Hungarian Helsinki Committee

GUIDANCE NOTE TO ASSIST FOREIGN DETAINEES WHO BECOME VICTIMS OF VIOLENCE IN DETENTION

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INTRODUCTION: THE BACKGROUND AND THE GOALS OF THE GUIDANCE NOTE

The Hungarian Helsinki Committee (the HHC) has been advocating for the rights of detainees since decades. The HHC has also paid numerous monitoring visits in places of detention and published monitoring reports after the visits, reports which were also commented by the authorities before their publication. The HHC has also represented detainees before Hungarian authorities and the European Court of Human Rights who have claimed that they have been ill-treated during detention. One of the most serious human rights violation in detention is when a detainee is ill-treated, and the ill-treament is even more serious if it is committed by an official, or if it is a result of the omission of officials.

Foreign detainees form an even more vulnerable group of detainees in the population of all detainees. Psychiatric research showed that the sources of stress (amongst other factors) are: uncertainty, lack of information, lack of control and the lack of opportunity to express oneself. These are exactly those factors which negatively affect all detainees, but especially foreign detainees.

The present guidance note is produced as part of the project "Access to Justice for Victims of Violent Crime Suffered in Detention" co-financed by the EU Justice Programme and coordinated by Fair Trials.[1] The guidance note is based on the background research, the answers of the authorities to the freedom of information requests of the HHC, interviews conducted with attorneys, staff of non-governmental organisations, staff of the National Preventive Mechanism, an expert roundtable and on the conclusions of an international conference.

The focus of the project – and the present guidance note – is the access to justice of foreign nationals ill-treated in detention, and the Hungarian implementation of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereinafter: Directive). The conclusions were drawn after studying four types of detention in the Hungarian context: 1) pre-trial detention; 2) asylum seekers detained in asylum detention centres; 3) foreigners detained in alien policing detention centres (deportation centres); 4) foreigners detained in transit zones during their asylum procedures and their alien policing procedures.

The rights and obligations listed in the Directive are not only applicable to foreign detainees, and to people becoming victims of crimes during detention. Therefore we recommend this guidance note to all those who want to know the rights of victims of any crime.

In the present guidance note we have examined six crucial elements of the Directive: 1) the right to information; 2) the right to participate in criminal procedures; 3) the right to en effective remedy; 4) the right to support services; 5) the right to protection; 6) the obligation of the state to train practitioners. The present guidance note is broken down to chapters based on the above six issues. Each chapter starts with the most relevant articles of the Directive, followed by the general Hungarian context of the specific issue, the relevant case law of the European Court of Human Rights and listing the problems and the recommendations regarding the issues.

We recommend this guidance note to all those who get in touch with detainees in any way, and who want to ensure that the rights of detainees enshrinred in the Directive are ensured.

[1] https://www.helsinki.hu/en/victims-of-violent-crimes-in-detention-vvcd/

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I. THE RIGHT TO INFORMATION

I.1. The relevant rules of the Directive

Article 3

Right to understand and to be understood

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

I.2. The Hungarian context

I.2.1. General context

According to the Hungarian Prison Service Headquarters, detainees' rights to information in their native language or in a language they understand is ensured.

The right to information covers the right to get to know the evidence the authorities collected during the investigation. The right to information covers the right to have an interpreter when examined by a doctor.

According to the Directive, the right to information covers the right of the victim to get to know the sanctions used against suspects. Practice however shows that ill-treated detainees do not always get information about the sanctions imposed on the suspected offender. Furthermore, the National Directorate-General for Alien Policing (hereinafter: NDGAP) – which is the responsible authority in asylum and alien policing cases – does not provide interpretation during medical examinations if a detainee complains of ill-treatment in the different types of immigration detention (in transit zones, in alien policing detention centres and in asylum detention centers).

"According to the law, state victim support should provide printed leaflets to the police who are then obliged to hand them to victims. In reality, leaflets are not available, significantly limiting victims in their right to receive information.

Even those victims who seek information on victim support from the internet are not in a better position: information on victim support is not easily available and it is next to impossible to find relevant and updated information through a simple web search."[2]

In practice many times doctors do not properly record the bruises of the victims they suffered after being ill-treated. In many cases the doctor only recorded the invisible injuries and the state authorities were consequently arguing later on during the investigations that these invisible injuries do not substantiate that somebody was ill-treated. According to victims, even if they had visible injuries, these were rarely recorded by the doctors. This seriously hampers the investigations.

