

Budapest, 22 November 2022

Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
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Subject: Communication from the Hungarian Helsinki Committee concerning the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary
(Application nos. 15707/10, 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13)

Dear Madams and Sirs,

The **Hungarian Helsinki Committee (HHC)** is a leading human rights organisation in Hungary and in Central Europe. The HHC monitors the enforcement of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC's main areas of activities are centred on protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

The HHC ran a detention-monitoring program for over two decades between 1995 and 2017. In this period, the organization carried out 1,237 monitoring visits at police jails, 48 visits at penitentiary institutions and made 51 inspections at places of immigration detention. The HHC submitted numerous communications to various international forums (CPT, UNWGAD, SPT, UPR, etc.) in related subject matters. The HHC's lawyers have litigated cases related to the conditions of and treatment in detention in Hungarian prisons before domestic forums and the European Court of Human Rights (see e.g. the cases *Engel v. Hungary*, Application no.: 46857/06, and *Csüllög v. Hungary*, Application no.: 30042/08), and three out of the six applicants in the *Varga and Others v. Hungary* case were also represented by HHC's lawyers.

With reference to the judgments of the European Court of Human Rights (ECtHR) **in the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary**, and the Action Report on the implementation of these judgements submitted by the Government of Hungary, **the HHC respectfully submits the following 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."

The present submission is structured as follows:

- Information on **issues related to resolving the structural problem of prison-overcrowding;**
- Information on **detention conditions;**
- Information on **preventive and compensatory remedies;**
- Information on **issues related to other violations found by the Court in this group of cases;**
- **Recommendations.**

1. Issues related to resolving the structural problem of prison-overcrowding

Point 4 of Decision CM/Del/Dec(2021)1398/H46-12: *[The Deputies] noted with satisfaction the eradication of overcrowding on an average in each prison facility; recalled, however, that **the only sustainable solution to control overcrowding is to moderate the number of persons sent to prison;** strongly encouraged therefore the authorities to pursue their efforts in maintaining adequate occupation levels, in particular by further promoting the use of alternatives to detention, and strongly urged them to submit comprehensive updated statistical figures of yearly average allowing for an assessment of the trends of implementation of the different alternative measures.*

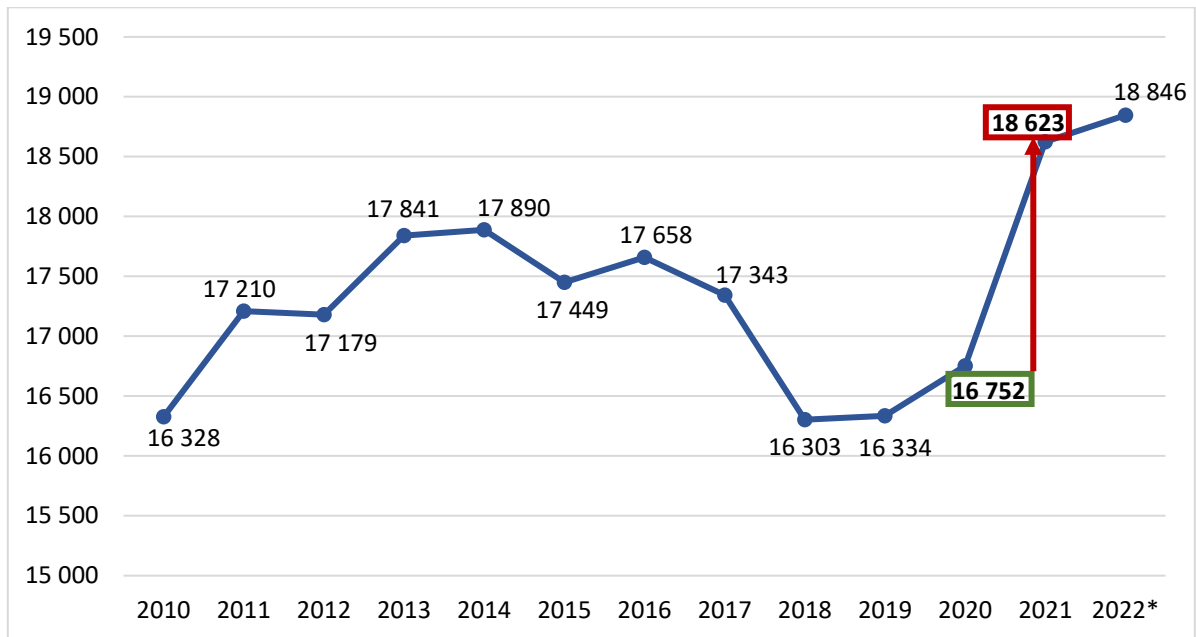
1.1. Overall number of persons detained in Hungarian penitentiaries¹

The Deputies noted in their latest Decision that, in order to sustainably control prison overcrowding, there is a need to moderate the number of individuals sent to prison, and strongly encouraged the authorities to further promote the use of alternatives to detention. The HHC has been closely monitoring the overall numbers of detained individuals as well as data on factors that may contribute to the changes in these numbers. The data show that the Government has failed to take steps towards promoting alternatives: while the country's population has been declining for decades, the overall number of detainees² has shown a significant increase in the past few years [2018: 16,303; 2022: 18,846]. The HHC finds the sharp increase in the number of persons detained in Hungarian penitentiaries between 2019 and 2022 particularly concerning as this timeframe includes the period of the coronavirus pandemic. In the past three years, most countries in Europe have seen a decrease in their prison populations, while the Hungarian prison population has increased by more than 2,000 detainees, a rate of 15 percentage points.

¹ It is important to mention that two years ago the National Penitentiary Administration (NPA) stopped publishing on a regular basis basic data on the operation on the penitentiary system, including the basic sociodemographic characteristics of detainees. The NPA used to periodically publish the most important statistical data related to detention in its own online paper called the Review of Prison Statistics (*Börtönstatisztikai Szemle*, the existing issues are available here: <https://bv.gov.hu/hu/bortonstatisztikai-szemle>). Since the second half of 2020, no issue has been published. Therefore (and since the data provided by the NPA to the National Office of Statistics are not sufficiently detailed for a thorough analysis), the HHC has to go through the process of submitting freedom of information requests to obtain all the data needed to conduct the thorough statistical monitoring related to the implementation of the judgments of the ECtHR in question.

² See longitudinal trends in Hungarian prison population rates in Council of Europe Annual Penal Statistics – SPACE I 2021, p. 33., here: https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf

Fig. 1. – Overall number of persons detained in Hungarian penitentiaries on 31st December each year and on *4th August 2022³



The HHC is of the view that the rapidly increasing prison population is a symptom of a heavily imprisonment-centred criminal policy and a strictly punitive criminal justice system, which leaves non-custodial sanctions and measures, including forms of early release underused. As a result, this carries the risk of quickly resulting in overcrowded penitentiaries again. The Council of Europe Annual Penal Statistics also corroborates this, as its latest edition shows that on 31 January 2021, the total number of detainees was equivalent with the total capacity of penal institutions (17,483); therefore, the Hungarian penitentiary system was operating on full capacity on that day.⁴ Since then, the number of detainees has continuously increased, reaching 18,846 on 4 August 2022 (see Figure 1.), which exceeds the current operational capacity, according to data communicated by the Government to the Committee of Ministers under the enhanced supervision process.⁵ According to the Action Report by the Government, to increase the penitentiary system’s capacity, in 2020 and 2021 “a total of 3,884 new places were created”⁶ in addition to the previous 14,866⁷ places available in 2019. This means that the current operational capacity accommodates for the maximum of 18,750 detainees and according to the latest data, the number of inmates in penitentiary institutions has yet again exceeded the operational maximum on 4 August 2022.

³ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC’s FOI request on 29/08/2022.

⁴ See Council of Europe Annual Penal Statistics – SPACE I 2021, p. 77., available here: https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf

⁵ The data the National Penitentiary Administration (NPA) has been providing on penitentiary institutions’ operational capacity is not entirely consistent, with the exception that it always shows the occupancy rate at around 100%.

⁶ DH-DD(2022)338: Communication from Hungary, p. 7.

⁷ Source: The NPA’s Prison Statistics Review 2020, p. 14., available here: https://bv.gov.hu/sites/default/files/Bortonstatisztikai_Szemle_2020.pdf

1.2. Causes for the sharp increase in the prison population

To identify the possible causes for the increase in the number of detainees in the past few years, the HHC has conducted an extensive analysis of public data and found the following tendencies contributing to the overuse and therefore increasing overburdening of the penitentiary system.

