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## **REPORT**

of the Commissioner of Fundamental Rights

in case number AJB 733/2012

Rapporteurs:      Dr Katalin Haraszti  
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Affected organizations:      *Károlyi Istrán Gyermekközpont* (Károlyi István Children's Center)  
                                *Than Károly Gimnázium, Szakközépiskola és Szakiskola* (Than Károly Grammar School, Specialized Secondary School and Vocational School)

Dated: April 2012

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### **The start of the investigation**

The Commissioner of Fundamental Rights examined the enforcement of the rights of unaccompanied and separated children (UASC) in the course of an on-site inspection carried out without prior notice on 11 November 2009.

Pursuant to Article 19(2) of Directive 2003/9/EC of the Council of the European Union laying down minimum standards for the reception of asylum seekers (hereinafter referred to as the 'Reception Directive'),<sup>1</sup> UASC who make an application for asylum shall be placed by the Member State concerned, from the moment they are admitted to its territory, with adult relatives, with a foster-family, in accommodation centres with special provisions for minors or in other accommodation suitable for minors.

The "accommodation center suitable for placing and boarding UASC separately" as required by Section 33(4) of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum as effective on 11 November 2009 (hereinafter: Implementation Decree and Asylum Act, respectively), was operating at the Bicske Accommodation Center site in buildings located in an area protected by a wire fence from 1 January 2008.

A report published at the end of January 2010 (AJB 7120/2009) established that UASC excluded from the system of county institutions for the protection of children are compelled to live at the Bicske Accommodation Center site, in the Unaccompanied Minors' Home, almost throughout the entire period of their integration in Hungary, which is not the ideal environment for understanding the Hungarian way of life and adapting to it.

However, Act XXXI of 1998 on the Protection of Children and on Guardianship Administration (hereinafter: Child Protection Act) does not define the terms 'unaccompanied minor' or 'unaccompanied minors' home' as an institution for children. As a result, there were no statutory guarantees that the institution (funded within the framework of a project at that time) would be able to carry out its tasks of support, care, education and integration on a permanent basis.

In the report, the Parliamentary Commissioner requested measures by the Minister of Employment and Social Affairs and the Minister of Justice and Law Enforcement to provide for the amendment of the Child Protection Act in order to integrate the home for unaccompanied and separated children as an institution providing special care with the Hungarian system of institutions for the protection of children. As a result of the initiative and as part of the gradual elimination of the project-based financing of the support provided at Bicske, in the second half of 2010 in Fót, the Unaccompanied Minor's Home was launched as part of the Károlyi István Children's Center (*Károlyi István Gyermekközpont*, hereinafter: Children's Center), hosting foreigners under the asylum procedure who are recognized as refugees or beneficiaries of subsidiary protection or receive post-care services.

### **The purpose of the investigation**

Children separated from their adult relatives miss the care and protection of their parents or legal guardian; consequently, they suffer serious social and psychological

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<sup>1</sup> COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

disadvantages and therefore special attention should be paid to the enforcement of their fundamental rights in the host country.

According to Article 22(1) of the Convention on the Rights of the Child, signed in New York and dated November 20, 1989 and promulgated in Hungary in Act LXIV of 1991 (hereinafter referred to as ‘UNCRC’), children separated from their adult relatives (hereinafter referred to as ‘unaccompanied and separated children’ or ‘UASC’) shall be entitled to treatment equal to that provided to any child of the nationality of the host country or lawfully residing in that country.

According to Section 2(f) of the Asylum Act, an ‘unaccompanied minor’ is a foreigner who has not reached the age of 18 and who entered the territory of the Hungary without the company of an adult responsible for his/her supervision on the basis of a rule of law or custom, or who remained without supervision following entry, as long as he or she is not transferred under the supervision of such a person.

According to Section 93(2) of Government Decree 290/2010 (XII. 21.) amending the relevant rules of the Implementation Decree (effective from 1 May 2011), if the asylum seeker is an unaccompanied minor, in accordance with the child protection legislation, he or she will be placed in a child protection institution, provided that the refugee authority has determined the minor status of the affected child.

Since according to the UNCRC, the asylum or alien status of the unaccompanied or separated child is of secondary importance (i.e., he/she must be treated primarily as a child), the primary purpose of the inquiry was to discover how the Children’s Center, as a “child protection institution” responsible for admitting and supporting unaccompanied and separated children, meets that requirement. As part of a follow-up investigation, another purpose of the visit was to discover the effects of the critical observations made by the Parliamentary Commissioner in the report AJB 7120/2009 on the treatment of unaccompanied and separated children.

## **Method of investigation**

We carried out an on-site inspection of the Children’s Center on 29 February 2012 without prior notice. The staff members involved in the inspection visited the buildings used for housing minors; they inspected the furniture and equipment, checked documents, spoke with a few young people and institution staff members responsible for their care and consulted with the director and deputy director of the Children’s Center.

As 12 out of the 14 unaccompanied school-age children living in the center attended the Than Károly Grammar School, Specialized Secondary School and Vocational School, run by the Municipality of Budapest, the investigators paid an unannounced on-site inspection at this institute of education on 3 April 2012. My staff members inspected the classrooms, their furniture and equipment, talked to the school management, to a few young people who have been recognised as refugees and to their teachers.

## **Participants in the investigation:**

Leader of the investigation: Dr Katalin Haraszti, Deputy Head of Department  
Participants:  
Dr Katalin Magyarné Vuk, legal rapporteur  
Dr Ágnes Kaiserné Pajó, legal rapporteur  
Dr István Sárközy, legal rapporteur

## The facts of the case as established

An “accommodation center suitable for separately placing and boarding unaccompanied minors” operated in Hungary at the Bicske Accommodation Center between 1 January 2008 and 1 September 2011. In that period, the conditions for running the Unaccompanied Minors’ Home were provided for by the Accommodation Center, along with the necessary equipment. However, their education was provided by staff from the Hungarian Interchurch Aid.