Another problem which specifically hinders the access to the right to information in both pre-trial and immigration detention is that professional and independent NGOs are not let in these prisons and detention centres. Prior to summer 2017, the HHC used to pay monitoring visits in these detention centres where it provided information sessions to potential victims as well. The access of other crucial NGOs e.g. Menedék Association providing social assistance – and information to prosecutors about the ill-treatment of detainees – and the Cordelia Foundation providing psychological help has been curtailed since 2018. Such services were also essential in decreasing the level of stress in detainees. Not only the independent NGOs are not let in, but the information leaflets written by them are also not shared by the authorities with the detainees any more.

Increasing the time slot detainees in immigration detention can spend daily using internet would also better ensure the right to information of detainees. Detainees usually only get the chance to use internet for 60 minutes per day (or less, depending on how many detainees are detained during a certain period), and they naturally prioritise spending this time on informing their family members and loved ones about their situation. If they had more time though, they would get the opportunity to read or watch online materials explaining their rights as well.

The right to information is also hindered by the written information provided to the detainees. Even though the information material about the rights and obligations of the detainees in pre-trial detention is available in 24 languages, there were complaints that this is not easily understandable. Websites still contain information which are already outdated, making victims and everybody else confused.

[2] https://victimsupport.eu/activeapp/wp-content/files_mf/1564677240VOCIARE_National_Report_Hungary_interactive.pdf page 80.

I.2.2. The specific situation of people detained during their asylum and alien policing procedures

In all three types of immigration detention, if a victim is taken to a doctor, not only the victim is escorted by police who then stay in the doctor's room, but interpretation is generally not provided during these medical examinations. This leads to the fact that victims are not able to share with the doctor where exactly they feel pain after being ill-treated, and they are also not able to understand what the doctor tells them, or asks them. They are also not able to understand what the doctor writes in the medical documents, because these documents are only issued in Hungarian.

When people get detained in their asylum and alien policing procedures, they very often feel extreme stress. Those asylum seekers who are detained in the transit zones usually spend many months if not years in Serbia before entering the transit zones. They need time to handle the trauma caused by their detention, and they are usually not in a mental state during the very first day of their detention during which they could pay enough attention to the information provided to them orally. Detainees many times try to pick up information later on from other detainees, but this necessarily results in the spreading of rumours and distorted information, which then results in the rise of level of tension. Rising tention then can result in violence.

I.3. Recommendations

Problems	Recommendations
The Hungarian authorities should not hinder NGOs from accessing places of detention and providing crucial services. Authorities do not allow NGOs to distribute information leaflets written to detainees.	The Hungarian authorities should let the professional and independent NGOs have access to the detention centres so that detainees have better access to information. The Hungarian authorities should share the information materials written by NGOs with the detainees.
Detainees in alien policing detention and in asylum detention centres can only spend a very limited time with using internet.	Authorities should either allow detainees to spend more time with using internet daily, or should allow the detainees in alien policing and in asylum detention centres to keep their cellphones (just as asylum seekers detained in the transit zones are allowed to keep their cellphones with them).
The prosecution officers monitoring the legality of the detention are usually not aware of how poorly the right to information of detainees is ensured.	• The prosecution officers monitoring the legality of the detention should request information from the authorities executing detention on how they ensure the provision of the right to information. • The prosecution officers monitoring the legality of the detention should interview detainees every time they pay a monitoring visit in a detention centre, and ask the detainees how much they know about their rights and how much they understand their rights.

The quality and the quantity of the information provided is not sufficient enough for most of the detainees.	• The authorities should provide information to detainees via audiovisual material so that those can also understand their rights and obligations who are illiterate and also those who can read but have difficulties understanding more complicated texts. • The language of the information provided in writing should be made easier to understand for detainees. • To enable more victims to receive information on victim support, close cooperation between the local victim support and the local police forces is essential.[3]
Interpretation is not provided during many procedural measures, especially not during medical examinations.	Authorities should always provide interpretation during medical examinations. Cross-interpretation involving other detainees should be avoided as a rule since in many cases detainees do not want to speak about their complaints in front of other detainees.
Authorities typically flood freshly detained people with information. However it takes time for most detainees to digest the fact that they became detained and to be able to understand the information provided to them.	Information orally should not only be given to people in the different types of immigration detention on the very first day of their detention since they are usually shocked about the fact that they got detained and they typically cannot pay enough attention to what is told to them. Information should be given to the freshly detained more times after they have been detained.