1. During the COVID-19 pandemic, there were no emergency measures introduced to reduce the prison population either by reducing the frequency of entries or by increasing the rate of release. Not even in the case of vulnerable detainees (such as juveniles, the elderly, people with health risks) or low-risk offenders, including those non-violent offenders who only had a short amount of time left of their sentence were any steps taken toward their extraordinary early release with electronic monitoring as in other European countries.
2. Data show that the number of people in pre-trial detention is increasing again, and there is an increase in the average length of pre-trial detentions.⁸

Table 1. – Number of detainees under pre-trial detention on 31 December and 30 June each year (2019-2022)⁹

| Date | Number of pre-trial detainees |
|------------|-------------------------------|
| 31/12/2019 | 2,709 |
| 30/06/2020 | 3,102 |
| 31/12/2020 | 3,421 |
| 30/06/2021 | 3,815 |
| 31/12/2021 | 4,380 |
| 30/06/2022 | 4,202 |

3. The average length of imprisonment was 13.4 months in 2020, which is among the highest within Council of Europe countries.¹⁰
4. The number of people subjected to confinement (short-term criminal detention, 5-90 days) and petty offence detention nearly tripled between 2018 and 2021 (2018: 392; 2021: 1,125).

Table 2. – Number of detainees in short term criminal detention (“confinement”) and petty offence detention on 31 December each year (2018-2021)¹¹

| Date | No. of detainees in confinement and petty offence detention |
|------------|---|
| 31/12/2018 | 392 |
| 31/12/2019 | 450 |
| 31/12/2020 | 587 |
| 31/12/2021 | 1,125 |

It is important to note that according to Act II of 2021 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereinafter: Petty Offence Act), in case of non-compliance, non-custodial petty offence sanctions such as fines and community service may be converted into confinement (imprisonment) by the authorities. Additionally, petty offence

⁸ Source: Office of the Prosecutor General, Statistics on Criminal Prosecution 2020, p. 64., available here: <http://ugyeshseg.hu/wp-content/uploads/2021/12/buntetojogi-szakag-2020.pdf>

⁹ Source: Response no. 30500/12347-8/2021 and 30500/7297-10/2022 issued by the NPA to the HHC’s FOI request on 02/01/2022 and on 29/08/2022.

¹⁰ See Council of Europe Annual Penal Statistics – SPACE I 2021, p. 6., available here: https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf

¹¹ Source: Response no. 30500/12347-8/2021 and 30500/7297-10/2022 issued by the NPA to the HHC’s FOI request on 02/01/2022 and on 29/08/2022.

detention can accumulate into lengthy detention: for example, in 2021, the longest accumulated petty offence confinement to be served was 371 days long, which by far exceeds the possible maximum of short-term criminal detention.

5. In Point 4) of its December 2021 decision, the Committee of Ministers strongly urged the Hungarian authorities to submit comprehensive updated statistical figures allowing for an assessment of the trends of implementation of the different alternative measures. However, the Group Action Report does not contain any such statistical figures; it merely shows data on the decreasing trend of implementing reintegration custody, which is only a type of early release, while in the Hungarian legal system several other types of non-custodial sanctions are available. According to the HHC’s analysis of public data, non-custodial sanctions and measures as alternatives to imprisonment are far from being utilised to their full potential. Within all decisions establishing criminal liability with a final and binding effect, the rate of courts applying community service showed a six-percentage-point decrease between 2013 and 2019 (17-11%), and the restorative measure of reparation work is severely underused (around 150 cases per year).¹² Fine is more “popular”, its application showed a ten-percentage-point increase between 2013 and 2019 (21-31%). However, it is to be noted that in the case of non-compliance with community service or the non-payment of a fine, the measure is converted into imprisonment by the court. According to the HHC’s data analysis¹³, between 2017 and 2019 the Hungarian courts initiated proceedings to convert both sanctions into imprisonment in a significant proportion of cases (community service – 2017: 49%; 2018: 58%; 2019: 61%; fines – 2017: 36%; 2018: 33%, 2019: 33%).
6. Data show that in comparison to 2019, there is reduced access to early release both in the case of reintegration custody and release on parole (see point 1.3. below).

1.3. Access further reduced to early release from imprisonment

The extent of applying either of the two early release schemes provided by the Hungarian criminal justice system (reintegration custody and release on parole) has significantly decreased since 2019, which the Government’s Action Report corroborates.¹⁴ Moreover, the HHC’s data analysis shows that from 2019 to 2021, the overall number of releases decreased by 12 percentage points and the ratio of early release within all releases of convicted persons decreased by 8 percentage points.

Table 2. – No. of inmates granted reintegration custody 2019-2022; average no. of prison population; ratio of inmates granted reintegration custody within av. no. of prison population¹⁵

| Year | No. of all convicted detainees released early | No. of all convicted detainees released | Ratio of early release within all releases of convicted persons (%) |
|-------|---|---|---|
| 2019 | 3,202 | 8,016 | 40% |
| 2020 | 2,649 | 7,444 | 36% |
| 2021 | 2,258 | 7,025 | 32% |
| 2022* | 1,500 | 4,592 | 33% |

*2022 data refers to the period between 1st January and 31st July 2022.

¹² See HHC’s country report on the use of alternative sanctions: Krámer, L. – Lukovics, A. – Szegő, D.: *Alternatives to Prison: Hungarian Law and Practice on Non-custodial Sentences*, 2022, p. 36., p. 41-42., available here: <https://helsinki.hu/en/alternatives-to-prison-hungarian-law-and-practice-on-non-custodial-sentences/>

¹³ Ibid. p. 34-40.

¹⁴ DH-DD(2022)338: Communication from Hungary, p. 7.

¹⁵ Source: Response no. 30500/12347-8/2021 and 30500/7297-10/2022 issued by the NPA to the HHC’s FOI request on 02/01/2022 and on 29/08/2022.

1.3.1. The steady decrease of detainees granted reintegration custody

According to data provided by the National Penitentiary Administration (hereinafter: NPA), the number of detainees in reintegration custody have been steadily decreasing since 2019. While in 2019, 4.1% of the prison population had access to reintegration custody, in 2021, only 2.7% did. However, the 2022 data suggests that by the end of the year we might see a slight increase in the use of reintegration custody in comparison to 2021. If we assume the positive scenario in which the same level of granting reintegration custody applies to the remaining five months of 2022, extrapolating the data of the first seven months will add up to 507 detainees who will have been granted reintegration custody by the end of this year. In addition, if the average number of the prison population does not change, 2.7% of the whole prison population will have been granted reintegration custody by the end of 2022.

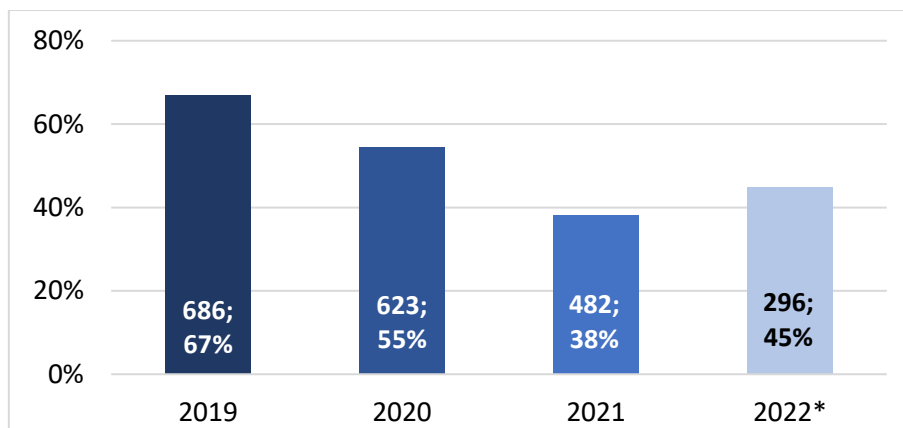
Table 3. – No. of inmates granted reintegration custody 2019-2022; average no. of prison population; ratio of inmates granted reintegration custody within av. no. of prison population¹⁶

| Year | No. of inmates granted reintegration custody | Average no. of prison population | Ratio of inmates granted reintegration custody within av. no. of prison population (%) |
|-------|--|----------------------------------|--|
| 2019 | 686 | 16,664 | 4.12% |
| 2020 | 623 | 16,756 | 3.72% |
| 2021 | 482 | 17,905 | 2.69% |
| 2022* | 296 | 18,768 | 1.58% |

*2022 data refers to the period between 1st January and 31st July 2022.

Additionally, the data shows that between 2019 and 2021 the ratio of detainees granted reintegration custody among those who were subject to the procedure determining the possibility of granting it decreased by 29 percentage points.

Fig. 2. – Number of detainees granted reintegration custody and their ratio among those who were subject to the procedure determining the possibility of granting reintegration custody, 2019-2022^{*17}



*2022 data refers to the period between 1st January and 31st July 2022.