According to Section 93(2) of Government Decree 290/2010 (XII. 21.) on the amendment of migration-related Government Decrees in connection with Act XXXV of 2010, unaccompanied minors seeking recognition as a refugee must be placed in a child protection institution as of 1 May 2011. As a result of a decision by the Ministry of National Resources, the Children’s Center in Fót, a small town 20 km from Budapest, was selected as the “child protection institution” referred to above.

The predecessor of the Children’s Center was the Fót Children’s Town (*Fóti Gyermekváros*), which opened in November 1957 in a Classicist palace previously owned by the Count Károlyi family, along with the 40-hectare English garden surrounding the palace. When the Children’s Town was launched, the classrooms, the dining hall and the dorms (each with 20-30 beds) were in the palace. In the early 1960s, around 800 or 900 children lived in the institution, which hosted, in addition to accommodation buildings, kindergartens, schools, workshops for vocational education, sports and cultural facilities, a library, a theater hall and a cinema. There was a central kitchen that cooked food for the children, and there was also a laundry, a dressmaker, a shoemaker, a hair salon and a post office. There was even a surgery and a small hospital (*Egészségház*, “House of Health”) to provide medical services.<sup>2</sup>

The social changes of the 1980s transformed the Hungarian system of child protection. A new Child Protection Act was adopted as a result of these trends, and after its effective date, the principles of a communal upbringing were replaced by personalized care focusing on the family, the child and the child’s needs. As part of the reform, something akin to households, of children’s home groups (each of 10 to 12 members), as well as apartments, were created in the institution. This significantly reduced the number of children living in the institution.<sup>3</sup> At the time of the on-site inspection, the institution (called Károlyi István Children’s Center since 1993) educates and supports around 160 children and young adults. A 10-hectare part of the land is now used as the equestrian therapy center of the International Children’s Safety Service (*Nemzetközi Gyermekmentő Szolgálat*).

The palace’s park is the largest public park in Fót with a fishing pond, playgrounds and sports fields. Four elementary and high schools and also a kindergarten funded by the Reformed Church operate in the buildings of the park. The institutions rent the buildings from the Children’s Center. Hungarian citizen children supported by the Children’s Center also attend these schools. There are also nearly 90 staff apartments in the park, used by former (now retired) employees of the Children’s Center, other employees and their family members.

According to its charter, the Children’s Center is an independent budgetary organization funded and supervised by the Ministry of Natural Resources. The land in which the institution is located is managed by the Hungarian State Holding Company (*Nemzeti Vagyonkezelő Zrt.*).

The Children’s Center carries out multiple activities. *As a children’s home*, it supports minors in child protection care, including unaccompanied and separated children under the asylum procedure and unaccompanied and separated children who have been recognised as refugees. *As a special home for children*, it supports children above the age of 12 (in

<sup>2</sup> <http://www.stop.hu/belfold/50-eves-a-foti-gyermekvaros/226193/> downloaded on 6 March 2012

<sup>3</sup> <http://www.stop.hu/belfold/50-eves-a-foti-gyermekvaros/226193/> downloaded on 6 March 2012

exceptional cases, above 10) and below the age of 18 who show serious psychological symptoms.<sup>4</sup> As a specialized home for children, it provides professional support to permanently ill minors.<sup>5</sup> Last, it provides post-care services to young adults above 18 but below 24 who previously lived in a children's home, including young adults that have been granted asylum and that previously received support from a children's home as unaccompanied or separated children.

As part of the post-care services, the Children's Center provides support outside the central site, in apartment homes in Vajta, Ozora, Fót and Mogyoród, which are available to young adults above the age of 18 but below 24. The staff members carrying out the inspection examined the accommodation and living conditions of the young people living in the Children's Center's central site.

The first group taken from the Bicske Accommodation Center to the Children's Center were young adults who reached adulthood in the period after a decision was made on their application for asylum. The first group (7 people) arrived on 21 June 2010 and the second (4 people) on 27 October 2010. A third group of 13 young adults was taken to the Children's Center on 20 May 2011 and one other person arrived on 1 July 2011. The Children's Center welcomed a 23-member group of unaccompanied and separated children and the last group of young adults (7 members) on 31 August 2011. Young adults were given post-care services while unaccompanied and separated children received children's home support, regardless of the date of their arrival.

After 31 August 2011, no young people receiving post-care services or children's home support remained in the Bicske Accommodation Center. Since 1 September 2011, the staff members of the Office of Immigration and Nationality (*Bevándorlási és Állampolgársági Hivatal (BÁH)*, hereinafter: Office) have been transporting all foreigners claiming to be UASC and seeking asylum at the border to the Children's Home. Between 1 September and 31 December 2011, a total number of 34 persons claiming to be UASC and seeking asylum came to the institution.

At the time of the on-site inspection, according to the Children's Center records, the institution supported a total number of 66 foreign citizens between the age of 14 and 24. Of the 28 unaccompanied and separated children, 13 were asylum seekers, 4 were recognised as refugees and 11 as beneficiaries of subsidiary protection. Thirty-eight young adults between the age of 18 and 24 were receiving post-care services. Another two former unaccompanied children receiving post-care services lived at their request outside the central site of the Children's Center in an apartment home in Mogyoród with their Hungarian citizen peers. Finally, 12 persons who had declared that they were children left for an undisclosed destination without prior notice.

