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Rule of law backsliding in Hungary from a criminal justice and law enforcement perspective

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Rule of law backsliding affects all policy areas and all areas of life, including the performance of law enforcement agencies and the criminal justice system. With a view to the stakeholder consultation regarding the European Commission's 2023 Rule of Law Report, in this paper we provide examples of the negative effects of rule of law backsliding in Hungary on institutions and mechanisms crucial for a well-functioning criminal justice system. Thus, this paper does not intend to provide a full picture of the rule of law situation in Hungary, but rather wishes to draw attention to how rule of law deficiencies in Hungary falling under the purview of the European Commission's Rule of Law Report have manifested itself in certain areas of criminal justice and law enforcement falling under the Hungarian Helsinki Committee's (HHC) mandate in the past years.¹

1. Undermining the independence of the judiciary

1.1. Power grip on the ordinary court system²

Undermining the independence of the judiciary in Hungary has been a constant endeavour of the current governing majority since it gained constitutional power in 2010. The project of capturing independent courts – both the Constitutional Court³ and the ordinary court system⁴ – has nearly come to full completion, with only one weak, but independent judicial self-governing body standing: the National Judicial Council (NCJ).

Until 2018, the attempts to gain political control over courts targeted the judiciary as a whole. A series of aggressive legislative steps were taken to undermine judicial independence both on the individual and the organisational level. These included taking control over judicial administration by concentrating court management powers in the hands of a political appointee, the President of the National Office for the Judiciary (NOJ).⁵ However, despite all endeavours, the judiciary stood its ground, the large majority of judges preserved their independence. Internal tensions culminated in a

¹ Note that this is not the HHC's official contribution to the European Commission's 2023 Rule of Law Report. The official contribution, prepared together with eight other Hungarian civil society organisations and covering all chapters of the Rule of Law Report, will be made available on the HHC's [website](#) by the end of January 2023.

² For a full analysis of the issue, see: Hungarian Helsinki Committee, *Court Capture Project Completed – The Hungarian recipe for getting a grip on the judiciary*, 26 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Court-Capture-Project-Completed-20221026-.pdf>.

³ See e.g.: <https://helsinki.hu/en/hungarys-government-has-taken-control-of-the-constitutional-court/>.

⁴ See in detail: Amnesty International Hungary – Hungarian Helsinki Committee, *Timeline of undermining the independence of the judiciary in Hungary 2012–2019*, https://helsinki.hu/wp-content/uploads/Hungary_judiciary_timeline_AI-HHC_2012-2019.pdf.

⁵ Other steps included the dismissal of individual judges and judicial leaders through forced early retirement (see the judgment issued by the Court of Justice of the European Union in Case C-286/1) and the removal of the President of the Supreme Court by *ad hominem* legislation (see the judgment issued by the European Court of Human Rights in the *Baka v. Hungary* case).

constitutional crisis,⁶ whereby the NJC initiated (in vain) the removal of the NOJ President who refused to cooperate with the NJC and hindered it in performing its constitutional task of overseeing the administration of the court system.

The strive for a power grip on the judiciary came to a turning point after the 2018 parliamentary elections. As the legislative steps taken after 2018 reveal, at this point, the governing majority recognised that capturing the whole judiciary comprising 3000 independent judges is just too big a bite. Instead of further striving to take control of the judiciary as a whole, the court capture project was strictly narrowed down to one single judicial body constituting the final instance of adjudication and comprising less than 100 judges: the Kúria, the supreme court of Hungary. After this strategic decision, the government quickly and successfully developed its own recipe for gaining political control over the judiciary. The court capture project launched was completed by 2021, ensuring that by the 2022 parliamentary elections, all politically sensitive cases end up at a loyal court instance.