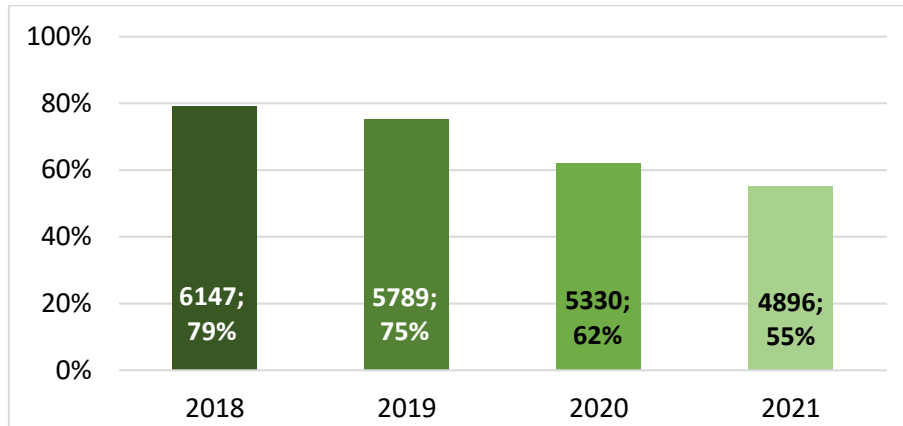
¹⁶ Source: Response no. 30500/12347-8/2021 and 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 02/01/2022 and on 29/08/2022.

¹⁷ Source: Responses issued individually by 20 Regional Courts to the HHC's FOI requests on 17/01/2022.

1.3.2. The effect of excluding certain offenders from conditional release

The number of detainees granted conditional release has shown a significant decrease: while in 2019 79% of those who had a case were granted conditional release, this dropped to 62% in 2020 and 55% in 2021.

Fig. 3. – Number of detainees granted conditional release and their ratio within total number of conditional release cases (total=granted + dismissed), 2018-2021¹⁸



In the HHC's view, the decrease is caused by a Government proposed¹⁹ amendment of Act C of 2012 on the Criminal Code (hereinafter: Criminal Code) , which extended the list of certain criminal acts²⁰ that generally exclude²¹ offenders from conditional release in the aftermath of a highly mediated case in 2019.²² When the draft law was made publicly available, the HHC drafted a reaction paper²³ including recommendations for the Government emphasising that while effective protection for victims of violence is needed, lengthening imprisonment is not an efficient way of protection. The HHC also pointed out that the general tightening of the eligibility criteria for conditional release would have several negative consequences: spending a prison sentence without the possibility of early release leads to a lack of motivation, which makes reintegration work inside penitentiaries more difficult with those offenders concerned. Additionally, expanding the group of detainees excluded from conditional release leads to a growing prison population. The amendment, however, entered into effect on 5 November 2020.

¹⁸ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

¹⁹ <https://2015->

[2019.kormany.hu/download/4/f0/c1000/felt%C3%A9teles_normasz%C3%B6veg_indokol%C3%A1s_200121.pdf](https://2015-2019.kormany.hu/download/4/f0/c1000/felt%C3%A9teles_normasz%C3%B6veg_indokol%C3%A1s_200121.pdf)

²⁰ Article 38(5)(c-b) of the Criminal Code

²¹ Article 38(6) of the Criminal Code as an additional provision upholds the court's discretion to decide not to apply the exclusion in certain groups of cases if i) the circumstances of the offence, ii) the degree of danger to society inherent to the offender's personality, or iii) other circumstances of sentencing, iv) the protection of society and preventing the offender from committing a new offence can be achieved by applying probation supervision and special requirements needing to be met by the offender.

²² The case was a double homicide against minors committed by a man on conditional release, who had formerly been convicted of a violent act against his wife.

²³ The HHC's reaction to the concerning the issue of the Government tightening the provisions related to conditional release is available here in Hungarian: https://helsinki.hu/wp-content/uploads/Magyar_Helsinki_Bizottsag_eszrevetelek_felteteles_eloterjesztes_200127.pdf

2. Detention conditions

Point 5 of Decision CM/Del/Dec(2021)1398/H46-12: *[The Deputies] invited the authorities to present the current situation as regards the concerns about poor conditions of detention related to aspects other than overcrowding, and encouraged them to quickly resolve the relevant problems, taking advantage of the opportunity provided by the eradication of overcrowding.*

Even though the Committee of Ministers invited the Hungarian authorities to present the current situation as regards to the concerns about poor conditions of detention related to aspects other than overcrowding, the Group Action Report fails to incorporate such a description.

2.1. Material detention conditions

The HHC receives approximately 500 complaints from detainees and their relatives per year by letter, e-mail or on the phone, and is frequently contacted by lawyers representing inmates in various legal procedures. As a result, the HHC has access to information on the most recent issues related to detention conditions. This information is augmented by the results of HHC's FOI requests, the cases taken the lawyers in the framework of HHC's human rights legal counselling program, and information provided by members of the FECSKE Support Network for Detainees and their Families.

Based on detainees' complaints, the most noteworthy problems related to material conditions have been the following:

- In relation to the 2022 summer heatwave (with 35-40 degrees centigrade on consecutive days), the following complaints were put forth:
 - in certain penitentiaries, only two showers a week were allowed to be taken even during the heat wave;
 - unbearable heat in the cells due to the lack of proper ventilation: in many prisons, the view blockers block the ventilation too; some cell windows can only be tilted (e.g. because of the bars); in some prisons, not even the small lookout window on the cell doors was allowed to be opened to generate draughts, or only after 6 p.m.;
- In the past weeks, the HHC has been receiving complaints from several penitentiaries related to the recent energy-usage related restrictions introduced by the Government, including the following:
 - as the season changes and the weather turns cold in Hungary, detainees experience unbearably cold temperatures in several underheated penitentiaries, many of them develop respiratory tract infections;
 - detainees are not allowed to put on a sweater on top of their uniform or use their blankets during the day;
 - an insufficient quantity of hot water is provided;
 - there are severe restrictions on using electricity, it is turned off for the most part of a day.
- Cockroach and bedbug infestation, frequent bedbug bites;
- Non-smoking detainees are often not placed in non-smoking cells;
- Sanitary facilities are often in a bad state of repair: dirty, mouldy, the toilet door is missing or broken, there is no ventilation/extractor, water standing high in showers and causing fungal infections on detainees' feet;
- Reduced access to open air:
 - no time for open air exercise, because it is scheduled for a time slot that is covered by other activities (work, showering);
 - inmates are discouraged by prison personnel from using their open-air time;

- Poor facilities and strict rules during open-air time: it is often not possible to sit down in the yard; in several walking yards, there are no facilities to protect the inmates from the rain or sunlight; in several yards, there are no sports facilities, leaving the inmates with nothing to do except for walking around in circles.

Several reports that the Commissioner for Fundamental Rights (Hungary's Ombudsperson) produced in his capacity as Hungary's National Preventive Mechanism under the Optional Protocol of the UN Convention Against Torture (NPM) in 2020-2021 describe problems in relation to the possible violation of fundamental rights similar to those that detainees reported to the HHC.²⁴ The majority of NPM reports raise concerns in relation to staff shortages and overworked staff that may have an adverse effect on the treatment of the inmates and the prevention of inhuman, degrading treatment or punishment of detainees. Poor sanitary conditions are also often mentioned, as well as concerns about cells in poor states of repair and the ongoing bedbug infestation problem. Some of these reports contain photos portraying the poor condition of facilities.²⁵

One example is the NPM's recent report of the monitoring visit paid in February 2021 to the Márianosztra Maximum and Medium Security Prison. The NPM pointed out that although the severe overcrowding experienced during the 2017 monitoring visit had been eliminated, and some cells had been renovated, other cells "were still in poor condition, and bedbug infection was still present. Concerning the provision of personal hygiene conditions, the dilapidated and dirty bathroom raised serious concerns."²⁶ The disciplinary cells were in a particularly bad condition. The report concludes that the physical conditions in some of the cells violate the inmates' constitutional rights. The photographs of the problematic cells shown in the report's appendix substantiate this conclusion.

Government Decree no. 353/2022 (IX. 19.) on Certain Institutions' Operations during the State of Danger introduced a heating restriction from 1 October 2022. According to the rule, public buildings – with the exception of residential social institutions and hospitals – are to be heated to a maximum of 18 degrees. This rule applies to penitentiaries, which the HHC finds concerning because regardless of the fact that certain infrastructural developments were made in some penitentiaries, the HHC still receives regular complaints from detainees in extreme weather conditions. This includes heatwaves in the summer and extremely cold weather in the winter as with a result of insufficient insulation in several penitentiaries; including the new facilities built using lightweight technology.

²⁴ See for example Report no. AJB-750/2021 here:

https://www.ajbh.hu/documents/10180/3656566/AJB_750_2021_jelent%C3%A9s.pdf/6a640a4a-e968-5439-8289-5dce6090e485?t=1645182127919; Report no. AJB-1190/2021 here:

https://www.ajbh.hu/documents/10180/3656566/AJB_1190_2021_jelent%C3%A9s.pdf/3fefb5b8-8004-c72e-34e8-1f386b406268?t=1645186710184; Report no. AJB-874-2021 here:

https://www.ajbh.hu/documents/10180/3656566/AJB_874_2021_jelent%C3%A9s.pdf/6cc4f087-6c2c-0b9b-e0a8-fea8d62d97e5?t=1636457476973

²⁵ See for example Report no. AJB-874-2021 here:

https://www.ajbh.hu/documents/10180/3656566/AJB_874_2021_jelent%C3%A9s.pdf/6cc4f087-6c2c-0b9b-e0a8-fea8d62d97e5?t=1636457476973

²⁶ The Ombudsperson's report no. AJB-874/2021 about his visit to Márianosztra Maximum and Medium Security Prison (Az alapvető jogok biztosa mint OPCAT nemzeti megelőző mechanizmus jelentése az AJB-874/2021. számú ügyben a Márianosztrai Fegyház és Börtön látogatásával összefüggésben), pp. 6-7. The English summary of the report is available here:

https://www.ajbh.hu/documents/14315/4187101/Summary_AJB_874_2021.pdf/52128b83-c633-150d-4498-600d06a6f544?t=1636457614197.