## **The fundamental rights affected in this case**

- *The right to education:* "Hungary shall ensure this right by extending and generalising public education, providing free and compulsory primary education, free and generally available secondary education, and higher education available to every person according to his or her abilities, and by providing statutory financial support to beneficiaries of education." (Article XI(2) of the Fundamental Law)

- *The right of children to protection and care:* "All children have the right to receive the protection and care necessary for their satisfactory physical, mental and moral development." Fundamental Law, Article XVI paragraph (1)

<sup>4</sup> It was opened on 26 November 2010; it has been receiving children since 2011, [http://www.kigyk.hu/assets/multimedia/rolunk\\_irtak/fh1010.pdf](http://www.kigyk.hu/assets/multimedia/rolunk_irtak/fh1010.pdf) downloaded on 6 March 2012.

<sup>5</sup> The first of such homes was opened in November 2005, the second in December 2006 and a third at the end of 2007.

## **The applicable laws**

- Act CXI of 2011 on the Commissioner of Fundamental Rights.
- Act IV of 1959 on the Civil Code.
- Act XXXI of 1998 on the Protection of Children and on Guardianship Administration.
- Act LXIV of 1991 on the promulgation of the Convention on the Rights of the Child, signed in New York on 20 November 1989.
- Act LXXIX of 1993 on Public Education.
- Act LXXX of 2007 on Asylum.
- Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum.
- Government Decree 290/2010 (XII. 21.) on the amendment of migration-related Government Decrees in connection with Act XXXV of 2010.
- Minister of National Resources Decree 24/2011 (V. 18.) on the detailed rules of requesting support for certain special public education tasks, of the system of decision-making, of the payment of such support, of the settlement of accounts and of the auditing of such support.

## **The findings of the investigation**

### **I. Concerning the competence of the Commissioner of Fundamental Rights**

According to Article 30(1) of the Fundamental Law, the Commissioner of Fundamental Rights protects fundamental rights and acts at the request of any person.

According to Section 1(2)(a) of Act CXI of 2011 on the Commissioner of Fundamental Rights (hereinafter: ACFR), in the course of his or her activities the Commissioner of Fundamental Rights will pay special attention, especially by conducting proceedings *ex officio*, to the protection of the rights of children. Section 18(4) of the ACFR states that the Commissioner for Fundamental Rights may conduct *ex officio* proceedings in order to conduct an inquiry into irregularities affecting not precisely identifiable larger groups of natural persons or conduct a comprehensive inquiry into the enforcement of a fundamental right.

In the case of children who are foreign nationals, cannot speak Hungarian and are separated from their adult relatives, it can be presumed with good reason that, due to their exposed situation, they would not even be able to complain about the infringement of their fundamental rights. As a result, exercising my powers specified in Section 18(4) of the ACFR, I examined *ex officio* whether the rights of young people of foreign nationality living in the Children's Center to receive the protection and care necessary for their satisfactory physical, mental and moral development and to education are guaranteed.

### **II. Findings relating to the accommodation and board unaccompanied and separated children submitting an application for asylum**

The majority of foreigners living in the Children's Center have attempted to cross the Hungarian border illegally. They told the police officers capturing and detaining them that they intend to apply for asylum. The joint implementation by the Office and the police of the rules of procedure that must be followed when foreigners within the scope of the Asylum Act

are identified on the border is regulated in detail by joint measure 1/2011 (OT 15) BÁH-ORFK, the rules of which must be applied from 17 October 2011.<sup>6</sup>

The asylum seekers were heard by the police with the assistance of an interpreter, and minutes were prepared of the hearings. The data of for each foreigner who arrived without documents suitable for identification were recorded by the police on the basis of the foreigners' statements. Pursuant to Article 4(1) of Regulation 2725/2000/EC of the Council of the European Union, the alien police authority took the fingerprints of every asylum seeker of at least 14 years of age and took photos of them, and then transmitted the data electronically to the Central Unit (hereinafter referred to as 'Eurodac').

As soon as the police officers realized (on the basis of the date of birth provided by the foreigner, the preliminary medical examination and the circumstances of arrival) that the asylum seeker was an unaccompanied minor, the relevant directorate of the Office was informed without delay. It is the Office that makes a decision on the temporary custody of UASC asylum seekers on the basis of Section 72(1) of the Child Protection Act. After the decision is made, the Office informs the local alien police authority where the child was captured and the Children's Center (as the child protection institution appointed by the Ministry of National Resources as the location for temporary custody) of the decision.

At the same time that the unaccompanied child is put into temporary custody, the competent directorate informs the Office's Budapest and Pest County Regional Directorate (*Budapesti és Pest-megyei Regionális Igazgatóság*) that an application for asylum has been filed and forwards the case documentation. The authority of first instance for asylum applications made by unaccompanied and separated children accommodated at the Children's Center is in all cases the Refugee Affairs Department (*Menekültügyi Osztály*) of the Office's Budapest and Pest County Regional Directorate.

The staff members of the Office typically grant a humanitarian residence permit to the unaccompanied or separated child asylum seeker as early as after he or she crosses the border, and in most cases the police or staff from the Office take the child to the Children's Center within a few hours. Staff at the Office send a fax to the Children's Center of the expected arrival of UASC, but in the majority of the cases they also consult over the phone with the educators on duty. *Relating to temporary accommodation and the transfer of UASC to the Children's Center, the investigation revealed no circumstance indicating any irregularity in connection with any fundamental right.*

UASC arriving to the Children's Center are welcomed by the educators on duty at that time. When they learn of the arrival of the child, they prepare a bed and some food and put out a towel for the child. Those who arrive receive a toiletry pack with a toothbrush, toothpaste, shaving cream, shower gel and paper hygiene products. The minor is then informed where he or she is, what examinations await him or her and what rights and obligations he or she has. A portrait photo and a full-body photo are taken and a physical description is recorded. If there are signs that the unaccompanied minor feels sick or is ill, medical help is provided. As a last step of the reception process, the unaccompanied or separated child is taken to one of the dormitories and shown his or her bed.