1.2. Chilling effect on the freedom of expression of judges

The power grip on the courts has been accompanied by waves of smear campaigns throughout the years against judges voicing professional criticism. Such attempts to exert chilling effect on the freedom of expression of judges continued in 2022 as well. In August, the NJC's spokesperson voiced his concerns over government overreach aimed at swaying courts in an article, which drew severe attacks against him from the pro-government propaganda media. In November, another massive smear campaign was launched by government representatives and the pro-government media against the spokesperson and another sitting judge, also member of the NJC. The judges were attacked and their independence was questioned for accepting an invitation to meet the ambassador of the USA in their capacity as representatives of the NJC, to talk about the situation of judges and judicial independence in Hungary.⁷

1.3. Undue interference with criminal procedures

High-ranking government officials have also repeatedly disregarded the requirement of non-interference with court procedures by publicly formulating expectations regarding the final judgment to be delivered. Examples for this since the current governing majority came into power in 2010 include exerting political pressure against the first instance acquittal in a criminal case launched in relation to an industrial disaster; the criticism of the sanctions imposed by the first instance judgment in a high-profile misappropriation case involving an opposition party politician; the Minister of Justice asking the President of the Kúria to “adjust jurisprudence to the expectations of the society” after the court of second instance imposed a more lenient sanction than the first instance court for the murder of a well-known professional handball player; and the leader of the governing party's parliamentary group demanding pre-trial detention instead of house arrest for the defendant of a car accident case causing deaths. Although it did not interfere with an ongoing case, another example for undue interference was when the head of the Prime Minister's Office publicly blamed the Kúria for a tragic family drama, claiming that “[t]he Kúria shall be responsible for the delivery of sufficiently rigorous judgments, because today judges hand down extremely lenient verdicts”.⁸

⁶ For more detail, see: Amnesty International Hungary – Hungarian Helsinki Committee, *A Constitutional Crisis in the Hungarian Judiciary*, 9 July 2019, <https://helsinki.hu/wp-content/uploads/A-Constitutional-Crisis-in-the-Hungarian-Judiciary-09072019.pdf>.

⁷ See e.g.: <https://www.theguardian.com/world/2022/nov/09/hungarian-judges-face-media-smears-after-meeting-us-ambassador>.

⁸ For more details on the cases and further examples of undue interference, see: Hungarian Helsinki Committee, *Unfettered Freedom to Interfere – Ruling party politicians exerting undue influence on the judiciary in Hungary 2010–2020*, July 2020, https://helsinki.hu/wp-content/uploads/HHC_Hun_Gov_undue_influence_judiciary_29072020.pdf.

2. Shortcomings regarding the prosecution service

The Hungarian prosecution service is burdened with structural shortcomings flowing from the lack of internal checks and balances and from the possibility of the Prosecutor General to unaccountably influence the work of subordinate prosecutors and to interfere in individual cases.⁹ Thus, the “concerns as regards the discretionary powers of the prosecution service to decide on the investigation and prosecution of cases, which are further amplified by the strictly hierarchical architecture of the prosecution service enabling the Prosecutor General and other senior prosecutors to instruct subordinate prosecutors and to reallocate cases assigned to them”¹⁰ as raised by the EC’s 2022 Rule of Law Report remain valid. Out of the four recommendations issued by the Council of Europe Group of States against Corruption (GRECO) in 2015 in relation to corruption prevention in respect of prosecutors, one recommendation remains not implemented, while two remain only partly implemented.¹¹

The prosecution service and the incumbent Prosecutor General (re-elected in 2019 for nine years by the governing parties) has long been subject to heavy criticism for not bringing high-profile corruption cases of government politicians and their close affiliates before courts. In relation to prosecution of corruption concerning EU funds, the EC cited issues as regard limitations to the effective investigation and prosecution of alleged criminal activity and the organisation of the prosecution services as grounds for triggering the rule of law conditionality mechanism¹² in relation to Hungary in 2022.¹³

3. Governmental attacks against and spying on lawyers

In the past years, occasionally attorneys have been subjected as well to attacks by governing party politicians and government-aligned media, similarly to judges. In particular, in 2020, attorneys representing inmates in compensations cases launched because of inadequate detention conditions (on the basis of domestic law introduced after a pilot judgment by the European Court of Human Rights) were attacked. For example, a high-level government representative stated that a “business” has been built on compensation payments by civil society organisations (CSOs) and their attorneys;¹⁴ and the Prime Minister also talked about “prison business” in an interview, and said that “the attorneys [involved] should be dealt with as well, because, after all, they took several billion forints from the state’s pocket”.¹⁵ In addition, a government-aligned news site listed by name attorneys who represented inmates in compensation cases in a negative context, publishing also the sums these

⁹ Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *The European Commission should be more intransigent to stop systemic corruption in Hungary – Civil society on Hungary’s unfolding anticorruption package*, 17 November 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HU_17_measures_assessment_17112022.pdf, in particular p. 4.

