



UT-02284/2017
33/2016/NZ/NM- 11120/2017
8 June 2017

Mgr. et Mgr. Pavel Bacík
Director
Refugee Facilities Administration of the
Ministry of the Interior
P. O. Box 110
143 00 Prague 4

Dear Sir,

On 23 May 2017, I received your statement on the development of analysis of the fence around the buildings comprising the Bělá-Jezová Facility for Detention of Foreigners (hereinafter the “Facility”) performed by the Refugee Facilities Administration, the Ministry of the Interior and the Police of the Czech Republic. Further, you informed me of the current state of affairs in the Facility concerning the employees of the private security contractor.

The measures you have adopted in the Facility to date are, in my opinion, impressive, especially compared to the conditions existing in the Facility three years ago. However, despite the great effort to improve the conditions in the Facility to satisfy the needs of families with children, I feel compelled to state that the conditions at the time of my visit in the Facility in November 2016 and persisting to date do not meet all the requirements set out by the European Court of Human Rights for facilities intended for migrating families with children, and the conditions are not suitable for accommodating families with children.

Legal basis of assessment

The case law of the European Court of Human Rights (hereinafter the “ECtHR”) concerning migrating families with minor children identifies the facts that the ECtHR believes to constitute, when combined, a degree of inhuman and degrading treatment that violates Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹ (hereinafter the “Convention”).

When assessing conditions in facilities accommodating families with children, the ECtHR repeatedly criticised, among others, the **presence of security features** in a facility. Security fences, constant presence of uniformed security guards, the fact that parents are not allowed to move around the compound freely without any escort, rigorous regime in a facility or omnipresent cameras: all that makes children feel uncomfortable and has adverse impact on their psychological condition. When assessing the conditions, the ECtHR always takes into regard the children’s age and the duration of their stay in a facility.² According to the ECtHR, such conditions in a facility are solely justifiable in cases where children are exposed to such conditions for a short period of time only. Nevertheless, the ECtHR’s case law suggests that even a 7- or 9-day stay of a child in such a facility is considered inadmissible. It must be noted that the

1 Convention for the Protection of Human Rights and Fundamental Freedoms, agreed in Rome on 4 November 1950, promulgated under No. 104/1991 Coll.

2 In those cases, the Court dealt with cases concerning children aged from 4 months to 4 years, staying in a facility for a period from 7 to 18 days. The Court stated that a 7-, 9- or 18-day stay in the conditions described above constituted a breach of Article 3 of the Convention, i.e. inhuman and degrading treatment, for children of such age.

background for children in terms of material and personnel was very good in some of the facilities being assessed.

Presence of security features in facility

Since the systematic visit of 22 November 2016, the Facility has undergone a number of positive changes, which you informed me of in your statements dated 3 February 2017 and 19 May 2017, respectively. Once again, I would like to thank you both for your statements and the measures adopted.

You state that the criticised security features in the Facility were revised as follows: At present, all the fences of the moderate-regime ward are painted in green, to blend in with the surroundings as much as possible. Eastern white cedars and small spruces were newly planted along the main 3.5-metre fence, so as to provide shade and screen the fence in the years to come. All the razor-blade and barbed wires from the inner dividing fences of the moderate-regime ward were removed, except for the part of the fence oriented to the gates. The dividing fences between residential buildings A and B were removed. The fence around the playground at the children centre was torn down as well. In your letter, you state that employees of the newly contracted private security contractor should be wearing sportswear or street clothes.

The underlying documents from the visit performed as well as your last statement indicate that despite the above-mentioned changes, the situation has not changed in the following aspects since November 2016: **The inner dividing fences remain in place within the moderate-regime area (except for the area between the residential buildings A and B). Foreigners thus cannot move around the compound freely and must be escorted by a member of staff or private security contractor: they cannot reach the cafeteria located in the main building, the medical centre or children's centre, which is separated from the area with buildings A and B by a dividing fence. Razor-blade and barbed wires continue to top the part of the fence oriented to the gates.**

Employees of the private security contractor equipped with transceivers to communicate among themselves are permanently present in the residential buildings and patrol each floor. Moreover, common rooms in the residential buildings are CCTV-monitored. Employees of the private security contractor are also constantly present on the outer premises of the Facility and escort any foreigners who wish to leave the area of buildings A and B.

Defender's assessment

The Facility complied with my recommendations only partially. Despite the extensive positive changes performed in the Facility in terms of accommodation of families with children – and I thank you for that – **numerous security features** have been retained in the Facility. In the light of the current case law of the European Court of Human Rights, the security features **might continue to represent a breach of Article 3 of the Convention**, since children stay in the Facility for 55 days on average³.

Sincerely,

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights
(this letter bears electronic signature)

³ The foreigner records provided to me by the Refugee Facilities Administration indicate that 153 children were accommodated in the Facility from November 2015 to November 2016, with the duration of stay ranging from 2 to 86 days. The average period of stay of children is 55 days approximately. The longer the children stay in the Facility, the less justifiable are any restrictive measures that affect children and their parents in the Facility.