The asylum procedure is divided into two parts, i.e. the preliminary examination and the substantive procedure. Pursuant to Section 47 of the Asylum Act, the Office first examines, in the preliminary examination procedure to be completed within 30 days, whether the asylum seeker meets the conditions of applying the Dublin Regulations. The Office also notifies the competent medical officer pursuant to Section 63(1) of Government Decree 301/2007 (XI. 9.) on the implementation of the Asylum Act in order to allow the medical officer to order the appropriate medical examinations as required by the epidemiological

<sup>6</sup> See issue 2011/15 of the National Police Information Bulletin (*ORFK Tájékoztató, OT*) published on 14 October 2011.

situation. The investigation found that the medical officer usually orders the unaccompanied minors to undergo medical screening for HIV, syphilis, tuberculosis, leprosy, typhoid stool, hepatitis B and ectoparasites.

If, as a result of the examinations, the medical officer finds that the asylum seeker suffers from a disease that is a public health hazard or is contagious, the medical officer informs the Office and immediately makes a recommendation for the necessary restrictive measures. Until the asylum seeker is cured, her or she may not be placed in a community or may only be placed in a community with certain restrictions specified with regard to his or her illness, condition or pathogen carrier status. If the asylum seeker may not be placed in a community, he or she must be taken into care and given accommodation in a quarantine as required by the medical officer. The Office must be informed of the quarantine. The refugee authority will reimburse the costs of the measures required for epidemiological purposes.

The staff members of the Children's Center said that some of the new UASC had scabies or lice or suffered from a contagious disease (namely tuberculosis) which was only discovered by the screening examination ordered by the medical officer. It would have been advisable to keep newly arrived UASC away from the community until they are no longer contagious or at least until the screening examinations' results arrive. *The Children's Center, however, has no quarantine room. This prevents the enforcement of the inhabitants' and the staff members' right to the highest possible physical and mental health guaranteed by Article XX(1) of the Fundamental Law.*

Since an unaccompanied or separated child is a party in the asylum procedure who cannot act independently and, in the absence of parental protection, he or she has neither a legal nor authorised representative, pursuant to Section 35(6) of the Asylum Act, the Office takes measures without delay to have a person appointed who is authorised to represent the child and contracts the Guardianship Agency of the 5th District of Budapest (hereinafter: Guardianship Agency). The Guardianship Agency appoints a temporary guardian to represent the UASC in accordance with Section 225(1) of Act IV of 1959 on the Civil Code. The temporary guardian has similar powers to a guardian. This means that, until the asylum procedure is completed, the temporary guardian represents the unaccompanied or separated child in any official procedure and before any official forum in addition to the asylum procedure. The temporary guardian of the UASC living in the Children's Center is a full-time staff member (a lawyer by profession). *Relating to the appointment of a temporary guardian as a legal representative of the unaccompanied minors, the investigation revealed no circumstance indicating any irregularity in connection with any constitutional right.*

A member of the staff of from the Office hears the UASC (in the presence of the temporary guardian employed by the Children's Center with the assistance of an interpreter) within 1 or 2 days, records his/her fingerprints and takes a photo of the UASC. If any doubt emerges concerning the minor status of an asylum seeker who claims to be a child, a medical expert examination may be initiated for the determination of his/her age in accordance with Section 44(1) of the Asylum Act. Pursuant to Article 4(3) of Resolution 97/C 221/03 of the Council of the European Union, "Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution."<sup>7</sup> According to the international requirement concerning the treatment of unaccompanied minors, age assessment includes physical, developmental, psychological and cultural factors. If an age assessment is thought to be necessary, the procedure should be

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<sup>7</sup> COUNCIL RESOLUTION of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03)

undertaken by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background.<sup>8</sup>

The Office may prescribe by an order the examination of the age of a UASC who has submitted an application for asylum. The age assessment is carried out by a forensic expert, the head radiologist of the Buda Health Center (*Budai Egészséközpont*) using the Greulich-Pyle method. The essence of the age assessment method used by the forensic expert is that the physician compares a radiogram of the examined person's left wrist with the data of a reference atlas compiled by its American authors; the atlas consists of radiograms taken of the wrists of 1000 middle-class boys and girls in the 1950s. This method is supplemented by a dental panoramic X-ray and a pelvis radiogram. These are also taken into account by the medical expert for age assessment purposes. According to the medical expert, the maximum difference between the result of the age assessment method used by the expert and the actual age is 1 or 2 years. The head physician claimed that all expert opinions had been given on the basis of radiograms; other circumstances (such as information about the ethnic or cultural environment of the given person) had not been available for assessment. The medical expert recommended the examination of the collarbone's radiogram as a supplementary method to reduce the margin of error of the age assessment.

The determination of the minor's age is not a legal question: it is a medical issue. The investigation was therefore limited to assessing whether the current practice is a step forward compared to the practice revealed by report no. AJB/7120/2009, according to which the determination of the age of the persons concerned had been performed based on general impressions, inspection of the teeth and physical examination of the secondary sexual characteristics (inspection) and an X-ray examination of wrist-joints had occurred only in exceptional cases i.e. only three times during the two years before the investigation.

The determination of age must be performed with special care and increased diligence, reasonably minimising the risk of errors. If there is any doubt in determining the age, the decision which is more favourable for children separated from their adult relatives should be adopted. Among the case documents disclosed to us during the investigation, we came across a case when, according to the birth certificate in the possession of the UASC, this child was younger than the age specified in the medical expert's report. The Office's decision in this case was favourable for the asylum seeker and the asylum seeker was treated as a UASC on the basis of the birth certificate the child had in their possession. *Relating to the assessment of the age of UASC, the investigation revealed no circumstance indicating any irregularity in connection with any fundamental right.*

The Office directs those persons declared of full age by the medical expert to the Accommodation Center in Debrecen where, due to the absence of the special rights granted in the UNCRC and the Child Protection Act, they are put in the same environment as the other adult asylum seekers.