It is important to mention, that in 2022, the daily basic food norm per detainee prescribed by the state is HUF 520 (approx. EUR 1.2).²⁷ This is the whole amount to be spent on one inmate's meals for an entire day, which is insufficient even for an institution operating on wholesale prices and producing some goods internally.²⁸ The amounts are concerningly low even in the highest norm categories: the norm for pregnant women and inmates doing heavy duty work is HUF 656 (ca. EUR 1.6), for breastfeeding women HUF 755 (ca. EUR 1.8). Nutritionists consulted by the HHC have concluded that it is not possible for the penitentiary system to meet the minimum level of nutritional intake prescribed for inmates out of this amount of money. Food related issues in Hungarian penitentiaries clearly constitute a violation of several of the European Prison Rules.²⁹

2.2. Immaterial conditions: reintegration activities and staff-detainee relationships

The HHC regularly receives complaints from detainees suggesting that prisoner reintegration and educational activities operate at low intensity in Hungarian penitentiaries. According to the complaints, there are very few programmes in reality; a lot of them “only exist on paper.” The programmes that actually exist often mostly or completely ignore the individual needs and characteristics of detainees, who practically miss out on getting prepared for their release as a result. These systemic deficiencies contribute to tensions building up between staff members and detainees, and in addition, further intensify the prominent role of the family in successful reintegration, while the preservation of family bonds rely on the penitentiary system to provide sufficient opportunities to keep meaningful contact with relatives.³⁰

Additionally, the information received by the HHC often concerns the highly vulnerable situation of detainees (and their relatives).

Part of the reason is that penitentiary staff is overburdened and the system suffers from permanent staff shortages. In August 2022, the total number of staff was 9,391 for the nearly 19 thousand inmates – 13% of the positions were unfilled.³¹ Prison staff, especially guards, exercise excessive authority in

²⁷ Source: Response no. 30500/6854/2022 issued by the NPA to the HHC's FOI request on 28/07/2022.

²⁸ Furthermore, instead of providing funding for the penitentiary administration to be able to maintain sufficient and nutritious sustenance for detainees, the Government plans to rely on detainees themselves to solve the issue of obtaining the necessary amount and quality of food. On 2 November 2022, the Government submitted Bill T/1837 on the Amendment of Certain Criminal and Related Acts, which envisages to amend Article 155(3) of the Penitentiary Code. Article 58 of the Bill T/1837 stipulates that “convicts may, by written declaration, waive the right to meals or specific food types provided by the penitentiary.” According to the explanatory memorandum of the Bill T/1837, “The convict shall be provided with three meals a day. The amendment allows the convict to waive certain meals by his/her written declaration, e.g. no dinner or certain types of food, no bread or other bakery products. Waiving a meal is not the same as refusing to eat, as typically in these cases the convict replaces his food from products purchased at the penitentiary's own store. The main – professed – reason for the modification is the high quantity and value of the food that prisoners do not consume, which is thrown away. Unlike under the current rules, the prison will now assess the prisoners' food requirements in advance and prepare food in proportion to the number of prisoners, instead of the number of requirements, thus helping to save on prison costs by reducing the amount of food that would otherwise be wasted and not consumed.” The Bill T/1837 is expected to be adopted on the week of 5 December 2022 the earliest.

²⁹ Rule 22.1, 22.2, 22.3 of the European Prison Rules

³⁰ As mentioned above, several NPM reports seem to corroborate similar concerns. For example, in Report no. AJB-2726/2020, the NPM urged to ensure the organisation of compulsory group sessions for prisoners in the therapeutic units of Szeged Strict and Medium Regime Prison. Available here: https://www.ajbh.hu/documents/10180/3418016/OPCAT+jelent%C3%A9s+a+Szegedi+Fegyh%C3%A1z+%C3%A9s+B%C3%B6rt%C3%B6n+I%C3%A1togat%C3%A1s%C3%A1r%C3%B3l+2726_2020.pdf/c79615fe-de03-6493-c488-fea6691eb47d

³¹ Source: Response no. 30500/7902-/2022 issued by the NPA to Borbála Ivány's FOI request on 26/09/2022.

determining the most important decisions about inmates' daily lives and, in some cases, even their chances of early release. Guards are authorised to initiate disciplinary procedures against an inmate in case of any violation of internal prison rules. In disciplinary procedures the penitentiary institution's staff examines and decides whether or not it can be substantiated that the detainee committed the alleged infringement "against the order of the institution."³² This procedure – especially that the inmates are extremely dependent on the prison staff's decisions – does not guarantee the principle of equality of arms, witnesses hardly testify against staff members, legal representation is practically unavailable, and therefore in such cases detainees often end up receiving disciplinary sanctions. For example, an HHC lawyer's client received disciplinary sanctions because he said hello to a female detainee; another detainee was sanctioned for adjusting a computer cable because the screen went off while he was on Skype with a relative. In another case, a disciplinary procedure was initiated against a detainee because allegedly he did not report that his cellmate left cigarette papers in the cell when he was suddenly transferred to another cell. A consequence of a sanction in a disciplinary procedure is often that the prison does not support the early release of the inmate, and research shows that in the majority of the cases the penitentiary judge aligns his/her decision with the prison's position.³³

In short, the system of disciplinary procedures and the role of the eventual sanctions in the early release system give guards an excessive amount of power that is easily abused. In the HHC's view, the risk of power abuse by staff is exacerbated by staff shortages, their insufficient training, the lack of activities offered for prisoners, as well as their social and economic status hindering them from mandating a lawyer.

3. Preventive and compensatory remedies

Point 6 of Decision CM/Del/Dec(2021)1398/H46-12: *[The Deputies] noting the entry into force of the revised compensatory remedy scheme and the fact that the apparent main aim of the amendment, namely making it easier for victims of crime to ensure payment of awards of criminal injuries compensation from the sums awarded to detainees in respect of poor conditions of detention, is in line with the principles of the Convention, regretted however that this amendment has been adopted without taking into account the Secretariat's comments on the draft proposals; firmly called on the authorities to ensure the Convention-compliant application of the revised compensatory remedy and invited them to provide the Committee with concrete information on its implementation in practice, as well as on the concerns identified in document [H/Exec\(2021\)5](#).*

Point 7 of Decision CM/Del/Dec(2021)1398/H46-12: *[The Deputies] noted with regret that the specific preventive remedy has been abolished with the revision of the remedies' scheme, while also noting the authorities' assessment that the general complaints mechanism provides for similar possibilities to complain of poor detention conditions; invited them to submit further information, in particular a presentation of the relevant case-law and practice, for the assessment of the effectiveness of the remaining general preventive mechanism, and to consider the introduction of a judicial review in respect of complaints concerning rights guaranteed under Article 3.*

The CM Notes further specify these issues. CM/Notes/1398/H46-12 point out – among other things – the following: "i) *The amended remedy does not entitle detainees to claim compensation for*

³² Article 3 of the Ministry of Justice Decree 14/2014. (XII. 17.)

³³ See: Solt, Á.: The institution of conditional release in practice in Hungary, 2017, OKRI, available: https://www.okri.hu/images/stories/KT/KT_54_2017/kt54_honlap2.pdf

inadequate material conditions of detention (e.g. unsanitary circumstances) if the statutory minimum of living space is ensured.

[...].

iii) The mandatory setting aside of compensations on an escrow account, not yielding any interest and accessible only according to the discretionary decision of the prison governor, were also raises concerns.

iv) The functioning of the rule preventing the payment of compensations to lawyers' escrow accounts, and its repercussions on detainee's access to effective legal services (given the potentially decreased willingness of lawyers' to represent detainees in circumstances where it may be difficult for them to obtain their remuneration)."

Unfortunately, none of the above issues have been reassuringly settled to date. Detainees are still not allowed to claim compensation for inadequate material conditions of detention (e.g. unsanitary circumstances) if the statutory minimum of living space is ensured. The mandatory setting aside of compensations on an escrow account has also not been remedied. The HHC's human rights legal counselling program has received a number of complaints in this regard. In one of the cases, the concerned inmate serves his life sentence, the earliest date of his conditional release (and consequently of his unfettered access to the compensation) is 2050. He wanted to transfer some of the compensation money to his indigent family to cover health care costs, but the prison governor rejected the request. In another case, the concerned inmate wanted to send money from his escrow account to his deaf and chronically ill nephew to support his upbringing. Even though the reintegration officer supported the request, the governor refused to allow the transfer without providing any particular reasoning.