II. THE RIGHT TO PARTICIPATE IN CRIMINAL PROCEEDINGS

II.1. The relevant rules of the Directive

Article 10

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

Article 11

Rights in the event of a decision not to prosecute

[3] https://victimsupport.eu/activeapp/wp-content/files_mf/1564677240VOCIARE_National_Report_Hungary_interactive.pdf

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

Article 17

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:

(a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;

2. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

II.2. The Hungarian context

Based on article 10 of the Directive, the right to take part in criminal proceedings also entails the right to provide evidence, and the state's obligation to assess the evidence. If the victim or her representative provides evidence or initiates that the authorities conduct a specific investigative measure, the investigating authorities are either obliged to comply with these requests and assess the provided evidence or if they wish not to comply with them, they are obliged to give reasons why they do not comply with them. However, practice shows that even though Hungarian authorities should ex officio assess all forms of evidence which might be relevant in a case (e.g. identity parades, confrontations between victim and suspects or witnesses and suspects), the authorities very often do not even feel obliged to conduct those sources of potential evidence which are specifically requested by the victim and her attorneys. This naturally results in the authorities not being able to conclude that ill-treatment took place.

It is also not without precedent that after a foreigner complained of ill-treatment, he was deported from Hungary and was therefore unable to take part in the criminal proceedings, which then did not result in finding those responsible for the ill-treatment claimed by the victim.

The right to participate in the criminal proceeding is seriously violated also when police remain present in the room where a doctor conducts the medical examination of the detainee who claims she has been

ill-treated. The violation is even more serious if the specific policeman/policewoman remains present in the doctor's room who is claimed by the victim to have committed the ill-treatment.

II.3. Recommendations

Problems	Recommendations
Many times police is present in the examination rooms where doctors examine ill-treated detainees.	Police should not be present in the doctor's room during medical examinations. If at all needed, they should wait outside of the doctor's room.
Many times authorities do not take into consideration evidence provided or investigative measures initiated by the victim or her representative.	Investigating authorities should comply with the requests of the victim or the representative. If they do not comply, they should provide reasons in writing thereof.

II.4. The relevant case-law of the European Court of Human Rights

- Based on the ECtHR's jurisprudence regarding the obligation to conduct an adequate investigation, authorities must make sure to obtain:
    - Victim's testimonies
    - Suspect's testimonies (Satik and Others v Turkey[4])
    - Forensic evidence (Boicenco v Moldova[5])
    - Medical evidence, autopsy
    - Authorities shall take into consideration any pattern of violence (e.g. if a detainee complains that he has been ill-treated while he was handcuffed to a radiator, authorities should take into consideration any other similar allegation, or monitoring reports if previous reports already mention such a practice).
    - Credibility of state agents: conflicting statements can undermine the credibility of state agents.
    - Witness testimonies, including eyewitnesses
    - Face-to-face confrontation of witnesses (Bouyid v Belgium[6] [GC], 2015 §§ 124-134)
    - Interviewing doctors who examined the injured (Bouyid v Belgium [GC], 2015 §§ 124-134)

[4] Number of application: 31866/96, date of judgement: 10 October 2000 http://echr.ketse.com/doc/31866.96-en-20001010/view/
[5] Number of application: 41088/05, date of judgement: 11 July 2006 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-76295%22]}
[6] Number of application: 23380/09, date of judgement: 28 September 2015 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-157670%22]}

According to recent ECtHR jurisprudence, the state cannot cease investigating by referring to the fact that a detainee signed a waiver. In Csonka v. Hungary[7] (2019), the Court concluded:

"The fact that the applicant signed a waiver before his release carries little weight, since this happened while the applicant was still at the police station, in all likelihood under the influence of the preceding situation and in the presence of the officers who had allegedly ill-treated him."

Victims and their attorneys should refer to ECtHR jurisprudence, according to which investigation must be independent in order to achieve that the harm is effectively remedied:

- Not only a lack of hierarchical or institutional connection but also a **practical independence** (Armani da Silva v. UK[8], 2016, [GC], §232)
- **Omissions** can also lead the Court to state that investigation was not independent: the failure to explore certain obvious and necessary lines of inquiry (Rupa v Romania[9], 2008)
- **Impartiality:** not accepting only state's version (Mustafa Tunç and Fecire Tunç v. Turkey[10], 2015, [GC], § 223)

Authorities should not argue that since the victim is not in the country any more, she cannot be heard but they should gather evidence fast if incident is recent (Gürtekin and Others v. Cyprus[11] § 21).