If, according to Eurodac's answer to be received within around 3 days, an asylum procedure has been initiated regarding the asylum seeker in any of the Member States, the Office will then suspend the procedure and, pursuant to Section 49(4) of the Asylum Act, decide by an order to extradite the person to that Member State within the frame of the Dublin procedure. If the Dublin procedure is closed with the delivery of the applicant, the preliminary assessment procedure will be discontinued at the time of the delivery of the applicant. A minor applicant will remain in the Children's Center until the date of extradition, the period of which varies depending on how cooperative the competent authorities of the recipient Member State are. It often happens that the asylum seeker leaves for an unknown place before

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<sup>8</sup> [http://www.separated-children-europe-programme.org/separated\\_children/good\\_practice/native/index.html](http://www.separated-children-europe-programme.org/separated_children/good_practice/native/index.html)

the date of extradition. In such a case the Office terminates the asylum procedure, pursuant to Section 52(2)(d) of the Asylum Act.

If, according to Eurodac's data, there has been no asylum procedure initiated in the applicant's case in any Member State, or the Member State addressed refuses to take the applicant and the examination of their case, the Office will then proceed with the preliminary examination procedure.

If the Office establishes the admissibility of an application, it will refer the application to the substantive procedure. Pursuant to Section 56 of the Asylum Act, in the order referring the case to substantive procedure, the Office specifies the Children's Center as the place of accommodation for UASC, which will be their habitual residence for the remainder of the procedure. The substantive procedure will be completed within sixty days of the adoption of the resolution referring the application to the substantive procedure. *According to inspection data, the Office meets all administrative deadlines prescribed by the Asylum Act concerning UASC; no irregularity relating to any constitutional right has been revealed by the investigation.*

When a final and nonappealable decision is reached in the asylum procedure, the Guardianship Agency takes the child into temporary care. The guardian of the child in temporary care appointed by the Guardianship Agency will be a person with whom the child is familiar: the head of the home for unaccompanied and separated children

### **III. Findings relating to the accommodation and board for UASC seeking asylum or recognised as refugees or beneficiaries of subsidiary protection**

Upon the substantive procedure, the Office recognises the UASC asylum seeker as a refugee or a person enjoying subsidiary protection; however, it may happen that the application is refused. Pursuant to Sections 10(1) and 17(1) of the Asylum Act, unless an Act or Government Decree expressly provides otherwise, a foreign refugee or a beneficiary of subsidiary protection has the rights and obligations of a Hungarian national. The majority of these other provisions are laid down in the Asylum Act and in the Implementation Decree.

Children and young people who are foreign nationals live in two child groups and four post-care groups. The groups, consisting of 10 to 12 people per group, are given accommodation in two-level buildings with separate apartments on each level. The centres of the apartments are the living rooms of 20-25 square feet, which serve as community space. Each apartment of the groups has a room which is a kitchen and dining room, four or five bedrooms, a bathroom with a washbasin, shower, toilet and washing machine, and a separate room for the educators.

UASC get their lunch from the restaurant located in the area of the institution. The other meals are provided by the institution from the funding available. The monthly financial support for each child above the age of 14 is HUF 33,500 per person. There is also an additional HUF 14,800 of family allowance, which is given to them as pocket money. The standard catering allowance for Hungarian national minors is HUF 685 per person per day, which is meant to cover five meals a day. From this amount, lunch alone costs HUF 271 per person. From special funding it has applied for and won, the Hungarian Interchurch Aid adds HUF 181 per person per day to the money available to cover the lunch costs of unaccompanied minors, which means that their lunch is prepared for HUF 452 per day.<sup>9</sup>

Young people living in post-care groups support themselves; they arrange the shopping and cooking together. The monthly benefit of young people above the age of 18 is HUF 37,000 per person. This is supplemented by a family allowance of HUF 14,800 (as

<sup>9</sup> At the time of the on-site inspection (29 March 2012), the exchange rates were 1 EUR=HUF 293 and 1 USD=HUF 220.

pocket money) per person, which they receive until the end of the school year in the year when they turn 20.

The Children's Center staff pay particular attention to Islamic dietary rules both when preparing everyday meals and on religious holidays (in particular during Ramadan and in the period following Ramadan).

Apart from the rooms of the educators, the premises of the apartments are cleaned and kept in order by the children and those receiving post-care support. Caretakers help them as necessary. The size, layout and equipment/furnishings of the apartments used by foreigners are equivalent to those used by their Hungarian national peers. *Relating to the accommodation and support received by UASC and foreigners receiving post-care services, the investigation revealed no circumstance indicating any irregularity in connection with any fundamental right.*

According to the data made available to us, 17 members of the Children's Center staff work with young foreign nationals in six, eight or twelve-hour shifts, depending on their position. Groups of UASC have educators, supervisors and assistants. Each group is dealt with by a total of five staff members; the group receives 24-hour attention as the five staff members work in shifts.

Post-care groups have group leaders and supervisors to help the group members. Group leaders give permission to welcome visitors and authorise community events (such as celebrations within the group). Supervisors provide social presence; they tutor those who need it, they help in studying, in the preparation of written homework and in overcoming specific issues of socialization.

The staff members are child and youth protection supervisors, child protection assistants, social educators, Romologists, teachers of Romology and education, psychologists and teachers by profession. They obtained their jobs through job applications. Three of them were transferred to the Children's Center from the Bicske Accommodation Center; the rest of them had already been working for the Center before then. One employee even worked at the Center as a university student as part of a practical course and then became an educator by applying for the position.

The Children's Center has a community center building, i.e. a club. Those young people who do not own a laptop may browse the Internet on the computers in the community center. They can even speak with friends and relatives through the Internet as there is a webcam. The community center has its own prayer room where young people following the Muslim faith may pray together.