The compensation also still cannot be paid to the lawyers' escrow accounts (which is unique, as no such limitation is in place regarding any other outstanding payment). In order to find some statistical evidence regarding how and whether this has impacted inmates' access to professional legal assistance, the HHC submitted an FOI request to the NPA, asking how many compensation claims were submitted by lawyers on behalf of detainees between 1 January 2017 and 31 December 2020 on the one hand, and how many have been submitted in this way since 1 January 2021 (i.e. since the amendment came into force) on the other. However, the NPA responded that it did not have readily available data regarding this issue. The HHC therefore suggests that this question be also posed to the Hungarian Government in the course of the monitoring of the execution.

4. Issues related to other violations found by the Court in this group of cases

Point 8 of Decision CM/Del/Dec(2021)1398/H46-12: [The Deputies] strongly urged the authorities to clarify the outstanding issues related to the other violations found by the Court in this group (concerning the treatment of disabled detainees, special security regimes and visits, as well as the lack of effective remedies in these respects) on a bilateral basis with the Secretariat, and to submit up-to-date information on the measures adopted or envisaged, including up-to-date statistical data allowing for an assessment of the relevant developments and a presentation of the implementation of the measures in question.

Even though the Committee of Ministers strongly urged the Hungarian authorities to submit up-to-date information including statistical data on the measures adopted or envisaged concerning the treatment of disabled detainees, special security regimes and visits, as well as the lack of effective remedies in these respects, the Group Action Report does not contain any information or statistical data about the measures in question.

4.1. Treatment of detainees with disabilities

The Hungarian authorities are not proactive in sharing information regarding the treatment of disabled detainees.

4.1.1. Disabled persons in unlawful petty offence detention

According to Article 10(a) of the Petty Offence Act, disabled persons shall not be subjected to petty offence detention (such detention is also executed in penitentiaries). Even so, the HHC has several clients with disabilities who were detained under the petty offence procedure without sufficient legal ground. For example, HHC's 20-year-old client with mental disabilities was repeatedly fined for littering and other similar petty offences and since he did not pay the fines, he was subjected to unlawful petty offence detention for altogether 71 days. In the HHC's view, there is a legal hiatus in these cases: the court often transforms petty offence fine into confinement without the offender's presence and hence, the information regarding his/her disability remains unknown. Regardless of the fact that the Petty Offence Act prohibits implementing petty offence confinement in the case of an offender with disability, Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (Penitentiary Code) does not contain the apparent disability of the offender as a ground for refusing a person's admission to the penitentiary institution.³⁴

4.1.2. Treatment of detainees with psychosocial disabilities

According to the NPM, experts and the experience of the HHC, due to the security-centred approach of the current prison system overriding all other considerations, it is impossible to implement a complex therapeutic approach at the Forensic Observation and Mental Institution (IMEI) where a special group of detainees, inmates with psychosocial disabilities are held. Mentally impaired offenders are administered pharmacotherapy, but other therapeutic activities are very restricted in the institution. For example, in the case of a client of the HHC, IMEI submitted in a court case documentation describing three months of "treatment" the client had received in the institution. The documentation shows that besides medication and a weekly conversation with a psychologist, no therapeutic activities were offered to the client.

In a professional publication, the then-Director and the Head of Psychology Department described that in 2014 (when on average 180 detainees were held there), only 14% of the total working hours of therapeutic staff were spent on providing psychotherapy, which was deemed insufficient by the authors themselves who held positions at the institution at the time.³⁵ The last visit of the Ombudsperson as NPM to the IMEI was conducted in 2016, and already then a shortage of professional staff was found:³⁶ "there was a shortage of professional staff, i.e., physicians, psychologists and nurses. Due to the inadequate working conditions, staff members face the risk of burn-out."³⁷ The psychologists interviewed by the Ombudsperson complained that there are too few of them for the diagnostic and therapeutic work to be done. In addition, only 4 of the 9 psychologists had the clinical specialisation enabling them to perform their duties without supervision.³⁸ At the time of the

³⁴ Article 90 of the Penitentiary Code

³⁵ See: Hamula, J. – Uzonyi, A.: Az Igazságügyi Megfigyelő és Elmegyógyító Intézet csoportterápiás rendszerének bemutatása, *Börtönügyi Szemle* 2015; 34(4), here:

http://epa.oszk.hu/02700/02705/00104/pdf/EPA02705_bortonugyi_szemle_2015_4_035-048.pdf p. 38.

³⁶ See the Executive Summary of Report no. AJB-766/2017 in English (hereinafter: Ombudsperson English IMEI Report) here: https://www.ajbh.hu/documents/14315/2611959/IMEI_osszegzes_EN.pdf/783d20b5-489e-41cf-aafc-097b16ba4af3

³⁷ Ombudsperson English IMEI Report, p. 1.

³⁸ The Ombudsperson's report on his 16-18 February 2016 visit to the IMEI (hereinafter Report no. AJB-766/2017). Available at:

Ombudsperson's visit, out of the 76 professional nurse positions available for the institution, only 66 were filled, of which only 26 were actual professional nurses.³⁹

These problems have a detrimental impact on both therapeutic work and the treatment of the inmates/patients.

The Ombudsperson pointed out that "the visiting delegation experienced cases when the personnel demonstrated derogatory, disdainful behaviour towards the patients. The term 'mentally retarded', often used by the staff and the management, is stigmatizing."⁴⁰ The Ombudsperson also criticised that "the documentation of various means of restraint and restrictive measures was incomplete, and the competent authorities had not been notified thereof."⁴¹

Since then, the staffing situation has become even worse. According to the NPM's report at the time of their visit, 230 patients were placed at IMEI,⁴² while the total number of staff was 178.⁴³ Since then, the number of detainees has risen to around 270,⁴⁴ while the total number of staff is 158.⁴⁵

Additionally, the increased number of detainees placed in the institution raises concerns of overcrowding. In 2016, the NPM reported that rooms and cells were, in general, large and overcrowded, when in fact, the number of detainees were significantly lower (15%) than in 2022, while the number of available places remained the same, 311.⁴⁶

According to a former staff member of IMEI,⁴⁷ the number of patients in the IMEI is constantly on the rise because even if the mental condition of a person convicted to mandatory psychiatric treatment improves to the extent that his/her mandatory psychiatric treatment is no longer necessary (i.e. he/she does not pose a threat to society), he/she is not released unless the family agrees to take him/her in and provide for him/her or if his/her placement in a "civilian" psychiatric home (*pszichiátriai betegek otthona*) can be guaranteed. As a form of institutional social care, psychiatric homes in Hungary are practically full (there has been an admission stop in many of the homes for over three years due to a shortage of labour and overcrowded conditions, and the waiting time to be admitted into the only Budapest institution is close to 20 years), and families are very rarely available or willing to undertake to provide accommodation and care to former IMEI patients. This means that the number of patients under mandatory psychiatric treatment is constantly on the rise, as practically no one leaves from the mandatory psychiatric treatment ward. According to the interviewee, the IMEI tries to solve this problem by turning community rooms and premises originally used for therapy into wards. There is only one group room left; all the other rooms have been turned into wards for the patients. Still there are wards where 10-15 patients are placed with only 1.5 metres between the beds, so the conditions are crowded, although the patients can leave the wards during the days (as opposed to inmates convicted to imprisonment and then referred to the IMEI for examinations or because their mental status warrants so; such inmates are locked up in cells holding 2-4 persons, practically all day long with

<https://www.ajbh.hu/documents/10180/2611988/jel.IMEI.0766.2017.v%C3%A9gs%C5%91.jelent%C3%A9s+d%C3%A1tummal.pdf/effbbde9-31a2-4a10-85d3-f961888e51b0>, p. 20.

³⁹ Ibid, p. 21.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Report no. AJB-766/2017, p. 12.

⁴³ Ibid, p. 21-22.

⁴⁴ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

⁴⁵ Source: Response no. 30500/7902-/2022 issued by the NPA to Borbála Ivány's FOI request on 26/09/2022.

⁴⁶ Report no. AJB-766/2017, p. 7.

And IMEI's Deed of Operation and Organisation, p. 4. here:

https://bv.gov.hu/sites/default/files/imei_szmsz_jovahagyott_2022.pdf

⁴⁷ The former staff member was interviewed in June 2022.

the exception of the one-hour open air exercise). The transformation of therapeutic premises into wards also has a negative impact on the availability of therapy other than the administration of medication.

Visitation is available for patients every week but as the general restrictive rules of penitentiaries are implemented in IMEI as well, high plexiglass walls have been installed there too.⁴⁸ Visits are conducted under a total physical separation between visitors and detainees/patients.

