

Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR

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Subject: NGO communication with regard to the execution of the judgment of the European Court of Human Rights in the *László Magyar v. Hungary* group of cases

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its observations under Rule 9(2) of the “Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements” regarding the execution of the judgment of the European Court of Human Rights in the *László Magyar v. Hungary* group of cases.

The HHC is an independent human rights watchdog organisation founded in 1989. The HHC focuses on defending the rule of law and a strong civil society in a shrinking democratic space; the right to seek asylum and access protection; the rights to be free from torture and inhuman treatment and the right to fairness in the criminal justice system. The HHC carries out monitoring, research, advocacy and litigation in its fields of expertise, contributes to monitoring Hungary’s compliance with relevant UN, EU, Council of Europe, and OSCE human rights standards and cooperates with international human rights mechanisms. The HHC has been advocating for the abolishment of life imprisonment without the possibility of parole in Hungary for over a decade, and as part of these efforts, it submitted third-party interventions to the European Court of Human Rights in both the *László Magyar* and the *T.P. and A.T. v. Hungary* cases, along with a Rule 9(2) communication in the *László Magyar* case.

EXECUTIVE SUMMARY

The Hungarian law allows for imposing life imprisonment without the possibility of parole (whole life sentence). In 2014, the Court ruled in the *László Magyar v. Hungary* case¹ that by sentencing an applicant to whole life imprisonment, Hungary violated the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights. After the judgment, a “mandatory clemency procedure” was introduced for whole lifers. The Court examined the conformity of the new procedure with the Convention in the *T.P. and A.T. v. Hungary* case, concluding that it was not persuaded that “the applicants’ life sentences can be regarded as reducible for the purposes of Article 3 of the Convention”, and established the violation of the Convention once again. This assessment was confirmed by further decisions. In a recent case the Court

¹ Application no. 73593/10, Judgment of 20 May 2014

also concluded that the Hungarian rules for life imprisonment with a possibility of parole also violate Article 3 of the Convention.

The Hungarian Government has not taken any general measures to date to address the rights violations as pointed out by the judgment handed down in the *T.P. and A.T. v. Hungary* case and subsequent judgments in this group of cases, and has not amended the respective legal provisions in a way that would prevent similar rights violations. None of the shortcomings identified by the *T.P. and A.T.* judgment have been addressed, and the Committee of Ministers decision issued regarding the group of cases in 2018 has not been complied with in any way. Mandatory clemency procedure for whole lifers after serving 40 years continues to violate the Convention; along with the rules allowing to set 40 years as the minimum term to be served for parole.

1. LACK OF REQUIRED LEGAL CHANGES

1.1. Mandatory clemency procedure for whole lifers continues to violate the Convention

As far as life imprisonment without the possibility of parole (whole life sentence) is concerned, the Hungarian Government has not taken any general measures to date to address the rights violations as pointed out by the judgment handed down in the *T.P. and A.T. v. Hungary* case² and has not amended the respective legal provisions in a way that would prevent similar rights violations. Furthermore, there is no publicly available information which would indicate that any legal amendment that would ensure compatibility with the Convention in this regard is envisaged by the Government.

Accordingly, all of the concerns due to which the Court ruled in the *T.P. and A.T.* case that the mandatory pardon/clemency procedure³ introduced for whole lifers is not compatible with the Convention remain valid. These include the following:

- The mandatory clemency procedure shall be conducted ex officio after 40 years of detention. According to the Court, “[s]uch a long waiting period unduly delays the domestic authorities’ review” and means that the Hungarian law “does not offer *de facto* reducibility of the applicants’ whole life sentences”.⁴
- In the course of the mandatory clemency procedure, a judicial clemency board adopts a recommendation on the granting of clemency, but the procedure concludes with the fully discretionary clemency decision of the President of the Republic. The Court expressed reservations over the fact that the law “does not oblige the President of the Republic to assess whether continued imprisonment is justified on legitimate penological grounds” and that it “failed to set a time-frame in which the President must decide on the clemency application or to oblige him or the Minister of Justice – who needs to countersign any clemency decision – to give reasons for the decision, even if it deviates from the recommendation of the [judicial] Clemency Board”.⁵

In contrast to the decision of the Committee of Ministers issued regarding the group of cases in June 2018,⁶ none of the shortcomings identified by the Court in the *T.P. and A.T.* case as presented above

² Application nos. 37871/14 and 73986/14, Judgment of 4 October 2016

³ The procedure is presented in detail by the judgment reached in the *T.P. and A.T. v. Hungary* case under § 17, and in the HHC’s Rule 9(2) communication submitted with regard to the *László Magyar v. Hungary* case in May 2016, available here: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)646E](http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E), pp. 3-4.