Those staff members of the Children's Center who work with children of foreign nationality typically speak English or German. However, they usually speak to unaccompanied children or young people receiving post-care support in Hungarian. The young people transferred from Bicske to the Children's Center could speak Hungarian at a certain level, which meant that there was no serious communication problem. The most frequently spoken foreign language by newly arrived children and young people is English. Those peers who have lived in Fót for a longer time and speak Hungarian better can help with communication whenever necessary. Educators make an effort to overcome communication problems. For instance, they try to learn (at a basic level) Pashto, Dari and other languages spoken by these young people.

The staff have not received any special preparatory training before the arrival of the young foreigners at the Children's Center. The institution started to arrange further training for them after the staff members had already started their new job. So far, this further training has covered the following topics: information about the asylum seekers' countries of origin; the legal background of the asylum procedure; the treatment of asylum seekers, especially those suffering from posttraumatic stress; a discussion of practical problems and experiences;

and cultural orientation training. The presentations were made by employees of the Asylum Association for Migrants (*Menedék Migránsokat Segítő Egyesület*), the Cordelia Foundation and the Office.

It was the impression of the investigators that the employees of the Children's Center like what they do; they are true professionals and they have a positive attitude when they come across a problem they have to solve. *Relating to the accommodation and board for UASC seeking asylum or recognised as refugees or beneficiaries of subsidiary protection, the investigation revealed no circumstance indicating any irregularity in connection with any fundamental right.*

#### **IV. Findings relating to the education of UASC seeking asylum or recognised as refugees or beneficiaries of subsidiary protection**

Under Article 28 of the UNCRC every child has right to the compulsory and free primary education. The states encourage the development of different forms of secondary education, including general and vocational education, and make them available and accessible to every child. Under paragraphs (1) and (2) of Article 10 of the Reception Directive, the Member States provide for the participation in the educational system to all child asylum seekers under the same conditions as valid for the nationals of the host Member State. Access to the educational system may be delayed for a maximum of three months upon submitting the application.

According to Section 6(1) of Act LXXIX of 1993 on Public Education (hereinafter: Public Education Act), schooling is compulsory for every child in Hungary as detailed in the Public Education Act. According to a definition in Section 110(1)(a) of the Public Education Act, schooling is compulsory for minors who seek asylum and for minors who have been granted asylum. According to Section 7(1)(a) of Minister of National Resources Decree 24/2011 (V. 18.) on the detailed rules of requesting support for certain special public education tasks, of the system of decision-making, of the payment of such support, of the settlement of accounts and of the control of such support, the entity funding the educational institute may apply for financial support regarding foreign citizens, within the scope of Section 110(1) of the Public Education Act, if they are of compulsory school age, are recognised as refugees or have a humanitarian residence permit and if they do not speak Hungarian as their mother tongue but are in a class where the language of teaching is Hungarian. The support only applies to full-time students and the maximum amount is HUF 140,000 per person per year.

According to the data from the inspection, the Children's Center staff usually succeed in placing the child in a primary or secondary educational institution after one month, i.e. practically by the time the preliminary examination phase of the asylum procedure finishes. This is the minimum time required by the UASC to complete their medical screenings, and more or less regain their strength, after their exhausting journey, to be able to walk the road from the Children's Center to the school and back alone.

Under Article 28 of UNCRC, the Member States encourage the development of different forms of secondary education, including general and vocational education, and make them available and accessible to every child. At the of the on-site inspection, of the UASC living in the Children's Center and the young people receiving post-care services, 32 attended the Than Károly Grammar School, Specialized Secondary School and Vocational School in Budapest, 5 studied at the ESÉLY Kövessi Erzsébet Vocational and Grammar School (*ESÉLY Kövessi Erzsébet Szakképző Iskola és Gimnázium*) and 1 went to the Semmelweis Ignác

Vocational School (*Semmelweis Ignác Szakiskola*). One of the young people attended the Madách Imre Vocational School (*Madách Imre Szakképző Iskola*) in Gödöllő.

With regard to the large number of foreign national children attending the Than Károly Grammar School, Specialized School and Vocational School (hereinafter: School) of those living in the Children's Center, the officials involved in the investigation carried out an on-site inspection at the School.

The School, founded in 1950, is currently financed by the Municipality of Budapest. The institution has 1043 full-time and 417 night school students with a total of 102 teachers. So far 40 teachers have attended multicultural training. However, quite a few teachers said that for successful teaching it would be important to gain more information about the country of origin of the students who have been granted asylum (in particular about the culture and religious customs of that country), and about the phases and content of the asylum procedure. Despite the demand, no such training has been organized so far.

The School started to work with students enjoying asylum in 2008 at the initiative of the Refugee Mission of the Reformed Church (*Református Menekültmisszió*), a non-governmental organization. In the first school year, they started off with a 10-member group. At the time of the on-site inspection, the School had 57 students who had been granted asylum (including young foreigners living in the Children's Center). More than four-fifths of the students were from Afghanistan; the rest were of Somalian or Iraqi nationality and two were Azerbaijanis.

The students living in Fót enroll in this school at the request of the Children's Center. Education is provided to children who have been granted asylum under the Minister of Education Directive published in the Education Gazette (*Oktatási Közlöny*, Volume XLVIII Issue 24) on the kindergarten and school education of foreign national children and students on the basis of an intercultural educational system.

New students first join an intensive language learning class and they study Hungarian as a foreign language 20 hours a week. Depending on the result of a Hungarian language skills exam at the end of the year and their knowledge in other subjects, they are assigned to a language course for further language training or join specialized, vocational or even grammar school courses in which they are taught in classes with Hungarian students and in Hungarian. If the students' language skills remain below the necessary level, the School keeps them in a language training class.

The School teaches the students enjoying asylum and attending a gap (catch-up) course in classes with a maximum of 15 students, in Hungarian and with Hungarian citizen peers who did not manage to complete the eighth grade by the age of 16. Students enjoying asylum and attending a gap course study Hungarian as a foreign language for 10 hours per week (instead of Hungarian Literature and Grammar classes, vocational training and vocational guidance classes, and the form master's class).