According to the NPM, “patients live in an extremely unstimulating environment, practically no leisure activities were organised for them.”⁴⁹ There is an insufficient amount of in-house programmes, only few patients participate in work activities for a few hours a week (without any occupational therapy content), there is no provision for participation in public or higher education, and socio-therapy, psychotherapy and psychoeducation groups are only occasional.⁵⁰ There is no individualisation or specialisation in IMEI as in the penitentiary institutions, the only separation criterion being gender.⁵¹ Detainees at the IMEI are not separated on the basis of the nature of the offence, their mental disorder (e.g. psychotic disorders from intellectual disabilities), age, comorbid substance use or recidivism, and even pre-trial detainees awaiting sentencing are in the same ward as the patients in mandatory psychiatric treatment.⁵²

4.2. Previously raised issues regarding restrictive contact-policies remain unresolved, or even intensify

New data,⁵³ the HHC’s latest fact sheet on detainees’ contacts with the outside world⁵⁴ and new research⁵⁵ show that as a response to the pandemic, the NPA has further restricted its already strict contact policies. It is apparent that the way the NPA has handled the epidemiological emergency has been disproportionately limiting detainees’ right to maintain contacts with the outside world. Additionally, even though the risks related to the COVID-19 pandemic have significantly decreased, some forms of contact are still not available to the extent they were before the epidemic; for example a ban on family visits was enforced at least until the end of July 2022 (when the HHC last received a response to its FOI request from the NPA).

⁴⁸ See: Bacsák, D. – Krámer, L.: “Punishment-therapy” – Chances of Psycho-rehabilitation for Mentally Disordered Offenders Under Forced Medical Treatment (in Hungarian), *Lege Artis Medicine* 2020; 30(1-2): 67-74., here: <https://elitmed.hu/kiadvanyaink/lege-artis-medicinae/buntetesterapia-kenyszergyogykezes-alatt-allo-betegek-pszichorehabilitacios-lehetosegei-magyarorszagon> p. 71.

⁴⁹ Ombudsperson English IMEI Report, p. 1.

⁵⁰ Report no. AJB-766/2017, p. 30-32.

⁵¹ See the organogram of the Forensic Observation and Mental Institution here (in Hungarian): https://bv.gov.hu/sites/default/files/Szervezeti%20fel%C3%A9p%C3%ADt%C3%A9s_0.pdf

⁵² See: Bacsák, D. – Krámer, L.: “Punishment-therapy” – Chances of Psycho-rehabilitation for Mentally Disordered Offenders Under Forced Medical Treatment (in Hungarian), *Lege Artis Medicine* 2020; 30(1-2): 67-74., here: <https://elitmed.hu/kiadvanyaink/lege-artis-medicinae/buntetesterapia-kenyszergyogykezes-alatt-allo-betegek-pszichorehabilitacios-lehetosegei-magyarorszagon> p. 70-72.

⁵³ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC’s FOI request on 29/08/2022.

⁵⁴ The HHC’s Factsheet on Contact with the outside world was completed on 30 March 2022 and is available here: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/03/HHC_factsheet_detainees_contact_Hungary_fin_EN.pdf

⁵⁵ Kovács, P. – Krámer, L. – Szegő, D.: Keeping in Contact with Detainees in Hungarian Penitentiary Institutions. FECSKE, 2020-2021. Available here: http://www.fogvatartas.hu/wp-content/uploads/2022/03/fecske_keeping_in_contact_EN_final.pdf

As reported by the HHC in its previous Rule 9 communications,⁵⁶ there are two main areas of contact with the outside world, where the NPA pursues an unnecessarily and disproportionately strict policy, which are:

1. Personal forms of contact including
 - visitation inside or outside the prison;
 - short-term temporary leave;
 - extraordinary temporary leave.
2. Phone calls.

No-physical-contact visitation policy remains the general rule

The NPA has still not softened its very restrictive, no-physical-contact visitation policy since the HHC's Rule 9 communication of 26 January 2021.⁵⁷ As the HHC has pointed out in their previous Rule 9 communications,⁵⁸ a process started in 2017-2018 whereby the Hungarian penitentiary system had become increasingly closed and non-transparent. As part of this process, the NPA introduced a very restrictive visitation policy: any physical contact between the detainees and their visitors was prohibited as a general rule. Furthermore, an internal regulation making it mandatory for every institution to install high transparent plastic screens, physically separating inmates from visitors came into effect on 29 April 2019.⁵⁹ Since then, physical contact between detainees and their visitors has been completely prohibited, except for a rarely available type of visit (family visit), which is only possible upon the detainee's request, and within the governor's discretion, based on criteria for its granting that are non-transparent.⁶⁰ Even though the plastic screens that physically separate the detainees and their visitors were in place already before the pandemic and therefore they could have been easily used to reduce the risk of COVID infection, the NPA decided not to utilise the previously installed infrastructure to make visitation possible, and maintained the total ban on visitation for an unprecedentedly long, 21 month-period.

⁵⁶ The HHC prepared several Rule 9 submissions with regards to the execution of the judgments of the European Court of Human Rights in the cases of *Varga and Others v. Hungary* and *Isván Gábor Kovács v. Hungary* (Application no. 14097/12 and 15707/10) that contained information on the disproportionate and unnecessary restrictions of detainees' contact with the outside world. See pages 13-15 of HHC's Rule 9 communication submitted on 20 April 2020 here: https://helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2020_04_20.pdf

See pages 3-7 of HHC's Rule 9 communication submitted on 26 January 2021 here: https://helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2021_01_26.pdf

See page 5 of HHC's Rule 9 communication submitted on 2 February 2021 here: https://helsinki.hu/wp-content/uploads/HHC_addendum_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2021_02_02.pdf

⁵⁷ The HHC prepared a Rule 9 submission with regards to the execution of the judgments of the European Court of Human Rights in the cases of *Varga and Others v. Hungary* and *Isván Gábor Kovács v. Hungary* (Application no. 14097/12 and 15707/10), which was submitted on 26 January 2021 and is available here: https://helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2021_01_26.pdf, see p. 3-4.

⁵⁸ The HHC prepared a Rule 9 submission with regards to the execution of the judgments of the European Court of Human Rights in the cases of *Varga and Others v. Hungary* and *Isván Gábor Kovács v. Hungary* (Application no. 14097/12 and 15707/10), which was submitted on 20 April 2020 and is available here: https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2020_04_20.pdf

⁵⁹ Source: Response no. 30500/490/2020 issued by the NPA to the HHC's FOI request, 17 January 2020.

⁶⁰ This practice is in clear violation of the ECtHR's consistent case law, according to which "*it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family*" (*Moiseyev v. Russia*, § 246). The ECtHR also made it clear that "*although physical separation of a detainee from his visitors may be justified by security considerations in certain cases [...], the measure cannot be considered necessary in the absence of any established security risk*" (*Ibid.*, § 258).

Short-term temporary release and extraordinary temporary release are still only minimally used

According to the Penitentiary Code, two types of short-term temporary release (*kimaradás, eltávozás*)⁶¹ are available as a form of detainees' contact with the outside world.⁶² Detainees who have served one third of their sentence (at least a year in a high security prison, at least six months in a medium security prison and three months in a low security prison) or are assigned to a "transitory regime" (*átmeneti részleg*), can request one or the other type of short-term temporary release⁶³ (*kimaradás* is a leave of maximum 24 hours, *eltávozás* is a leave of maximum 5, 10 or 15 days per year, depending on the security-level of the prison). Data provided by the NPA show that short-term temporary release is still practically non-existent. These forms of contact with the outside world have not been reinstated in practice, even after the complete ban on personal contact with the outside world was lifted and visitation became possible again.⁶⁴

Additionally, the Penitentiary Code allows for extraordinary temporary release (*rendkívüli eltávozás*)⁶⁵ as a compassionate measure for convicted prisoners to visit a seriously ill close relative or attend a close relative's funeral. This measure has been severely underused in the past years.

High phone tariffs remain

Previously raised serious problems concerning the high phone call tariffs have not been resolved either. Deposit and minute tariffs for penitentiary administered mobile phones continue to constitute a serious financial difficulty to several inmates.

These problems will be outlined in more detail below.

4.2.1. Unprecedented restrictions on detainees' personal contact to prevent the COVID-19 outbreak within the penitentiary system

At the beginning of the first wave of COVID-19, the NPA called upon the relatives of detainees to "minimise the number of visits." However, visitation in general was still allowed. The number of visitors was reduced to two per visit, and the NPA proposed to detainees to avoid initiating visits with their elderly or young relatives.

Some penitentiary institutions suspended visitation referring to the general curfew restriction Hungary introduced on 27 March 2020. The rules of the curfew allowed people to leave their homes for work or for "essential" activities such as buying food (or even for going to a hairdresser), but visiting family

⁶¹ Articles 173(1)(f-g) and 179-180 of the Penitentiary Code

⁶² The HHC welcomes that the Government plans to create a new form of short-term temporary release as Article 59 and Article 61 of Bill T/1837 envisages to amend Article 173(1) of the Penitentiary Code adding "(h) reintegration release." Detainees who have served 3-4-5 months (depending on the security level of the prison they are held in) of their sentence can request the maximum of 5-10-15 days of temporary release using electronic monitoring. According to the explanatory memorandum of Bill T/1837, reintegration release "can be interpreted as the »hallway« of reintegration custody, because spending it successfully can serve as proof that the convict will respect the law in free living conditions, which helps the decision making process regarding his/her reintegration custody." However, arguably the two already existing forms of short-term temporary release (*kimaradás, eltávozás*) could serve the same purpose, even though these remain vastly underused (see Chapter 4.2.2.).