The investigating authorities should resolve the conflicting testimonies (Rantsev v. Cyprus and Russia[12] §236).

If victim was not heard contrary to Article 10 of the 2012 Directive, the victim and attorneys should refer to Kovalev v. Russia[13] (para 35, 37) where the ECtHR concluded that personal experience of the victim requires the state to provide access to the victim for a hearing if ill-treated by police.

If investigation is not launched ex officio, victims and attorneys should refer to Slimani v. France[14] § 47, Al-Skeini and Others v. UK[15], 2011 [GC], § 165, where the Court concluded that states shall not wait for relatives to file a complaint, but should proceed with the investigation on their own accord.

[7] Number of application: 48455/14, date of judgement: 16 April 2019 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192465%22]}
[8] Number of application: 5878/08, date of judgement: 30 March 2016 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-161975%22]}
[9] Number of application: 58478/00, date of judgement: 16 December 2008 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22003-2584109-2798869%22]}
[10] Number of application: 24014/05, date of judgement: 14 April 2015 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-154007%22]}
[11] Number of application: 60441/13, date of judgement: 11 March 2014 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-142369%22]}
[12] Number of application: 25965/04, date of judgement: 7 January 2010 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-96549%22]}
[13] Number of application: 78145/01, date of judgement: 12 November 2007 http://echr.ketse.com/doc/78145.01-en-20070510/view/
[14] Number of application: 57671/00, date of judgement: 24 July 2004 https://www.refworld.org/cases,ECHR,42d264864.html
[15] Number of application: 55721/07, date of judgement: 7 July 2011 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105606%22]}

Refer to Mezhiyeva v. Russia[16], if investigation is not made available to the victim's relatives. Here, the Court stated that the investigation must be **made accessible to the victim's relatives. The relatives also have:**

- **the right to be informed** of significant developments
- **right to make photocopies** of important documents
- **right to study witness statements** to be able to react on them

Important to have in mind that (therefore attorneys are recommended to litigate further these issues):

- The states do not have an obligation to search for a relative.
- Not all documents have to be disclosed, but right of defence cannot be restricted.

III. THE RIGHT TO AN EFFECTIVE REMEDY AND THE OBLIGATION OF THE STATE TO APPLY THE ADEQUATE SANCTION

III.1. The relevant rules of the Directive

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

III.2. The Hungarian context

The right to an effective remedy of the detainees suffering ill-treatment during their detention is generally not ensured in Hungary. This is especially true for those detainees who claim that they have been ill-treated by an official.

[16] Number of application: 44297/06, date of judgement: 16 April 2015 https://hudoc.echr.coe.int/eng#{"itemid":["001-153801"]}

The Hungarian authorities still claim that victims should exhaust the rules related to substitute private prosecution laid down in Chapter 105 of the Act 90 of 2017 on the Code of Criminal Procedure (hereinafter: CCP). Practice and statistics show however that the substitute private prosecution cannot be considered an effective remedy in ill-treatment cases in Hungary, and consequently should not be exhausted.

III.3. The relevant case-law of the European Court of Human Rights

The Hungarian Government considers the substitute private prosecution to be an effective remedy in ill-treatment cases. However, the ECtHR most recently again reiterated in Csonka v. Hungary[17] its former position that it is not an effective remedy, therefore it should not be exhausted domestically. This means that if a victim has not continued the criminal procedure acting as a substitute private prosecutor after the investigation has been closed by the prosecution, the victim can still apply to the ECtHR. In Armani da Silva v. UK[18] the ECtHR took into consideration statistics provided by the applicant showing how ineffective investigating authorities in the UK are. Such statistics can also be referred to by Hungarian applicants before the ECtHR after they obtained this public data through freedom of information requests. If such requests were not complied with by the state authorities, the applicants before the ECtHR should also refer to the fact that the state authorities unlawfully deined providing such data (if applicable). Even the omission of the authorities can serve as important evidence in a case and thereby the applicant can also show the ECtHR that she acted with due diligence.

Article 301 of Act 100 of 2012 on the Hungarian Penal Code contains the following whistle-blower legislation:

„The penalty may be reduced without limitation if the perpetrator unveils the circumstances of the criminal offense defined in Subsection (2) to the authorities before the indictment."