¹⁰ 2022 Rule of Law Report Country Chapter on the rule of law situation in Hungary, p. 9.

¹¹ GRECO, *Fourth Evaluation Round – Third Interim Compliance Report – Hungary*, GrecoRC4(2021)24, 3 December 2021, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a7f171>, para. 31-50 and 55.

¹² I.e. the procedure under Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

¹³ Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, COM/2022/485 final, Explanatory Memorandum (34)

¹⁴ The interview is available here in Hungarian: <https://hirtv.hu/magyarorszageloben/tuzson-az-nem-lehetseges-hogy-bunozoknek-fizet-a-magyar-allam-2493378>.

¹⁵ For the full interview in English, see: *Prime Minister Viktor Orbán on the Kossuth Radio programme “Good morning, Hungary”*, 17 January 2020, <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-6/>.

attorneys allegedly “won” from the state.¹⁶ The same news site also attacked the President of the Budapest Bar Association for calling on colleagues in a closed Facebook group to show solidarity with the attacked attorneys, and stated that the influence of George Soros has increased in the Budapest Bar Association.¹⁷

In 2021, with the assistance from Amnesty International’s Security Lab experts’ in-depth forensic analysis of numerous mobile devices around the world, the investigative news outlet Direkt36 revealed that the Hungarian government had been spying on Hungarian attorneys-at-law, including the President of the Hungarian Bar Association, using the Pegasus Spyware.¹⁸

4. Lack of meaningful consultation on laws and hasty legal changes

In recent years, public consultation on draft laws has virtually ceased;¹⁹ “rules on the obligatory public consultation of draft legal acts and their impact assessments have been systematically disregarded”.²⁰ The “absence of effective public consultation on draft laws” as pointed out by the EC’s 2022 Rule of Law Report²¹ remains an issue despite new legislative amendments: although Act CXXXI of 2010 on Public Participation in Preparing of Laws was amended in October 2022 in the interest of reaching an agreement with the EC and accessing EU funds,²² the new rules do not offer real solutions either. The amendment introduces a weak sanctioning mechanism for when consultation is unlawfully omitted, but it does not foresee any further consequences, and so laws adopted in breach of the rules on public consultation can become/remain part of the legal system.²³ In the last period 2022, ministries started to publish laws for public consultation, but several significant laws were omitted.

Moreover, penal populism can easily lead to hasty changes in the law without any regard for its consequences on the criminal justice system as a whole even when a consultation formally takes place. A blatant example of such a hasty change and of how extensive the chilling effect of its application could be is the 2020 amendment of the conditional release rules of Act C of 2012 on the Criminal Code (hereinafter: Criminal Code),²⁴ initiated by the Minister of Justice basically as a reaction to an individual case. In December 2019, after a man released conditionally from prison killed his two young children and committed suicide, the Minister of Justice announced the tightening of the conditions of

¹⁶ See: <https://www.origo.hu/itthon/20200129-magyar-gyorgy-irodajanak-felmilliardot-fizettek-ki.html>.

¹⁷ See: <https://www.origo.hu/itthon/20200120-budapesti-ugyvedi-kamara-szervezkes-a-bortonkartritesek-leallitasa-miatt.html>.

¹⁸ <https://www.direkt36.hu/tag/pegasus/>

¹⁹ For more details, see: *Submission by Amnesty International Hungary, the Eötvös Károly Institute, and the Hungarian Helsinki Committee for the third cycle of the Universal Periodic Review of Hungary*, 25 March 2021, https://helsinki.hu/wp-content/uploads/2021/03/AIHU_EKINT_HHC_UPR2021_Hungary_RoL_web.pdf, pp. 13-15; *Statement of the Hungarian Helsinki Committee made during the OSCE SHDM II 2021 on Democratic Law-Making: Ensuring Participation*, 26 April 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/04/OSCE-SHDM-II-2021_HungarianHelsinkiCommittee.pdf.