⁶³ See the detailed rules of eligibility for temporary release at Articles 39-42 of the Ministry of Justice Decree 16/2014 on the detailed rules on the execution of imprisonment, detention, pre-trial detention, and detention as a substitute for fines.

⁶⁴ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

⁶⁵ According to Article 123(1) of the Penitentiary Code "On the basis of permission issued by the governor of the penitentiary institution, convicted prisoners may – with or without an escort – visit a seriously ill close relative or attend the funeral of a close relative."

members in prison was not one of the reasons for leaving home under the rules, and visitation was halted on this basis. Later on, this became the general practice in all penitentiaries on the basis of Government Decree 90/2020 (IV. 5.) issued on 5 April 2020, according to which [Article 3(7)], the right to receive visitors and to be granted short-term temporary release may be restricted in one or more penitentiary institutions, if compliance with epidemiological measures may not be guaranteed otherwise.

When the first wave of the epidemic was over and the special legal order was terminated, a law was passed by the Parliament on the rules of transition back to the ordinary legal order (Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness, hereinafter: Transitional Act). Under Article 237(4), the Commander of the NPA may restrict visitation and short-term temporary release in one or more penitentiaries based on epidemiological reasons.

Based on this provision, visitation and short-term temporary release were not allowed in any of the penitentiaries until 30 June 2021 (although between 18 June and 4 November 2020, there was no “state of danger” in place, but even in this period, visitation and short-term temporary release rights were not reinstated). While during the first wave of the epidemic (March-June 2020), this limitation was largely accepted by both inmates and their families, by mid-July 2020 it had started to cause severe tensions within the prisons, because

1. the epidemiological numbers did not seem to substantiate the full ban of visitation and short-term temporary release (by way of example, on 12 July 2022, the 3-day rolling average of daily new cases was 5 in Hungary⁶⁶);
2. limitations of visitation had been lifted in all other “suspect” institutions, including hospitals and old people’s homes;
3. out-of-prison employment was continual, i.e. inmates could leave the prison to work in the outside world, where they met civilians, but they could not be visited under the pretext of being protected from the threat coming from the outside world;
4. and inmates found it highly unjust that while the prison personnel whom they met on a daily basis were not limited in any way in their movements in the outside world (they were able to attend football games, parties, or spend their holidays abroad), their family members were not allowed to visit them even though (as mentioned above) there were plastic screens in every penitentiary in order to separate the inmates from their visitors.

Additionally, the complete ban on personal contact had a very negative effect on detainees under the special regime of the so-called “lighter enforcement rules” (*enyhébb végrehajtási szabályok, EVSZ*), which can be granted to first-time offenders who only committed minor offences, present good behaviour during serving their sentence, and are soon to be released. Lighter enforcement rules provide significant allowances compared to the general rules of contact, including as longer visitations. Moreover, detainees under this special regime are allowed by law to receive visitors outside the prison and to apply for temporary release. In practical terms during the long ban on visits and temporary release, prison sentences of detainees under the lighter enforcement rules got stricter, as they completely lost the opportunity of visiting home that used to count towards the length of their sentence, and the NPA did not compensate them for losing out on their benefits in any way.⁶⁷

⁶⁶ <https://www.worldometers.info/coronavirus/country/hungary/>

⁶⁷ See the HHC’s Factsheet on Contact with the outside world, which was completed on 30 March 2022 and is available here: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/03/HHC_factsheet_detainees_contact_Hungary_fin_EN.pdf

According to a report by the Ombudsperson,⁶⁸ during the epidemic, to mitigate the lack of contact stemming from the total ban on visitation, those inmates who could not afford to have a prison mobile and/or to make calls at these high rates, were allowed, upon request and within the discretion of the staff, to make a maximum of three 5-minute phone calls per month on the “wall telephones”. 15 minutes on the phone a month would obviously be insufficient to maintain meaningful contacts with the outside world even if the staff allowed all the three calls every month. However, HHC staff has been informed by penitentiary personnel that there are too few “wall telephones” (in some cases one telephone for 300 inmates) and due to a 13% staff shortage,⁶⁹ guards often do not have the time and capacity to escort all inmates concerned one by one to these phones,⁷⁰ so indigent detainees often were not compensated for the loss of visitation.

It must be added that to offset the lack of visits, Article 237(7) of the Transitional Act authorised the Commander of the NPA to introduce certain measures extending the inmates’ rights concerning other forms of contact (such as additional time for telephone calls for those who can afford it, and the 3 times 5 minutes of free calls per week mentioned above). Free Skype calls (a maximum of two calls per week for a maximum of 60 minutes per occasion based on the discretion of the penitentiary institution)⁷¹ were also offered, however, the HHC has also received several complaints regarding the practical implementation of Skype communication. Many indigent families do not have computers and/or access to the internet, the level of computer literacy is low among many concerned families, some of the relatives have never heard of Skype. The use of such programs is particularly difficult for elderly relatives, such as parents, who are often the last ones to maintain contacts with inmates serving longer terms.

The Ombudsperson’s report on inmates’ access to phone calls concludes that the high prices encumber or fully eliminate indigent inmates’ access to this form of communication amount to a limitation of the right to family life and also of the right to defence (as the indigent inmates who cannot afford to make phone calls, are only provided with the possibility of calling their lawyers if the aim of the call is to discuss a remedial action, and even in such cases, the penitentiary only advances the cost of the call), and this limitation does not have a legitimate aim in light of which it could be regarded as proportionate. For this reason, the Ombudsperson is of the view that the laws and practice regulating inmates’ access to telephone communication amount to a constitutional violation and recommends that the NPA would initiate the reduction of the phone tariffs with the service provider and adopt internal regulations guaranteeing indigent inmates’ access to phone calls and widening the use of electronic forms of communication for all inmates.

The ban on visitation was finally lifted on 30 June 2021. This means that Hungarian inmates were prevented from receiving visits for 16 months, even in periods when the epidemic data did not warrant such limitations. It must also be pointed out that even when the visitation rights were restored, it was with severe and often unjustified restrictions, including

⁶⁸ Report no. AIB-2236/2021. of the Ombudsperson. Available here: https://www.ajbh.hu/documents/10180/3713052/Jelent%3%a9s+a+fogvatartottak+telefonos+kapcsolattart%3%a1s%3%a1nak+percd%3%adjaival+%3%b6sszef%3%bcgg%3%a9sben+2236_2021/

⁶⁹ Source: Response no. 30500/7902-/2022 issued by the NPA to Borbála Ivány’s FOI request on 26/09/2022.

⁷⁰ <https://444.hu/2020/08/03/egyre-zabosabbak-a-rabok-amiert-meg-mindig-nem-oldottak-fel-a-latogatasi-tilalmat>

⁷¹ Article 13 of Instruction 37/2020. (VII. 24.) of the NPA.

1. the ban on children visiting their parents;
2. the reduction of the default one-hour visit at least once a month to a half-hour visit no more than once a month; and
3. the reduction of the frequency of Skype calls with relatives to once a month for up to half an hour, instead of the previous four times a month.⁷²

On 5 November 2021, a complete ban of visitation was ordered again as of 8 November 2021.⁷³ Despite the fact that Government Decree 77/2022. (III. 4.) lifted most of the epidemiological restrictions (including the obligation to wear masks on public transportation, shops and post offices) as of 7 March 2022, the ban on prison visitation and short-term temporary release was upheld until 1 May 2022,⁷⁴ when visitation was reintroduced with still limited⁷⁵ forms in comparison to the pre-pandemic period.

Thus, the ban on visits and short-term temporary release was exceptionally long: there were nearly 21 months when detainees were not allowed to receive visitors at all, nor were they allowed on short-term temporary release. The ban on visits and short-term temporary release was upheld without individual assessment, as the conditions for lifting the ban (such as the rate of infected population, the rate of vaccination) were never communicated. The HHC requested information from the NPA on the criteria for lifting the total ban, but no information was disclosed regarding this policy violating the rights of thousands of detainees to either the HHC, or the detainees and their family members.