If authorities want to stop investigation or punishing those responsible due to abusing whistle-blower legislation, victims and attorneys should refer to Paul and Audey Edwards v. UK[19], where the ECtHR concluded that if witnesses are not heard because the accused pleads guilty, there might be a violation of Articles 2 or 3. It was impossible to examine the practice of the above mentioned whistle-blower legislation in the frame of the present project because of it has only been introduced recently. However, we can already suppose that this provision will not be applied many times because practice shows that officials suspected of ill-treatment usually deny the allegations.

According to the ECtHR, an action leading only to an award of damages does not meet the standards of the ECHR. If there is a serious enough allegation of ill-treatment, the state authorities are obliged to attempt investigating what has happened by measures which are capable of establishing the truth and finding and sanctioning those responsible.

In some cases it is never too late to apply to the ECtHR. Victims and their attorneys should monitor the execution of domestic judgements against offenders, and if sanctions or their execution are not appropriate, referring to the relevant ECtHR jurisprudence is advisable:

- **Manifest disproportion** between the gravity of the act and the results obtained at domestic level: violation of Articles 2 or 3 (Öneryildiz v Turkey[20], [GC], § 325)

[17] Number of application: 48455/14, date of judgement: 2019. április 16. Az ítélet angolul itt olvasható: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192465%22]}
[18] Number of application: 5878/08, date of judgement: 2016. március 30. Az ítélet angolul itt olvasható: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-161975%22]}
[19] Number of application: 46477/99, date of judgement: 2002. március 14. Az ítélet angolul itt olvasható: https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-514203-515601%22]}
[20] Number of application: 48939/99, date of judgement: 2004. november 30. Az ítélet angolul itt olvasható: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-67614%22]}

- **Suspension of execution** of convicted policemen's prison sentences is in breach of Art. 3: virtual impunity: Ali and Ayse Duran v Turkey[21]
- If released **too early** (Enukidze and Girgvliani v. Georgia[22], §§ 269 and 275)
- **Unjustified delays** of prison sentences (Kitanovska Stanojkovic and Others v. the former Yugoslav Republic of Macedonia[23], 2016 § 33)

IV. RIGHT TO SUPPORT SERVICES

IV.1. The relevant rules of the Directive

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(b) information about or direct referral to any relevant specialist support services in place;

(c) emotional and, where available, psychological support;

(d) advice relating to financial and practical issues arising from the crime;

[21] Number of application: 42942/02, az ítélet kelte: 2008. április 8.
[22] Number of application: 25091/07, date of judgement: 2011. április 26. Az ítélet angolul itt olvasható: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104636%22]}
[23] Number of application: 2319/14, date of judgement: 2016. október 13.

(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;

(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

IV. 2. The Hungarian context

IV.2.1. General problems of the victim support services

According to a fresh study conducted by Victim Support Europe, the existing Hungarian non-governmental victim support organisations would be able to provide the necessary services, but in the absence of appropriate transparent funding schemes they are struggling for survival. [24]

The study further found, that: "It has been noted that victims are reluctant to approach state support services from the outset so as not be seen using social services. Also, it appears that, in the state support system, there is pressure on victims to report a crime in order to receive associated services."[25] Consequently, Article 8 (5) of the 2012 Directive – according to which the provision of victim support services should not be dependent on a victim making a formal complaint – is not respected in practice. The principle of providing support first is crucial since many times victims only open up to a trusted person and they need time to consider making a formal complaint.

As the study continues: "The structure and the work practices of the state victim support, their facilities as well as the qualification and workload of the staff is below satisfactory. (…) The offices used are inappropriate for receiving victims; equipped for office tasks rather than counselling. Since victim support is integrated into the Guardianship Office, victims are kept from seeking help, because they are afraid of "going to the social services". As well as victim support, the staff have other duties (most are required to additionally or mainly provide legal aid services), therefore they lack time and are not encouraged by their superiors to improve client numbers. One might even say that, professionally, they could not handle a higher number of victims."[26]

IV.2.2. Difficulties faced by detained victims in accessing support services

The information leaflet about the rights and obligations of the detainees does not contain any information about which support services are available for victims of ill-treatment in pre-trial or in immigration detention.

Victims who do not have a legal right to stay in Hungary (e.g. detainees in alien policing detention centres) cannot access support services according to the national legislation. This is not in line with the

[24] https://victimsupport.eu/activeapp/wp-content/files_mf/1564677240VOCIARE_National_Report_Hungary_interactive.pdf

[25] https://victimsupport.eu/activeapp/wp-content/files_mf/1564677240VOCIARE_National_Report_Hungary_interactive.pdf

[26] https://victimsupport.eu/activeapp/wp-content/files_mf/1564677240VOCIARE_National_Report_Hungary_interactive.pdf

Directive. The legal aid service also limits its services to those detainees who have a legal right to stay in Hungary and according to them those foreign detainees who have been expelled (but not yet deported) from Hungary and who are serving their prison sentences do not have access to services.