²⁰ Council Recommendation of 12 July 2022 on the 2022 National Reform Programme of Hungary and delivering a Council opinion on the 2022 Convergence Programme of Hungary, (28)

²¹ *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, p. 24.

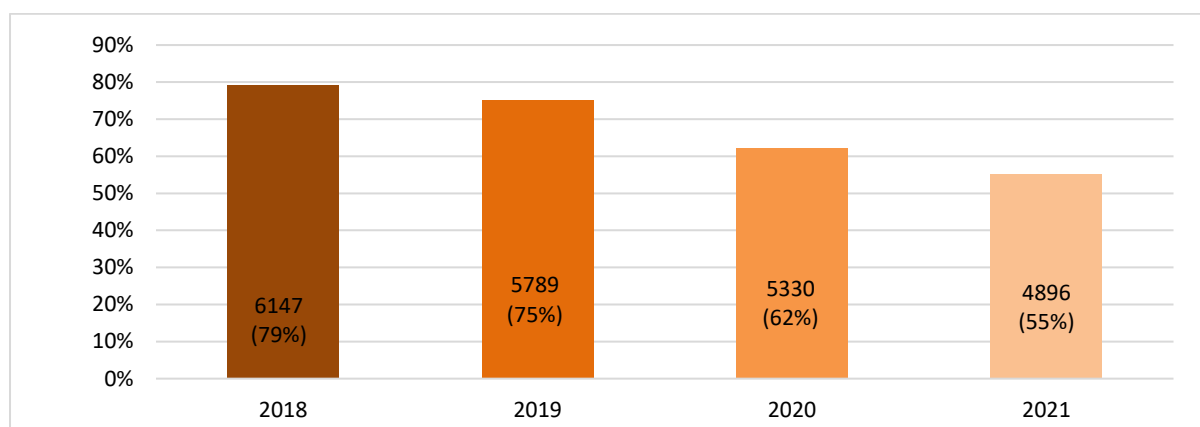
²² Act XXX of 2020 on the Amendments of Act CXXX of 2010 on Law-Making and of Act CXXXI of 2010 on Public Participation in Preparing Laws in the Interest of Reaching an Agreement with the European Commission; entry into force: 26 October 2022.

²³ For more details, see: press release of 10 Hungarian CSOs of 27 July 2022 at <https://helsinki.hu/en/the-governments-bill-on-public-consultation-does-not-offer-real-solutions/>; Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Half-Hearted Promises, Disappointing Delivery. An Assessment of the Hungarian Government’s New Measures to Protect the EU Budget and Related Recommendations*, 7 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/Assessment-of-measures-to-protect-EU-budget.pdf>, pp. 4-5.

²⁴ Analysis and recommendations related to the amendments of the law by the HHC are available here in Hungarian: https://www.helsinki.hu/wp-content/uploads/Magyar_Helsinki_Bizottsag_eszrevetelek_felteteles_eloterjesztes_200127.pdf.

conditional release. The Minister initiated a governmental inquiry on 16 December 2019, and a draft law changing the rules of conditional release was published for commenting already on 22 January 2020, but without a summary of any social impact assessment, regardless of the fact that the law prescribes that such an assessment should be carried out and that the summary should be published.²⁵ The amendment finally entered into force in November 2020,²⁶ without the Government ever publishing any document evidencing that a social impact assessment even took place. The rules were made stricter without any preliminary research, and the possibility of conditional release was excluded by default in the case of certain serious crimes.²⁷ Even though the changes concerned only a limited number and types of crimes,²⁸ nevertheless, as a consequence of the accompanying government propaganda, judges deciding on conditional release got more rigorous in general. Certainly, it is not possible to establish the exact reasons for the changes in the practice, but the statistical evidence shows that the number of detainees granted conditional release significantly decreased after the amendment: while in 2019, 79% of those who had a case were granted conditional release, this dropped to 62% in 2020 and to 55% in 2021.