In the first two years of specialized school, the students are taught general education subjects. After two years of training, the students may apply for vocational training. Students who have been granted the right of asylum and attending such classes study Hungarian as a foreign language for 15 hours a week. The specialized course is a two-year course. After its general education phase, the students may apply for specialized training. In the School, students can learn the professions of waterworks operative and shop assistant. They may also choose any other institution that teaches different professions. According to past experience, young Somalian citizens generally choose plumbing as a profession while Afghans usually learn to become a car mechanic.

Students who speak Hungarian have been granted the right of asylum and attend a grammar school course study Hungarian as a foreign language 2 hours a week (in addition to English, German or French).

The School also educates adults who have been granted refugee status. Grammar school training is available as a part of adult education services. Foreigners participating in adult education are also taught Hungarian as a foreign language by staff members of the Refugee Mission of the Reformed Church. The School has a religious room for students who follow the Muslim faith; they can pray here several times a day whenever they need to. One of the students who have been granted the right of asylum is planning to make an “Islamic gate” for the prayer room. The School has already purchased the required wood material and has allowed the student to prepare the gate in the maintenance room with the School’s tools.

During the on-site inspection, we had the chance to talk to 4 students of Afghan citizenship enjoying asylum. All of them arrived at the Bicske Accommodation Center during 2010 or 2011 and spent about a year there. Three of them have been living in the Children’s Center for 7 months while the fourth has been staying there for one and a half years now. The latter has been a student at the School for two years. The rest of them enrolled in the School in December 2011; the School was chosen for them by the staff at the Children’s Center. Before their arrival, three of them did not attend any school in Afghanistan due to the civil war that has been going on for nearly twenty years. Only one of the four attended a Persian school for a short while.

The boy has been studying at the school for two years now. Next year, he will have to choose a profession to learn. He said his plan is to become a car mechanic or a hairdresser. He is in a class of 20 people, the majority of whom are Hungarians; there are three other foreigners. He gets free school supplies in Fót and in the School. The others also members of an integrated class; they are the only foreigners in their classes. They want to become car mechanics.

The interviewed students attend school in the afternoon; school is between 12:30 p.m. and 4:30 p.m. on weekdays. They have Hungarian language class every day but they also learn Biology, Math, History and Geography; they even have a Physical Education class. They had no conflict of any kind with their classmates, who help them regularly with their studies.

The students enjoying asylum also attend extra-curricular community activities organised by the School about once per month: for instance, they go to the cinema, visit museums or the Parliament building or go to summer camp. The students living in Fót usually have their meals in the Children’s Center; however, the school cafeteria also sells vegetarian and pork-free dishes. *According to the experiences of the site inspection, the young people having been granted the right of asylum seem to be enjoying school; no irregularities relating to any constitutional right concerning their education has been revealed by the investigation.*

After the on-site inspection of the Children’s Center, staff members of the Refugee Mission of the Reformed Church told the investigators that they take care of three students at the School who, despite being UASC when arriving to Hungary, were not taken to the Children’s Center and they are not eligible for post-care support either. They claimed that a sibling of one of the three students still lived in Fót and this sibling living in Fót gave half of the daily ration to the sibling in the School to keep the sibling from starving.

At the time of the on-site inspection, we wanted to talk to the students to whom the staff members of the Refugee Mission of the Reformed Church had referred, but two of them had left by then to an unknown destination, presumably abroad. *As we did not even have the chance to clarify whether the students staying at an unknown location approve of the procedure of the Commissioner for Fundamental Rights, we were not in the position to examine their case as the condition specified in Section 18(1) of the ACFR was not met.*

The third one is an Afghan citizen student receiving subsidiary protection. He was born in Varamin on 2 January 1992. He has been staying in Hungary for two and a half years. He spent a year as a UASC at the Bicske Accommodation Center. However, he had come of

age before the final decision in the asylum procedure was made; as a result, the Guardianship Agency did not provide him with post-care services and he had to leave the Accommodation Center. He has been studying at the school for two years; he is currently in a specialized school class. He would like to become a car mechanic, but he is planning to transfer to a vocational school class next year. He studies Chemistry, Physics, Math, History, Arts and Crafts, Music and English in addition to Hungarian (as a foreign language). He is a member of an integrated class; there is one more foreigner in his class. He speaks Hungarian well.

He participates in the school integration program of the Refugee Mission of the Reformed Church. It was the staff members of the Mission who had found him accommodation in the Kós Károly Dormitories (*Kós Károly Kollégium*), where he lives today. As the Kós Károly Dormitories close for the summer, he spent the summer vacation last year in the Reformed Church Dormitories (*Református Kollégium*). He has to buy his own school supplies. His current income is the family allowance (HUF 14,000 a month) and the HUF 7,500 pocket money he gets from the Refugee Mission of the Reformed Church. The Office pays for his monthly public transport ticket and accommodation in the dormitories. As he will only be eligible for the family allowance until the end of the school year in which he turns 20, he is worrying how he will cover his living and schooling costs in the future.

According to Section 18(5) of the ACFR, if a final administrative decision has been taken in the case, a petition may be filed with the Commissioner for Fundamental Rights within one year from the notification of the decision. *As the third student was notified of the administrative decision requiring him to leave the Accommodation Center over a year ago, it was not possible to investigate his case as the deadline terminating the right of investigation as specified in Section 18(5) of the ACFR has passed.*

## Summary

The most significant finding of my follow-up investigation is that my recommendations made in the report AJB 7120/2009 concerning both legislation and legal practice have mostly been implemented.