Similarly, no justification was provided for the most severe violation of detainees' and their relatives' rights to respect for private and family life: the complete ban on extraordinary temporary release. According to the Penitentiary Code, convicted prisoners can apply for extraordinary temporary release⁷⁶ to visit a seriously ill close relative or attend a close relative's funeral. According to the HHC's experience, in such situations, the penitentiary administration often denies the inmates' requests, without providing its decision in due time (i.e. before the date of the funeral), or informing the detainees of the legal remedies available against the decision. Moreover, if the detainee could not attend his/her close relative's funeral, Article 123(4) of the Penitentiary Code leaves an unnecessarily short 30-day period after the funeral when the prison commander can allow the inmate to pay their respects. Even before the epidemic, HHC lawyers successfully litigated cases⁷⁷ before the European Court of Human Rights in relation to prison authorities violating detainees' right to respect for their private and family life when denying the permission to visit terminally ill close relatives. During the pandemic, the HHC received numerous complaints from detainees and their family members that the reasoning provided by the NPA for not granting such a request was a simple general health security risk argument without any individual risk assessment being provided. Furthermore, NPA data⁷⁸ on the

⁷² For more details, see: <https://helsinki.hu/en/unnecessary-restrictions-have-been-imposed-as-prisoners-are-allowed-visitors-again/>

⁷³ See the NPA's publicly disclosed COVID-19 related news, here: <https://bv.gov.hu/hu/node/3592>

⁷⁴ The NPA informed the public on its website about lifting the ban on 29 April 2022, here:

<https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4909>

⁷⁵ In May 2022, visits were limited to the maximum of two visitors, once a month for the maximum of 60 minutes. Visitors and detainees had to be strictly separated from each other.

⁷⁶ According to Article 123(1) of the Penitentiary Code "On the basis of permission issued by the governor of the penitentiary institution, convicted prisoners may – with or without an escort – visit a seriously ill close relative or attend the funeral of a close relative."

⁷⁷ See Császay v. Hungary, Application no. 14447/11 and Pintér v. Hungary, Application no. 39638/15.

Additionally, HHC has a similar case ongoing before the ECtHR (Application no. 54953/21).

⁷⁸ Response no. 30500/3918-11/2021 issued by the NPA to the HHC's FOI request on 27/04/2021.

protocols and process of risk assessment in relation to the epidemic situation suggested that the nature of assessing health risks remained on a general level, and was not individualised at all.⁷⁹

4.2.2. Remaining restrictions after the pandemic

The long-standing total lockdown of penitentiary institutions put a severe burden on detainees' family ties. It is important to mention that the NPA declared that even after reintroducing the "ordinary" pre-pandemic visitation policy on 1 June 2022,⁸⁰ visits have still been carried out with the complete physical separation of the inmates from the visitors, regardless of the detainees' assigned security regime and risk category, or their and their visitors' health condition.

In addition, while the "ordinary" pre-epidemic visitation policy included the exceptional family visits (where physical contact between detainees and their visitors was allowed), data show that family visits have not been reinstated. Therefore, since March 2020 detainees have not been able to successfully request this exceptional form of contact (at least not until the end of July 2022).⁸¹

On 30 June 2022, there were 69 detainees in the special regime "lighter enforcement rules". Even now, after the complete ban on personal contacts was lifted, the HHC still receives regular complaints that the most desirable benefit of lighter enforcement rules, which is the possibility of short-term temporary release, is practically unavailable. The data provided by the NPA substantiates these claims, showing that short-term temporary release is still practically non-existent, regardless of the fact that all restrictions on contacts with the outside world were lifted on 1 June 2022. Between 1 May and 31 July 2022, 30 detainees filed 38 requests for short-term temporary release out of which only one detainee was granted his/her request by the prison governor. This detainee was allowed a short-term temporary release six times in total, out of which on four occasions the detainee was allowed to go home for three days, and on two occasions for four days.⁸²

Extraordinary temporary release was similarly rigorously administered between 1 May and 31 July 2022. According to data provided by the NPA, 35 detainees requested permission to attend a close relative's funeral and less than one third of them, only 11 people were granted the request; four detainees requested to visit their terminally ill family members and only one of them was allowed the visit.

NPA's data⁸³ show that only a minority of the average prison population were able to utilise the reintroduced visits: in May 2022, 9% of them received visitors, this ratio increased to 17% in June and to 20% in July, while the rate of using Skype is slowly decreasing.

Table 4. – Number of detainees receiving visitors and their ratio within the average prison population (18 803) between May and July 2022⁸⁴

| Month | No. of detainees receiving visitors | Ratio of detainees receiving visitors |
|---------|-------------------------------------|---------------------------------------|
| 05/2022 | 1 635 | 9% |
| 06/2022 | 3 173 | 17% |
| 07/2022 | 3 833 | 20% |

⁷⁹ Response no. 30500/3918-11/2021 issued by the NPA to the HHC's FOI request on 27/04/2021.

⁸⁰ See: <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/5004>

⁸¹ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

⁸² Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

⁸³ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

⁸⁴ Source: Response no. VII/125/2/2022 issued by the Ministry of Justice to the HHC's FOI request on 12/09/2022.

The HHC welcomes the fact that the free-of-charge Skype calls were continued after the visitation ban was lifted. However, from 1 May 2022, the frequency of Skype calls was reduced to a maximum of 60 minutes once a month with the exception of those detainees who are unable to receive their relatives for any reason. They may Skype with their registered contacts twice a week for a maximum of 60 minutes in total.⁸⁵

Data show that while between January and May 2022, 55-58% of the prison population used Skype 3-4 times a month for 30-31 minutes per call on average, in June and July 2022, the ratio of detainees using Skype started declining to around 50% and the frequency of calls dropped to 1.6-1.7 times a month for 29-31 minutes per call on average.

Table 5. – Number of detainees using Skype and their ratio within the average prison population at the time (18 768), January-July 2022⁸⁶

| Month | No. of detainees using Skype | Ratio of detainees using Skype | Average frequency of calls (no. of occasions) | Average length of calls (minutes) |
|---------|------------------------------|--------------------------------|---|-----------------------------------|
| 01/2022 | 10 271 | 55% | 3.7 | 31 |
| 02/2022 | 10 437 | 56% | 3.4 | 31 |
| 03/2022 | 10 742 | 57% | 3.6 | 30 |
| 04/2022 | 10 813 | 58% | 3.6 | 30 |
| 05/2022 | 10 567 | 56% | 3.4 | 30 |
| 06/2022 | 9 518 | 51% | 1.7 | 31 |
| 07/2022 | 9 276 | 49% | 1.6 | 29 |

5. Recommendations

5.1. Procedural recommendations

- The HHC respectfully recommends to the Committee of Ministers of the Council of Europe **to continue to examine this group of cases under the enhanced procedure.**
- The HHC respectfully calls on the Committee of Ministers of the Council of Europe to **review this group of cases, with special regard to the recent rapid increase of the prison population.**

5.2. Substantive recommendations

New recommendations

- The authorities should regularly collect, process, analyse and publish data to monitor the use of alternative sanctions. Data should be reliable, easy to access; data collection should be regular and systematic. Using these data, decision makers should regularly monitor the application of alternatives and publish the findings.

⁸⁵ See: <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4909>

⁸⁶ Source: Response no. VII/125/2/2022 issued by the Ministry of Justice to the HHC's FOI request on 12/09/2022.

- To enhance the utilisation of alternatives, the Hungarian authorities should support closer cross-sectoral cooperation between criminal justice stakeholders, social services, local authorities, charities, churches and NGOs.
- The NPA should be urged to recommence its previous practice of releasing basic public data related to detention conditions and the basic sociodemographic characteristics of detainees.
- Forms of contact with the outside world that have not been reinstated since the epidemic-related limitations on visits were lifted should be made available to the detainees again.

Outstanding recommendations from previous Rule 9 communications

- **The unjustified and discriminatory limitation that detained inmates may only access the compensation amount after their release should be abolished.** Inmates should be free to use the compensation granted for the violation of their inherent rights without any limitations beyond the ones made absolutely necessary by the deprivation of their liberty. This should include (but not be limited to) their ability to pay the fee of their legal counsels from the compensation amount.
- The system whereby the payment of compensations to lawyers' escrow accounts was possible should be reinstated in order to enhance detainee's access to effective legal services and to put an end to the discrimination the ban on this practice results in.
- The Government should **invest in the sufficient use of the existing non-custodial alternatives to detention** to mitigate the harmful consequences of inadequate detention conditions **by reviewing its criminal policy**, and by focusing its efforts on long-term strategies for crime prevention and reduction.
- **Data crucial for the assessment of the degree of implementation** (such as the number of inmates with insufficient moving space, length of compensation proceedings, data allowing for the assessment of the consistency of the jurisprudence) **shall be regularly collected and made accessible** for the interested public by the Hungarian authorities.
- A sufficient amount of independent monitors shall have access to the penitentiary system. Therefore, the NPA should **allow the HHC to recommence its prison monitoring activity** to support the protection and enforcement of detainees' rights.
- Physical conditions other than moving space shall be taken into account in the course of implementing the ECtHR judgments in question. **The provisions on the compensatory mechanism shall be amended to make sure that if the overall physical conditions** (access to fresh air, proper natural lighting, and the partitioning of toilettes, absence of parasites) **are substandard to the extent that they justify this, inmates should be entitled to claim compensation even if they are provided with the required moving space.**
- **The unnecessary restrictions concerning contact with the outside world and especially family members should be removed.** Inmates should be allowed, as a main rule, physical contact with their visitors, and only those should be prevented from direct contact whose risk assessment justifies such a restriction.