



**DEPUTY COMMISSIONER FOR FUNDAMENTAL RIGHTS
OMBUDSMAN FOR THE RIGHTS OF NATIONAL MINORITIES**
NATIONAL HUMAN RIGHTS INSTITUTION

**General Comment No.1. of the Deputy-Commissioner for Minority Rights of Hungary on issues
related to the pre-boarding screening of international passengers at the airport**

(issued on 15th July 2016)

I. Introduction

1. The Deputy-Commissioner for Minority Rights of Hungary protects and promotes the rights of national minorities living in Hungary with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations ex-officio concerning the situation of a non-determinable group of people or the implementation of a particular fundamental right. The Act on the Rights of Nationalities defines national minorities as “all ethnic groups resident in Hungary for at least one century which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities”. The national minorities fulfilling these requirements are listed in the Appendix of the Act and namely are: Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian.

2. The mandate of the Deputy Commissioner for Minority Rights includes activities supporting the work of the Commissioner for Fundamental Rights of Hungary in the field of minority protection as well as taking individual actions. The Deputy Commissioner supports the work of the Commissioner by providing up-to-date information about the situation of national minorities and early warnings aimed at preventing human rights violations. The Deputy Commissioner takes part in the inquiries of the Commissioner and may propose to initiate investigations ex officio in relation to minority rights issues.

3. In her individual capacity, the Deputy Commissioner shares her experiences concerning the promotion, protection and enforcement of minority rights in Hungary with all the stakeholders as well as the wider public and draws attention to the potential violation of minority rights in case she identifies warning indicators pointing to the probable occurrence of such violations. Within this mandate, the Deputy Commissioner issues general comments in order to express her concerns in relation to the protection of minority rights and to provide standards, guidelines and best practices with the aim to reduce cases of human rights abuses as well as to prevent further human rights violations. Dissemination of the general comments to a wider audience is part of her international activities prescribed by law.

II. Background

4. According to some media reports and complaints lodged with the Office of the Commissioner for Fundamental Rights, in 2015 several Hungarian citizens (mainly families) belonging to the Roma minority could not depart for Canada from the Budapest Liszt Ferenc International Airport irrespective of the fact that they had valid travel documents and air tickets. The airline company denied the boarding to them as a result of the pre-boarding screening and questioning that was performed out of records, by officials of unknown affiliation and most of the times in front of fellow passengers which rendered the victims subject to public humiliation. They also complained about not having received proper information about compensation for denied boarding and the ways to file complaints. In addition to the Office of the Commissioner for Fundamental Rights, many of the victims also submitted complaints to the Hungarian Equal Treatment Authority (equality body) and sought legal advice from an NGO, the Legal Defence Bureau for National and Ethnic Minorities.

5. The Deputy Commissioner for the Protection of Minority Rights decided to prepare a general comment on issues related to the pre-boarding screening of international passengers at airports from a human rights perspective for several reasons. As the result of the investigation it has been revealed that several stakeholders concerned in this case fell outside of the mandate of the Deputy Commissioner but may be willing to accept recommendations in order to avoid human rights violations. Furthermore, the Deputy Commissioner is aware of similar cases of Hungarian victims occurred in the international airports of Vienna and Brussels, while the direct flight to Canada from Budapest has been relaunched this summer.

III. Concerns in relation to the protection of minority rights

6. The reason behind the pre-boarding passenger control practice introduced in several European airports is that if the passenger is turned back by the Canadian border control authority supervising immigration to Canada (Canadian Border Services Agency – CBSA) due to the lack of proper documentation or failure to fulfil the entry requirements, the airline concerned is obliged to arrange their transportation back to the country of origin and could be fined up to 3200 CAN \$ per passenger. The practice of the Canadian authorities induced the airline companies to try to screen out at the airports of departure those passengers whose entry to Canada would be probably refused by the CBSA.

7. The pre-boarding screening on the Budapest International Airport was performed by the BUD Security Ltd, a company providing security services and owned by Budapest Airport Plc, based on a service contract between them and the Canadian Air Transat airline company. The employees of the security company checked the documents of the passengers heading to Canada as well as interviewed them about their personal circumstances including questions related to their employment, financial background (income, real estates), family relations in Hungary and in Canada, purpose of travel and the financial resources allocated for the travel. If it was obvious that the passenger would fail to fulfil the entry requirements to Canada, the security officer recommended the airline company to deny the boarding to the passenger concerned. In case of any doubts, the security officer asked for clarifications from the representative of CBSA present on the spot and made their recommendations based on that. The decision on denied boarding in each case was made solely by the Canadian airline company.

8. The Canadian Air Transat airline, upon the request of the Deputy Commissioner, confirmed that according to the relevant Canadian laws they are only required to make sure of the passengers having valid and complete documentation needed to enter Canada, they are normally not required to actively investigate the intentions of passengers for travelling, their means of financial support while travelling or their risk for illegal migration. However, the airline company argued that the pre-boarding screening performed by their local partners (in this case the security company of the airport) and the representatives of the CBSA deemed necessary after several dozens of Hungarians applied for asylum upon arrival to Canada by a direct flight operated by them and another company in the summer of 2015. Relevant legal provisions were not referred at all.

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9. According to the complaints, the security officers did not introduce themselves neither claimed authorization to perform such screenings, besides, they did not inform the passengers about the purpose and the consequences of the questioning, e.g. the denial of boarding. Concerning the pre-boarding screening of the passengers performed by the security company based on the service contract with the Canadian airlines, it has been revealed that such contractual obligation which includes screening of passengers by the means of questioning and observation with the aim to prevent illegal immigration attempts totally lacks a legal background.

10. Consequently, in relation to the pre-boarding screenings of air passengers of Roma origin heading to Canada performed at the place of departure several human rights concerns have been raised: the potential violation of the right to fair procedure, the right to remedy and eventually the failure to respect human dignity as well as the principle of equal treatment.

IV. Standards, guidelines and best practice

11. First of all, rules of pre-boarding screening processes of air passengers should be clearly set out in the form of a written protocol and include safeguards which guarantee the right to fair procedure for everyone. The person performing the screening shall wear a name badge, introduce themselves and state their affiliation, furthermore, shall inform the passenger about the purpose, legal basis and the consequence of the procedure. All passengers travelling with the same flight shall be screened in accordance with the rules of the procedure and exactly the same way in all cases in order to avoid any allegation of discrimination. All circumstances of the screening and the people involved shall respect the human dignity of the passengers.

12. Then, in case of denied boarding, the passengers shall receive the decision as well as the information about the available remedies and compensation in written form, both in English and Hungarian language. The document shall include at least the name of the company as well as the employee performing the screening, the airline company concerned, the formal denial of boarding with reasoning based on facts and the legal background (e.g. Canadian laws on entry requirements), the available remedies in case of denied boarding and complaints mechanism concerning the performance of the screening procedure. Besides, the passenger rights, the basic rules to claim compensation and the designated national enforcement body under Regulation [EC] 261/2004 establishing common rules on compensation and

assistance to passengers in the event of denied boarding and of cancellation or long delay of flights shall be covered, too.

13. All the guidelines mentioned above are of crucial importance in pre-boarding screenings of certain groups of air passengers by the relevant authorities of the country of destination but performed at the place of departure. Irrespective of that the passengers travel from the territory of one country to another, from one jurisdiction to another, their human rights such as the right to fair procedure, the right to remedy and their human dignity shall be protected and respected by all stakeholders without discrimination on any ground.