As a result of my efforts affecting legislation, Act CXXXXV of 2010 on the Amendment of Certain Migration Related Acts for Legal Harmonization Purposes supplemented Section 4(1) of the Child Protection Act and modified Section 72(1) of same Act to create the legal background for UASC staying in Hungary to receive from the domestic child protection services the same treatment that is received by children who stay in Hungary legally (as required by Article 22(1) of the UNCRC).

According to Section 93(2) of Government Decree 290/2010 (XII. 21.), on the amendment of migration-related Government Decrees in connection with Act XXXV of 2010, unaccompanied minors seeking recognition as a refugee must be placed in a child protection institution (and no longer in a refugee camp) as of 1 May 2011. It is a rule of key importance in Act CXXXV of 2010 that the refugee authority is required to select a child protection institution for the unaccompanied minor during the detailed asylum procedure.

As a result of a decision by the Ministry of National Resources, the Children's Center in Fót, a small town 20 km from Budapest, was selected as the "child protection institution" providing accommodation for UASC.

As a consequence of the statutory changes, between 21 June 2010 and 31 August 2011 all UASC and young adults receiving post-care support moved to the Children's Center from the Bicske Accommodation Center. This relocation means that these young foreigners now live in a child protection institution and receive the same support and education as their Hungarian peers. This significantly improved their chance of integration into Hungarian society and their fundamental rights were much better enforced.

During the investigation, it was discovered that progress had been made also in connection with the age assessment of people claiming to be unaccompanied and separated children and arriving in Hungary without identification documents. At the time of the AJB 7120/2009 investigation, the age assessment was carried out by the general practitioner and the pediatrician of Bicske “based on general impressions, inspection of the teeth and physical examination of the secondary sexual characteristics”. Now the practice is that age assessment is made by an independent forensic medical expert on the basis of tests (using the Greulich-Pyle method).

In my AJB 7120/2009 report, I objected to the fact that although it was the task of the guardian ad litem to represent the UASC in the asylum procedure, the same person could not act as a legal representative in other procedures (for instance in connection with medical interventions). It is an important step in the right direction that the Guardianship Agency now appoints a temporary guardian (a staff member of the Children’s Center who is a lawyer by profession) and this person can represent UASC in all official procedures (in addition to the asylum procedure). Unfortunately, the lawyer (temporary guardian) representing UASC in the asylum procedure has not received training on how to carry out the task of representation in the asylum procedure effectively.

The Guardianship Agency also appointed an employee of the Children’s Center (the head of the home for UASC) as the guardian of children who have been granted asylum.

My colleagues carrying out the on-site inspection talked to a few young people receiving post-care support who used to be UASC and whom they had met at the Bicske Accommodation Center during the AJB 7120/2009 investigation. They all confirmed that they enjoy their stay in the Children’s Center; their living circumstances are much better there than those the Bicske Accommodation Center could offer. Their most often mentioned complaint was that mutton and lamb are missing from their diet.

The accommodation and support the young foreign nationals living in the Children’s Center receive are equivalent to those provided by the Hungarian child protection services to their abandoned Hungarian citizen peers of the same age. *In the Center, it is a risk to the enforcement of the inhabitants’ and the staff members’ right to the highest possible physical and mental health, guaranteed by Article XX(1) of the Fundamental Law, that there is no quarantine room in the institution in which young people suffering from a contagious disease or parasites may be placed temporarily.*

During the investigation, both the staff of the Children’s Center and the Refugee Mission of the Reformed Church mentioned that the support and education received by those UASC who turn eighteen before the end of the asylum procedure (which procedure takes months and sometimes even half a year) are far from satisfactory. The same applies to those young people who have to move out from the Children’s Center due to an offence against discipline or a violation of the rules. As the cases I had learnt of as a result of the on-site inspections were not suitable for substantive examination, I will come back to the issues mentioned above in a future procedure when I have the necessary information.

In connection with the education of the inhabitants of the Children’s Center, I found no circumstance indicating any irregularity in connection with a fundamental right.

Both the teachers at the school and the staff members at the Children’s Center reported that almost all children and young adults receiving post-care support show some kind of posttraumatic symptom; such symptoms are particularly striking on newly arrived UASC. Symptoms range from unexplained and significant weight loss through chronic headaches to unexpected and uncontrollable rages. The educators noted that they all suffer from some form of sleep disturbance. Although the Children’s Center employs psychologists and development specialists, their work capacity is occupied by the inhabitants of the special children’s home, which means that neither UASC nor young adults receiving post-care support have access to

the necessary psychological help. *This constitutes an irregularity concerning their right to the highest possible physical and mental health guaranteed by Article XX(1) of the Fundamental Law.*

According to the teachers of both the Children's Center and the School, the situation is further aggravated by the fact that some children, after longer or shorter periods, start to trust the teachers and become more talkative. When this happens, they usually tell them about the traumas they have experienced. It often happens that, due to the emotional bond developed, the lack of information about the foreign children's country of origin and there being no appropriate supervision of these conversations, the teachers themselves are unable to cope with what they have heard. *This constitutes an irregularity concerning their right to the highest possible physical and mental health guaranteed by Article XX(1) of the Fundamental Law.*

## **Measures**

On the basis of Section 31(1) of the ACFR, I hereby request the Minister for Natural Resources to

- ensure that a quarantine room is built for those young people who live in the Károlyi István Children's Center but suffer from contagious diseases or parasites;
- arrange psychological support for unaccompanied and separated children and young adults receiving post-care support living in the Károlyi István Children's Center and arrange supervisory support for educators dealing with such young people;

On the basis of Section 31(1) of the ACFR, I hereby request the Director of the Office of Immigration and Nationality to

- organise country and asylum procedure information training for teachers dealing with UASC and young adults receiving post-care support.

Dated: Budapest, ..... April 2012

Prof. Dr Máté Szabó

Translation: Afford Fordító- és Tolmácsiroda Kft.  
(Courtesy by UNHCR Hungary Unit)

(No proofreading has been conducted!)