Number of detainees granted conditional release and their ratio within the total number of conditional release cases (total=granted + dismissed), 2018–2021²⁹



5. Ineffective human rights protection by the Ombudsperson

Rule of law backsliding in Hungary entailed the severe weakening of independent institutions, as a result of the systematic undermining of their role as checks and balances to political power. From the perspective of the protection of human rights, the effect this had on the position of Hungary's Ombudsperson, the Commissioner for Fundamental Rights (CFR), who is the country's national human rights institution (NHRI), is crucial.

²⁵ Act CXXX of 2010 on Law-Making, Article 17; Act CXXXI of 2010 on Public Participation in Preparing of Laws, Article 8(3)

²⁶ Act CVIII of 2020 on Amending Certain Laws to Improve the Protection of Victims of Serious Violent Crimes Committed against Relatives

²⁷ Criminal Code, Article 38(5). 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.

²⁸ See e.g.: <https://hungarytoday.hu/gyor-murder-justice-minister-rules/>.

²⁹ Source: response no. 30500/7297-10/2022 of the National Prison Administration to the HHC's freedom of information request, issued on 29 August 2022.

In June 2021, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) recommended that the CFR is downgraded from an A to a B status as an NHRI.³⁰ The downgrading became final in March 2022.³¹ In its March 2022 report, the SCA concluded,³² confirming the concerns of Hungarian CSOs,³³ that the CFR has not substantiated, among others, that it is “fulfilling its mandate to effectively promote and protect all human rights”, that it is “effectively carrying out its mandate in relation to vulnerable groups such as ethnic minorities, LGBTQI people, human rights defenders, refugees and migrants, or related to important human rights issues such as media pluralism, civic space and judicial independence”, or its “engagement with the constitutional court and international human rights mechanisms in relation to cases deemed political and institutional”. The SCA emphasized that the failure to do so “evidences a lack of independence” of the CFR. The concern raised earlier that the CFR’s selection and appointment process is not sufficiently broad and transparent has not been addressed either.

In the light of the above development, it is all the more problematic that as of February 2020, the Independent Police Complaints Board was abolished and the CFR took over its tasks and responsibilities.³⁴ Abolishing a separate body exclusively dealing with complaints over violations and omissions by the police that concern fundamental rights can be considered as a step backwards in terms of the level of protection. Practical issues include that no time limit applies to the CFR’s procedure, and therefore, cases might last unreasonably long. For example, the HHC represent complainants before the CFR whose complaints against the police have not yet been decided on since October 2020 and December 2020, respectively. It shall be noted here that it is a recurring problem in general that the CFR fails to provide a response to NGO submissions.³⁵

It is not less concerning that, as of January 2021, Hungary’s equality body, the Equal Treatment Authority was also abolished and was merged into the CFR’ Office as well.³⁶ The merger was criticized both by domestic CSO representing protected groups and the Venice Commission,³⁷ with the latter raising the concern that the new system “is overall more complicated and thus has the potential to be

³⁰ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14-24 June 2021, <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>, pp. 12-15.

³¹ <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>, p. 13.

³² Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14-25 March 2022, https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf, pp. 43-47.

³³ For more information, see: Hungarian Helsinki Committee, *Shadow report to the GANHRI Sub-Committee on Accreditation on the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, 18 February 2021, https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf.

³⁴ Pursuant to Article 145 of Act CIX of 2019, adopted by the Parliament on 10 December 2019. The abolished Independent Police Complaints Board was responsible for investigating violations and omissions committed by the police, provided that such violations and omissions substantively concerned fundamental rights. In his capacity of the successor of the Independent Police Complaints Board, if the CFR establishes on the basis of a complaint that a substantive fundamental rights violation has been committed by the police, he shall submit his respective opinion to the police (as a main rule, to the National Police Chief) who then delivers the decision on the individual complaint. The police may only divert from the CFR’s opinion on the basis of a detailed reasoning.