There can be practical problems if a foreigner detainee wants to access the victim's support services. There are only two ways they can be accessed: either personally – which the detainee can only do once released – and by telephone. It is unlikely that the operators taking phone calls would speak even English let alone other languages foreign detainees typically speak. The phone calls made by detainees in pre-trial detention are furthermore overheard by the prison staff which results in a chilling effect as detainees are unlikely to openly speak about their ill-treatment if they allege that the offender is an official.

The only assistance, which is accessible in penitentiary institutions are psychologists, however they are low in numbers and are overburdened due to the large number of detainees. Since psychologists are employed by the authorities they do not feel completely free to write down anything they professionally consider relevant about the treatment of detainees in case they complain that they have been ill-treated.

In pre-trial detention it can also be a problem that the detainee is frequently transferred to another detention facility, and hence has to start again building all her connections that she previously built up with detention staff. In case the detainee was ill-treated and is in need of support services, frequent transfers undermine the opportunity for healing.

It is crucial to know that based on Article 8 (1) and (3) not only victims, but their family members are also entitled to support services. This is not respected in practice. Support provided to family members of detained victims is crucial however, because family members can also be severly traumatised by the fact that their beloved relative has been ill-treated (or even killed). Family members are also in a position to visit and support their loved ones, so if family members are supported by professional NGOs or state state support services, they are also more able to support their detained family member who became a victim. Furthermore, even if the state prohibits NGOs to provide support services directly to victims while they are detained, the state does not have means to prohibit the provision of support services to the family members of victims.

IV.2.3. The specific context of issues related to detention during asylum and alien policing procedures

People detained during their asylum or alien polcing procedures – if they arrived in Hungary with their family members – are usually detained in the same cell or container together with their family members. It is not unusual that family members let their frustration out by being aggressive towards their own family members. This is the case even more so if the conditions of the detention are violating the prohibition of inhuman and degrading treatment[27] and if the detainees do not know why they are detained and until when they are detained (e.g. in the transit zones). Women or younger siblings can easily become victims of domestic violence while being detained. If they become victims of domestic violence they feel they need to choose between two bad options: 1) endure the violence in order not to cause any problems in the family's asylum or alien policing procedure, or 2) report the violence and risk that the violent family member is prosecuted in a criminal procedure and rejected in the asylum procedure or deported in the alien policing procedure.

There are also professional NGOs which have been providing psycho-social treatment to foreigners suffering from previous traumas. Authorities systematically prevent the provision of such independent and professional services by not allowing the experienced psychiatrists and psychologists contracted by

27 https://www.helsinki.hu/en/hungary-continues-to-starve-detainees-in-the-transit-zones/ The Hungarian authorities have deined the provision of food from 27 adult foreigners who were detained during their asylum or alien policing procedures in the transit zones. This not only affected extremly negatively their own physical and mental health but in case of detainees with family members, it also negatively affected the whole family's mental state.

NGOs – and the professional interpreters they are working with – to enter the detention facilities where asylum seekers are detained, many of whom have been tortured in their countries of origin.

What solutions could be recommended in a system where even social workers employed by the authorities in the transit zones are not encouraged to be friendly with detained asylum seekers?

IV.3. Recommendations

Problems	Recommendations
Authorities do not let non-governmental organisations access placed of detention, and hinder their ability to provide adequate support services to victims of violence.	Authorities should let professional NGOs access places of detention which are capable of providing adequate support services to victims of violence, including victims to domestic violence. Detainees shall get information on what kind of support services they can access in case they become victims of violence.
The authorities make the provision of state support services dependant on whether the victim has made a formal complaint or not.	If victim informs any detention staff or authority that she/he has become a victim of a crime, the victim should immediately get access to victim support services regardless of whether the victim decides to make a formal complaint or not.
Non-governmental organisations with experience in support provided to victims of violence and traumas have limited opportunities to apply for funds.	Non-governmental organisations should be given more opportunities by the European Union to access funds which are independent from the national governments. These NGOs should get more opportunities to provide help to family members of victims.
Authorities transfer detainees in pre-trial detention too often – thereby disrupting the continuity of already ongoing treatments of victims with their specific psychogolist and doctor.	Once a detainee has been ill-treated and is in need of victim support services, the detainee shall only be transferred to another detention facility if the transfer is in her interest. The provision of already ongoing support services should as a principle not be discontinued and should be provided by the same professionals in order to ensure the maintenance of trust between the victim and the service provider.
Accordingo to the Hungarian legislation people who do not have a legal right to stay in Hungary cannot access support services.	The amendment of the Hungarian law is needed in order to let those victims access support services who do not have a legal right to stay in Hungary.
Detained victims of domestic violence do not get adequate support either from state authorities or from NGOs (since the latter are not even let by authorities access places of detention and victims).	Detention staff in immigration detention should not only talk to the head of the family (who is typically the father), but should talk (or play with children) separately with all the family members who are old enough to talk. This way the victims of domestic violence will be more able to make a decision on what support to ask for.