⁴ *T.P. and A.T. v. Hungary*, § 48

⁵ *T.P. and A.T. v. Hungary*, § 49

⁶ CM/Del/Dec(2018)1318/H46-11, <https://hudoc.exec.coe.int/eng?i=004-10897>

have been addressed. Thus, the Hungarian authorities have not complied with the Committee of Ministers' decision, and, in particular,

- have not “align[ed] their legislation with the Court’s case-law as regards the time period life prisoners have to wait before they are considered for clemency”;
- have not “address[ed] the concerns raised by the Court regarding the lack of sufficient procedural safeguards in the second part of the review procedure before the President of the Republic”; and
- have not “take[n] the necessary legislative measures to ensure that this [second] part of the [...] mandatory clemency procedure is likewise carried out in line with the requirements of the Convention as set out in the Court’s case-law”.⁷

In its Group Action Plan of 28 January 2019,⁸ the Hungarian Government claimed that the “new requirements” established by the Court with regard to whole life sentences in *T.P. and A.T.* case “raised or left open a series of questions in respect of the consistency of the Court’s jurisprudence and the inner coherence of the system of punishments under Hungarian law which made the swift implementation of the judgment impossible. These issues will have to be clarified by the Court in the cases of *Sándor Varga v. Hungary* (no. 39734/15) and *Kruchió v. Hungary* (no. 43444/15) and further 3 applications pending before the Court.”

Since then, the Court has handed down its judgments in both of the cases named in the Group Action Plan, making it clear that there are no issues whatsoever that need to be clarified, and that the applicants’ rights under Article 3 of the Convention have been violated also in these cases. In its judgment issued in the *Kruchió and Lehóczki v. Hungary* case on 14 January 2020, the Court noted that “the arguments raised by the Government are similar to those already examined and rejected in the case of *T.P. and A.T. v. Hungary*. The Government have not submitted any new circumstances which would lead the Court to depart from its previous findings that the applicants’ whole-life sentences cannot be regarded as reducible for the purposes of Article 3 of the Convention.”⁹ The same conclusion was repeated by the Court in its judgment issued in the *Sándor Varga and Others v. Hungary* case on 17 June 2021.¹⁰

Finally, it has to be recalled that life imprisonment without the possibility of release on parole is explicitly provided for by the Fundamental Law of Hungary.¹¹ The lack of any political will to abandon the concept of whole life sentence is also signified by the fact that since the judgment of the Court in the *T.P. and A.T.* case was issued in October 2016, the Fundamental Law has been amended five times, but the provision on whole life sentence have remained untouched.

1.2. Rules allowing to set 40 years as the minimum term to be served for parole continue to violate the Convention

In the latest addition to the group of cases, in the judgment issued in the *Bancsók and László Magyar (no. 2) v. Hungary* case,¹² the Court assessed the institution of “simple” life sentence as provided for by the Hungarian law, where parole is not excluded. According to Article 43 of Act C of 2012 on the

⁷ Cf. § 4 of Committee of Ministers’ decision CM/Del/Dec(2018)1318/H46-11 of 7 June 2018.

⁸ DH-DD(2019)245, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)245E](https://hudoc.exec.coe.int/eng?i=DH-DD(2019)245E)

⁹ Applications nos. 43444/15 and 53441/15, Judgment of 14 January 2020, § 27

¹⁰ Applications nos. 39734/15 and 2 others, Judgment of 17 June 2021, § 49

¹¹ Article IV(2) of the Fundamental Law sets out the following: “Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences.”

¹² Applications nos. 52374/15 and 53364/15, 28 October 2021

Criminal Code, in such cases, the minimum term to be served before a detainee can be released on parole is to be set between 25 years and 40 years. This minimum term to be served was set for 40 years for both applicants in the case. This fact was “sufficient for the Court to conclude that the applicants’ life sentences cannot be regarded as reducible for the purposes of Article 3 of the Convention” (§ 47). The Court recalled that the 40 years “during which the applicants must wait before they can for the first time expect to be considered for release on parole is a significantly longer period than the maximum recommended time frame after which the review of a life sentence should be guaranteed, established on the basis of a consensus in comparative and international law” (§ 45).

However, the respective provision of the Criminal Code remains the same to date; no legislative step has been taken to comply with the judgment.