³⁵ The following website, operated by the Hungarian Civil Liberties Union, tracks for how long such NGO submissions have been left without a substantive answer: <https://www.valaszoltekozmaakos.hu/ugyek>.

³⁶ For more details, see: *Contributions of Hungarian NGOs to the European Commission’s Rule of Law Report*, March 2021, https://helsinki.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf, p. 52.; *Country report – Non-discrimination – Hungary*, 2021, <https://www.equalitylaw.eu/downloads/5732-hungary-country-report-non-discrimination-2022-1-63-mb>, pp. 100-115.

³⁷ European Commission for Democracy through Law (Venice Commission), *Opinion on the Amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as Adopted by the Hungarian Parliament in December 2020*, CDL-AD(2021)034, 18 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)034-e).

less effective than the previous one”³⁸ and that this is a risk “that may undermine the effectiveness of the work in the field of promoting equality and combating discrimination”.³⁹ This conclusion is supported by a drop in the number of discrimination complaints after the merger.⁴⁰

In addition to its above roles, the CFR is Hungary’s national preventive mechanism (NPM) under the OPCAT since 2015. In 2021, the Committee of Ministers (CM) of the Council of Europe, in the framework of supervising the execution of judgments by the European Court of Human Rights (ECtHR) issued in a group of cases related to police ill-treatment,⁴¹ expressed concerns regarding the NPM’s functional independence and funding, the human and financial resources allocated to it, and “its capacity to carry out additional preventive work other than detention monitoring”.⁴² In December 2022, it reiterated its call on Hungarian authorities to provide information on measures taken or foreseen to strengthen the role of the CFR in performing its NPM function.⁴³

6. Failure to implement domestic and regional court judgments

6.1. Poor record in implementing judgments of the European Court of Human Rights

Hungary’s record of implementing ECtHR judgments remains poor: currently, 43 leading cases are still pending execution, signalling a variety of systemic and structural issues.⁴⁴ While just satisfaction is always paid, general measures that would be necessary to prevent similar rights violations are very often not taken. According to data from January 2022, the average time leading cases have been pending was 6 years and 3 months.⁴⁵ The Government’s approach towards the implementation of ECtHR judgments lacks transparency and inclusivity; there is no separate national structure whose explicit aim would be to bring together various actors to coordinate implementation. Meaningful parliamentary oversight is also lacking.

Many of the pending cases concern violations of the European Convention on Human Rights (hereinafter: Convention) in the area of criminal justice and law enforcement. Examples include the following.

Whole life sentence (*László Magyar v. Hungary group of cases*)⁴⁶

Hungarian law allows for imposing life imprisonment without the possibility of parole (whole life sentence). In 2014, the ECtHR ruled in the *László Magyar v. Hungary* case⁴⁷ that by sentencing an applicant to whole life imprisonment, Hungary violated the prohibition of torture and inhuman or

³⁸ Ibid., para. 40.

³⁹ Ibid., para. 59.

⁴⁰ According to Háttér Society, the Equal Treatment Authority received 868 cases in 2019, whereas “in the first 6 months of 2021, [the CFR’s respective directorate] received only 156 complaints”. According to the CFR’s annual report, in 2021 the CFR’s respective directorate dealt with altogether 462 cases, but this number also includes pending complaints from previous years. (See: Háttér Society, *Information on the Abolishment of the Equal Treatment Authority in Hungary: a Briefing Written for the Experts of the Venice Commission on 15 September 2021*, <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-eta.pdf>, p. 6.; *Beszámoló az alapvető jogok biztosának és helyetteseinek tevékenységéről – 2021 [Report on the Activities of the Commissioner for Fundamental Rights of Hungary and his Deputies – 2021]*, <https://bit.ly/3QskMax>, p. 97.)

⁴¹ *Gubacsi v. Hungary group of cases* – see in more detail section 6. of this paper.

⁴² CM/Del/Dec(2021)1419/H46-16, para. 7., <https://hudoc.exec.coe.int/eng?i=004-10515>

⁴³ CM/Del/Dec(2022)1451/H46-16, para. 10., <https://hudoc.exec.coe.int/eng?i=004-10515>

⁴⁴ Source of data: HUDOC EXEC.