IV.4. The relevant case-law of the European Court of Human Rights

If a detained victim only received assistance from cellmates, victims and attorneys should refer to the case of Topekhin v. Russia (§ 85) in which the ECtHR concluded that it is not tolerated that states leave care to the detainee's fellow inmates.

V. RIGHT TO PROTECTION

V.1. The relevant rules of the Directive

Article 18

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 19

Right to avoid contact between victim and offender

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

2. Member States shall ensure that new court premises have separate waiting areas for victims.

Article 20

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

(a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;

(b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;

(c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;

(d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings

Article 21

Right to protection of privacy

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into

account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

(a) the personal characteristics of the victim;

(b) the type or nature of the crime; and

(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints

make this impossible, or where there is a an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

(a) interviews with the victim being carried out in premises designed or adapted for that purpose;

(b) interviews with the victim being carried out by or through professionals trained for that purpose;

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

(a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;

(b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;

(c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and

(d) measures allowing a hearing to take place without the presence of the public.

V.2. The Hungarian context

V.2.1. General context

According to the National Police Headquarters (hereinafter: NPH) if a detainee is ill-treated, the governor of the detention centre immediately orders steps to ensure that those involved are separated and that the case is examined. Furthermore, the governor immediately reports the case to the Central Investigating Prosecution if it can be suspected that a crime of ill-treatment in an official procedure has been committed.

The governor also initiates the transfer of the ill-treated detainee to another detention facility, and this is decided by the Head of the Border Protection Department of the National Police Headquarters.

According to the Hungarian Prison Service Headquarters, they pay special attention to the vulnerable detainees and those in need of special treatment. While that may be true for individual cases, if a detainee becomes vulnerable due to the fact that she was ill-treated by an official and reported this crime, the victim rarely gets the protection she needs. A detainee even alleged that in his new prison where he was transferred to after being ill-treated in his former penitentiary institution, as a revenge, he was ill-treated by a guard because the guard knew that the victim reported the ill-treatment committed against him by another guard in the previous prioson. Other detainees have complained that the detention staff placed them in "cannibal cells" where other detainees ill-treated them, and the detainees had the impression that their ill-treatment was encouraged by the detention staff.

Not only victims can face problems while trying to access their right to protection, but their family members can also be at risk if the detained victim makes a complaint because if the offender's family members get to know about the complaint, they can intimidate, retaliate or subject the victim's family members to psychological harm or even to physical atrocities.

There were several cases when detainees in pre-trial detention got ill-treated, raped or even killed by other detainees due to the fact that the detention staff did not pay enough attention to what is happening inside the cells. This is partly due to the fact that many staff left their jobs and it is extremely hard to recruit competent new detention officials.

According to our view, a detainee who is ill-treated by an official during her detention will necessarily meet the criteria for having specific protection needs set out in Article 22 of the Directive. This is the case because if an official ill-treats a detainee, the practice shows that detainees usually not only are unable to access their rights set out in the Directive, but they can even become victims of further ill-treatment or other human rights violations in case they complain to the authorities.

V.2.2. The specific context of those detained during their asylum and alien policing procedures

Due to the extremely restricted legislation on asylum and the fact that the Hungarian asylum system lacks an adequate vulnerability assessment mechanism, the most vulnerable asylum seekers are also placed in detention in the transit zones. According to the present legislation, there is a "state of emergency due to mass immigration" based on which all the asylum seekers are kept detained during the whole course of their asylum procedures with the exception of unaccompanied minors between the age of 0 and 14. People whose asylum procedures have been rejected (many times unlawfully) are also kept detained in the transit zones during their alien policing procedures.