2. STATISTICAL DATA

In its decision of June 2018, the Committee of Ministers “invited the authorities to provide statistical data on the number of prisoners serving a whole life sentence, the number of mandatory clemency proceedings carried out since its entry into force as well as the number of cases where clemency was granted”.¹³ However, the Government’s Group Action Plan of 28 January 2019 does not include such statistics. In addition, access to relevant statistical data by the general public is limited.

For example, data is available about the overall number of detainees serving a whole life sentence (see Table 1) and the number of detainees serving a “simple” life sentence with the possibility of parole, but, to the HHC’s knowledge, no data is collected systematically about the length of the minimum term to be served set for those eligible for parole.

Table 1 – Number of detainees serving a whole life sentence¹⁴

	Total number of detainees serving a whole life sentence	Number of detainees serving a whole life sentence on the basis of a final decision	Overall number of detainees
31 December 2014	49	34	17,890
31 December 2015	47	42	17,449
31 December 2016	49	47	17,658
31 December 2017	54	52	17,343
31 December 2018	57	56	16,303
31 December 2019	62	60	16,334
31 December 2020	69	64	16,752
30 June 2021	70	67	17,920

¹³ CM/Del/Dec(2018)1318/H46-11, § 5

¹⁴ Source: Response no. 30500/12347-8/2022 of the National Penitentiary Headquarters to the HHC’s freedom of information request, 2 January 2022

Table 2 – Number of detainees serving a life sentence with the possibility of a parole¹⁵

	Total number of detainees serving a life sentence	Overall number of detainees
31 December 2014	283	17,890
31 December 2015	313	17,449
31 December 2016	338	17,658
31 December 2017	346	17,343
31 December 2018	357	16,303
31 December 2019	382	16,334

According to the publicly available official statistics, the number of pardons/clemencies granted in criminal cases in general has been very low in the past years, as shown by Table 3. However, the data on the nature of cases in which clemency was granted (statistical data on sentences imposed and criminal offences committed in cases where clemency was granted, or individual anonymized clemency decisions) have not been disclosed by the President of the Republic in any format, despite freedom of information requests addressed to the Office of the President of the Republic and ensuing lawsuits launched by the HHC and an online news portal with the assistance of the Hungarian Civil Liberties Union.¹⁶

Table 3 – Clemency decisions aimed at the reduction or the waiver of a sentence¹⁷

Year	Clemency granted	Rejection	Number of all clemency decisions	Percentage of clemencies granted as compared to all decisions
2014	4	749	753	0.53%
2015	24	792	816	2.94%
2016	22	473	495	4.44%
2017	11	662	673	1.63%
2018	4	452	456	0.88%
2019	8	500	508	1.57%
2020	13	452	465	2.80%
2021	14	450	464	3.02%

¹⁵ Source: National Penitentiary Headquarters, https://bv.gov.hu/sites/default/files/Bortonstatisztikai_Szemle_2020.pdf, p. 16.

¹⁶ For details, see the HHC's Rule 9(2) communication submitted in the *László Magyar v. Hungary* case in May 2016 (DH-DD(2016)646, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)646E](https://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E), pp. 7–8.).

¹⁷ Source: website of the Ministry of Justice, <https://igazsagugyiinformaciok.kormany.hu/download/0/9f/e2000/statisztika%202002%20janu%C3%A1r%201-2021%20december%2031%20-%20kegyelmi%20%C3%BCgyek.pdf>.

3. RECOMMENDATIONS

For the reasons above, the HHC respectfully recommends the Committee of Ministers **to continue examining the execution of the judgments** in the *László Magyar v. Hungary* group of cases **under the enhanced procedure**. Furthermore, we respectfully recommend the Committee of Ministers to call on the Government of Hungary to:

1. **Abolish the institution of life imprisonment without the possibility of parole** from both the respective laws and the Fundamental Law of Hungary.
2. **Establish a review system for those already sentenced to whole life imprisonment** which complies with the standards set by the Court with respect to the decision-making process, applicable procedural safeguards and its timing, and which provides a real prospect of release.
3. **Ensure that a review** complying with the standards set by the Court **takes place no later than 25 years** after the imposition of every life sentence, with further periodic reviews thereafter.
4. **Ensure that the rights violations suffered by the applicants** in the *László Magyar v. Hungary* group of cases **are fully remedied** and that they are eligible for parole in accordance with the guidance of the Court and the Committee of Ministers.
5. **Collect and make publicly accessible relevant data**, including the nature of cases in which (either positive or negative) clemency decisions have been made, and the length of the minimum terms to be served before persons convicted for life sentence can be considered for parole

Sincerely yours,



András Kristóf Kádár
co-chair
Hungarian Helsinki Committee