⁴⁵ See: <https://www.einnetwork.org/hungary-echr>.

⁴⁶ For more details, see the HHC’s communication submitted to the Committee of Ministers of the Council of Europe regarding this group of cases in July 2022: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/08/HHC_Rule_9_Laszlo_Magyar_072022.pdf.

⁴⁷ Application no. 73593/10, Judgment of 20 May 2014

degrading treatment or punishment under Article 3 of the Convention. After the judgment, a “mandatory clemency procedure” was introduced for whole lifers, but this still does not comply with Convention standards, as confirmed by the ECtHR first in a 2016 judgment.⁴⁸ Furthermore, in 2021, the ECtHR concluded that the Hungarian rules for life imprisonment *with* a possibility of parole that allow to set 40 years as the minimum term to be served for parole also violate Article 3 of the Convention.⁴⁹ However, to date, the Hungarian government has not amended the respective legal provisions, and has not taken any general measures to date to address the rights violations as pointed out by these judgments.⁵⁰

Police ill-treatment (*Gubacsi v. Hungary group of cases*)⁵¹

This group of cases concerns the violation of the prohibition of torture and inhuman or degrading treatment by police officers and/or the lack of adequate investigations in this respect. However, as also shown by the variety of legislative and practical issues raised in the last decision of the CM from December 2022,⁵² Hungary has been failing to address systemic deficiencies with regard to preventing, investigating and sanctioning ill-treatment by the police. It shall be noted that this case was transferred to the so-called enhanced procedure by the CM due to the “complex and long-standing nature of the problems raised” in 2018. In its December 2022 decision the CM warned (again) that if no “tangible progress” is achieved soon, it will consider issuing an interim resolution in the case.

Prison overcrowding and the underuse of alternatives to detention (*Varga and Others and István Gábor Kovács v. Hungary group of cases*)⁵³

In the pilot judgment issued in the *Varga and Others v. Hungary* case in 2015, the ECtHR called on the Hungarian authorities to solve the structural problem of prison overcrowding by applying non-custodial sanctions more frequently and minimising the recourse to pre-trial detention. The Government took meaningful steps to implement the judgment (such as the introduction of a pecuniary remedy for inadequate conditions), but data show that the Government has failed to take steps specifically towards promoting alternatives to detention. While the country’s population has been declining for decades, the overall number of detainees⁵⁴ has shown a significant, a rate of 15-percentage-points increase in the past few years (2018: 16,303; 2022: 18,846).⁵⁵ The rapidly increasing prison population is unique in Europe as in other countries the pandemic resulted in a decreasing prison population. The HHC is of the view that it 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. Data show that 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

⁴⁸ *T.P. and A.T. v. Hungary* (Application nos. 37871/14 and 73986/14, Judgment of 4 October 2016)

⁴⁹ *Bancsók and László Magyar (no. 2) v. Hungary* (Applications nos. 52374/15 and 53364/15, 28 October 2021)

⁵⁰ See also the latest decision of the Committee of Ministers of the Council of Europe from September 2022 in this regard: CM/Del/Dec(2022)1443/H46-12, <https://hudoc.exec.coe.int/eng?i=004-10897>.

⁵¹ For more details, see the HHC’s communications submitted to the Committee of Ministers of the Council of Europe regarding this group of cases in October 2022: <https://helsinki.hu/en/no-tangible-progress-in-preventing-and-sanctioning-police-ill-treatment/>

⁵² CM/Del/Dec(2022)1451/H46-16, <https://hudoc.exec.coe.int/eng?i=004-10515>

⁵³ For the latest communication the HHC submitted to the CM in relation to this group of cases in November 2022, see: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HHC_Varga_Rule_9_FINAL_221122.pdf.

⁵⁴ For the longitudinal trends in Hungarian prison population rates, see: *Council of Europe Annual Penal Statistics – SPACE I 2021*, https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf, p. 33.