Families detained during their asylum or alien policing procedures are placed in the same cells (in asylum and alien policing detention centres) or containers (in the transit zones). The cases of adult siblings and adult children detained with their parents, it can happen that different judges are deciding about the cases of the parents and the adult children, or the adult siblings. It even occurred that a female adult sister was left alone in the transit zone after her brothers she previously arrived with were released by another judge. She was afraid that she becomes a victim of sexual and gender based violence because she was alone in the sector where other families including adult men were also detained. The preambles (5) and (6) of the Directive specifically mentions the importance of prevention of violence committed against women. Therefore, it is of upmost importance that authorities do not leave women in situations in which they would need to choose between being detained completely alone in a whole sector, or remain in a sector with others where they feel threatened.

V.3. Recommendations

Problems	Recommendations
The right to protection of detainees is usually not ensured due to the fact that there are not enough detention officials who could prevent violence.	Stakeholders should implement legislation and policies which will result in more detention staff being recruited, less pressure, higher salaries and the improvement of the working conditions and environment.
The authorities usually do not take into consideration the opinion and the interests of the victim.	The authorities should not meet their obligation to protect victims by placing them alone in an entire sector against their will. The right to protection of detainees if they are victims of a crime should cover that the victims are consulted about what form of protection should be provided to them. If they agree to solitary confinement, this should also be allowed, but detainees should not be forced to choose between two bad options.

V.4. The relevant case-law of the European Court of Human Rights

If states do not meet their obligations to provide adequate support to the vulnerable detainees, victims and attorneys should refer to the case of Dybeku v. Albania[28] in which the ECtHR held that certain prisoners require a place of detention tailored to their needs, e.g. mentally disabled, physically disabled, persons with serious physical illness, the elderly and drug addicts.

When litigating cases of vulnerable victims, the case of O.M. v. Hungary[29] should be referred to. In this case the ECtHR stated that gay asylum seekers are more vulnerable than the already vulnerable population of detained asylum seekers, therefore more vulnerable people should not be detained in the first place. Consequently, the Court found a violation of Article 5 of the ECHR in O.M.

If authorities fail to meet their obligations to protect a detainee, in case the detainee faces irreparable harm (e.g. further ill-treatment) victims and their attorneys can request the ECtHR to grant an interim measure, ordering the authorities to protect the already ill-treated detainee from further harm. Victims and their attorneys should refer to the case of D.F. v. Latvia[30] (para 86) in which the ECtHR stated that states must make steps – such as solitary confinement or prison transfer, to protect a prisoner against a "high risk of inter-prisoner violence".

VI. TRAINING OF PRACTITIONERS

VI.1. The relevant rules of the Directive

Article 25

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.

3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

[28] Number of application: 41153/06, date of judgement: 18 December 2007 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-84028%22]}

[29] Number of application: 9912/15, date of judgement: 5 July 2016 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-164466%22]}

[30] Number of application: 11160/07, date of judgement: 29 October 2013

VI.2. General context

While prior to 2018 authorities let their staff to be trained by professional NGOs working on the field of protecting the rights of detainees and providing essential services to them, since 2018 authorities do not let their staff to be trained by these NGOs.

Another problem is that the fluctuation rate of detention staff is extremely high, and the number and frequency of the trainings cannot keep up with the newly arrived and employed staff. Consequently, many of the staff are not trained in time. The quality of the trainings differ: some are not engaging enough or too theoretical especially for the guards working in the practice.

Not only sufficient trainings are not provided to officials, but there is a clear need for frequently organised psychological counselling and group supervisions provided to detention staff. Not only are such counselling sessions crucial to prevent the burnout of the staff, but it is also importanct to achieve that detention officials do not feel that they are let alone with their frustrations (which they would then let out by being aggressive with detainees).

VI.3. Recommendations

Problems	Recommendations
The government does not allow professional non-governmental organisations to train practitioners who get in touch with detainees.	The government should not hinder that non-governmental organisations train detention staff, police, prosecutors and judges.
Training of practitioners is not frequent, not effective and not engaging enough.	Practitioners should be trained more frequently. This can be achieved by the contribution of non-governmental organisations. Authorities should invite traininers from other Member States of the European Union with good practices of the implementation of the Directive. Authorities should raise the level of engagement of practitioners during trainings with appropriate incentives.
Trainings typically do not include raising the level of resilience and burnout prevention of detention staff.	Trainings provided to detention staff should also include burnout prevention and should aim at raising the level of mental health within officials who regularly meet victims.