

Visit Report

**The Suðurnes Commissioner of Police
Detention in connection with border checks**

20-21 January and 13-14 February 2021

Summary

The Althingi Ombudsman visited the police cells in Suðurnes and the guard room at the Leifur Eiríksson Air Terminal on 20-21 January and 13-14 February 2021. The Ombudsman's examination concerning detention in connection with border checks was directed primarily at the legal framework for detention and the facilities provided to detainees.

Detention in connection with border checks is carried out with reference to the authorisation in the Foreign Nationals Act to refuse a foreign national entry into the country temporarily. One of the issues that the ombudsman considered specifically after the visit was the placement of persons detained for border checks in police cells. Following the visit, the Ombudsman sent a letter of inquiry to the Suðurnes Commissioner of Police requesting further information on this procedure, including whether it was based on any legal authority in addition to provisions of the Foreign Nationals Act and whether, in the estimation of the Commissioner of Police, this satisfied the requirements made of statutory provisions which restrict human rights. A copy of the letter was sent to the Minister of Justice for information.

The Commissioner of Police stated that the detention procedures were not based on authorisations other than the provisions of the Foreign National Act, but that the view was that police authorisations in this regard had a strong legal basis. However, it would be better for the legal authority to be clearer in cases where a foreigner was kept in a police cell due to a lack of facilities at the airport, and the Commissioner had repeatedly and for a long time pointed out that he did not consider the facilities of detainees in connection with border checks to be satisfactory.

The Ombudsman also received a letter from the Ministry of Justice on this occasion stating, among other things, that the Ministry considered it doubtful whether the provisions of the Foreign Nationals Act, upon which detentions in connection with border checks were based, could be considered a sufficiently clear basis for deprivation of liberty. In this regard, the Ministry intends to examine more closely the implementation and, in addition, to begin work on assessing possible options for constructing facilities for the placement of individuals at the border; however, the aim is to set up temporary facilities as soon as possible.

In this connection, the Ombudsman pointed out that, when onerous decisions such as a decision on deprivation of liberty are taken, efforts should always be made to arrange matters so that the least onerous remedy is chosen, if it serves the intended purpose. Furthermore, it has not been considered appropriate to place individuals in this situation in prisons. In light of the Ministry's response, apart from this there was no other discussion of the basis of detention in this report; however, it is pointed out that developments and progress in these matters will be monitored.

Foreign nationals detained for checks at the border are placed either in a transit area or waiting rooms in the airport terminal or in police cells at the police station on Hringbraut. In the report, the Ombudsman made recommendations to the Suðurnes Commissioner of Police concerning the situation and facilities in the transit area of the terminal and recommendations concerning the waiting rooms at the airport guard room, including with regard to sleeping facilities, outdoor activity, sanitary facilities and recreation. The Commissioner was also advised to review work procedures so that an assessment would be made on a case-by-case basis of the necessity of infringing on personal freedom. Regarding detention in police cells, the Ombudsman reiterates in his report that persons detained in connection with border checks have not been placed under arrest and that different criteria therefore apply to them than to arrested individuals and persons placed in remand custody in connection with suspicion of criminal conduct.

Individuals detained at the border may be agitated or in another type of condition requiring healthcare services. The Ombudsman recommends that the Suđurnes Commissioner of Police review current procedures with a view to assessing the condition of persons detained at the border prior to placing them in detention or shortly thereafter, and to determine in which cases the involvement of healthcare professionals is needed.

The Foreign Nationals Act contains a specific provision on the duty to provide guidance, which exceeds that made of authorities under the Public Administration Act. In this connection, the Ombudsman recommends that the Suđurnes Commissioner of Police ensure that persons detained for border checks receive guidance on their right to contact representatives of their home country and recognised humanitarian and human rights organisations as provided for by law.

The Ombudsman will continue to monitor the development of these issues, and requests that the Suđurnes Commissioner of Police provide an account of actions taken in response to the report by 1 March 2022.

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