

7 QUESTIONS AND ANSWERS ABOUT DETENTION

1

What is detention?

Detention is deprivation of personal freedom of foreigners who are staying in Slovakia without permission of their residence or who applied for asylum. Irregular migration is not a crime, but an administrative offence, but it is the only offence for which a person may be locked up. The aim of detention is preparation and implementation of one's return to his country of origin or his transfer or to the country responsible for examination of his asylum application based on rules laid down by the Dublin III. regulation. Asylum seekers can be detained until the main reasons of their asylum application are established or in order to prevent their absconding, if asylum application is believed to be submitted merely with intention to avoid imminent risk of deportation.

Detention is like prison. The only personnel present are almost exclusively police officers. Windows and corridors are protected by bars and the detention center is surrounded with high fences with barbed wire. Police confiscates all personal belongings from detainees including cell phones. They do not have access to internet. In the worst scenario a foreigner may stay there up to 18 months, even though the detainee probably has not committed any crime. Families with children can be detained for up to 6 months.

2

Why are families with children detained?

Children are detained for the same reasons as adults. They travel with their parents or other relatives and do not have documents, which authorize them to cross international borders. In 2015 and 2016 there were 451 children who have arrived to Slovakia in this manner, especially from Afghanistan and Syria, and were detained together with their adult family members. When parents are placed into detention, children follow their fate and are detained as well in order to ensure family unity.

However, children are primarily children. It was not of their freewill to determine the manner in which they have arrived to the Slovak Republic. Legislation, international agreements as well as common sense require that all actions related to children should take into account **the principle of the best interest of the child**. Children should therefore not suffer because of actions of their parents, but the adopted measures should reflect the best interest of the child.

The UN Committee on the Rights of the Child has repeatedly stated that detention is never in the best interest of the child and in 2016 it recommended to the Slovak Republic to improve its current practices. Detention of children cannot be made legitimate by the need to detain their adult relatives claiming that detention is the only way to preserve family unity. On the contrary, we are bound to look for other solutions which enable us to achieve the same result without the need of detaining children.

3

In which conditions are families with children placed in detention?

Detention centre looks like prison. Windows and corridors are protected by bars, the building is surrounded with a barbed wire fence and detainees are accompanied by police officers at all times. Daily routine of individuals in detention is governed by the rules of the detention center, which is also applicable to families with children. All detainees, adults and children regardless of age, are allowed for three 1-hour sessions of fresh air access. Equally they all have right to receive visitors once in three weeks and all detainees have restricted access to communication via internet or phone.

Some conditions in the detention center are adjusted for families with children and reflect children needs and rights. Every family lives together in one common room. Children have access to various informal educational activities in detention; however, they do not attend regular school. Other conditions in detention are not specially adjusted to children needs and do not differ from conditions for adults.

4

What is the impact of detention on children?

Regardless of conditions in which children are detained, several studies have proved that detention has significant negative impact on children's health and their development. Even a short period of detention could inflict negative impact upon the intellectual and physical wellbeing of a child and can disrupt his normal cognitive development. Children in detention are at risk of developing depression and anxiety; as well as insomnia, nightmares and bed-wetting – all these are symptomatic to post-traumatic stress disorder. The feelings of hopelessness and frustration can be manifested in violence against oneself or others. The reports have also highlighted serious misunderstandings between adults and children in detention. Detention also has a negative impact on the coherence and well-functioning of family relations.

5

What are the alternatives/ less restrictive measures?

The aim of immigration detention is to ensure the presence of a foreigner on the territory of the Slovak republic at his **known place of residence and to ensure his cooperation** with state authorities in asylum procedure or during preparation of his expulsion from the territory of Slovakia.

The law favors achieving this goal in a **manner which does not include the deprivation of personal liberty**, for example by ordering presence in asylum camp, by regularly reporting to the police or by submitting a financial bail. These other solutions are called **less restrictive measures or alternatives to detention**. Detention is considered as the final resort when it is clear that less restrictive measures are proven to be ineffective in achieving the aim - the cooperation of a foreigner with the state authorities.

If less restrictive measures are applied, people subjected to them need sensitive support and open communication. Experience shows that if effective support is ensured to them, they will not abscond, but cooperate with state authorities in resolving their situation.

6

Why less restrictive measures are not applied?

Unfortunately, less restrictive measures are applied minimally in practice. A foreigner must show 56 EUR per person for each day of intended stay outside the detention. This requirement makes these measures quite inaccessible for families with children and for other vulnerable persons.

There are two centers for detention of foreigners in Slovakia, but Slovak Republic has not created sufficient material conditions for the application of less restrictive measures, such as housing, boarding and access to health care.

Less restrictive measures are therefore accessible only to those, who have relatives or acquaintances in Slovakia who would take care of them or to those who have sufficient financial resources to demonstrate their ability in fulfilling the strict legal requirements. **For all the others who do not have financial resources the only applicable measure is the last resort - detention.** If state creates conditions for application of less restrictive measures, the assistance offered to such a person should have been provided by non-governmental as well as charitable organizations.

7

What do we want to achieve?

Our goal is **not** to completely abolish detention of foreigners. We recognize that in some situations detention may be appropriate for the individual situation. However, children should under no circumstances be placed into detention together with parents, if so, only in exceptional cases for a very short period of time (counted in hours / days).

We believe that there is the opportunity to increase adoption of less restrictive measures in cases of families with children and other vulnerable people. We implore the government **to create conditions** together with NGOs that is favorable for the application of less restrictive measures even for families with children and vulnerable persons. Material conditions will relieve them from obligation to demonstrate inadequately high financial subsistence, but will also provide for adequate accommodation and provision of health care.

Our experience confirms that these measures can be effective and lead to the respect of laws and obligations, not to their violation.