folyosó és a közös használatú helyiségek takarítása

14. (1) A[z egészségügyi] vizsgálat alkalmával a fogvatartottat – ha eü. állapota lehetővé teszi – az előírásoknak megfelelően meg kell bilincselni.

A végrehajtás főbb mozzanatai:
- feküdjön fel a fogvatartott az ágyra,
- lábaira kell helyezni a szíjbilincset, majd levenni a fémbilincset
- kezeire kell helyezni a szíjbilincset, majd levenni a fémbilincset és a vezetőbilincset [...]

22. (1) A látogatás zárt biztonsági fülkében történik, közvetlen biztosítás és ellenőrzés mellett.

24. (2) Sportoláson és szabadlevegőn [...] egyszerre legfeljebb 2 fő tartózkodhat, a mozgatás során egymást nem láthatják, főként nem teremthetnek kapcsolatot egymással.

A fenti intézetparancsnoki intézkedés 9. sz. mellékleteként csatolt, a kbk-n elhelyezett fogvatartottakra vonatkozó házirendből: [A [fogvatartott] a reggeli létszámellenőrzéskor adhatja át a felügyeletnek írásban, amire napközben a zárkán kívül tárolt személyes tárgyaiból szüksége van.