⁵⁵ Source: response no. 30500/7297-10/2022 of the National Prison Administration to the HHC’s freedom of information request, issued on 29 August 2022.

reparation work is severely underused (there are around 150 cases per year).⁵⁶ 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 by the court into imprisonment. According to the HHC’s data analysis,⁵⁷ between 2017 and 2019, the courts initiated proceedings to convert both sanctions into imprisonment in a significant proportion of cases.⁵⁸ Moreover, data show that the number of people in pre-trial detention is increasing, and there is an increase in the average length of pre-trial detentions as well.⁵⁹

Number of pre-trial detainees in penitentiaries

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

Violating the right of detainees to private and family life

According to the Penitentiary Code, convicted prisoners can apply for extraordinary temporary release to visit a seriously ill close relative or attend a close relative’s funeral.⁶⁰ However, 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 their close relative’s funeral, the Penitentiary Code leaves an unnecessarily short 30-day period after the funeral when the prison governor can allow the inmate to pay their respects. HHC lawyers successfully litigated cases⁶¹ before the ECtHR 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. Even though the supervision of the respective cases was closed by the CM, the problem seems to persist. During the pandemic, the HHC received numerous complaints from detainees and their family members that the reasoning provided by the National Prison Administration for not granting such a request was a simple general health security risk argument without any individual risk assessment being provided.

⁵⁶ 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, <https://helsinki.hu/en/alternatives-to-prison-hungarian-law-and-practice-on-non-custodial-sentences/>, pp. 36 and 41-42.

⁵⁷ Ibid., pp. 34-40.

⁵⁸ Community service – 2017: 49%; 2018: 58%; 2019: 61%; fines – 2017: 36%; 2018: 33%, 2019: 33%).

⁵⁹ Source: Office of the Prosecutor General, *Ügyészségi statisztikai tájékoztató – Büntetőjogi szakág – A 2020. évi tevékenység [Statistical information by the prosecution service – Criminal law – Activities in 2020]*, <http://ugyveszseg.hu/wp-content/uploads/2021/12/buntetojogi-szakag-2020.pdf>, p. 64.

⁶⁰ According to Article 123(1) of the Penitentiary Code, “[o]n 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”.

⁶¹ See *Császay v. Hungary* (Application no. 14447/11, Judgment of 21 October 2014) and *Pintér v. Hungary* (Application no. 39638/15, Judgment of 26 May 2020). Additionally, HHC has a similar case ongoing before the ECtHR (Application no. 54953/21).

Furthermore, National Prison Administration data⁶² on the 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.⁶³

Excessive length of proceedings (*Gazsó v. Hungary* group of cases)⁶⁴

The CM has been supervising the execution of ECtHR judgments concerning the excessive length of judicial proceedings in Hungary since 2003. In 2015, the ECtHR delivered a pilot judgment in the *Gazsó v. Hungary* case,⁶⁵ and requested Hungary to introduce, by October 2016, an effective domestic remedy or combination of remedies capable of addressing the issue. It took five years, 14 CM decisions and three interim resolutions for this to yield a partial, but important result: as of January 2022, a pecuniary satisfaction has been introduced for excessively long proceedings, but only in civil law cases. Thus, still no compensatory remedy is ensured in the case of criminal procedures of excessive length.

Enhanced police checks without adequate guarantees (*Vig v. Hungary*)⁶⁶

This case concerns a violation of the applicant's rights when he was subjected by the police to an "enhanced check", in violation of Article 8 of the Convention. The ECtHR found that "in the absence of any real restriction or review of either the authorisation of an enhanced check or the police measures carried out during an enhanced check [...] the domestic law did not provide adequate safeguards to offer the individual adequate protection against arbitrary interference" with the applicant's right to respect for his private life.

In 2021, related Hungarian legal provisions were amended, but the law remains unsatisfactory. Among other deficiencies, the mandatory review of ordering an enhanced check is conducted by the very same person who orders it, so the review cannot be considered independent. The rules of the review are not determined. In addition, the amendments expressly excluded the earlier existing possibility of submitting a complaint against the decision to order an enhanced check by those concerned (e.g. because they were stopped and searched in the framework of the enhanced check), which also means that the possibility of judicial review has been removed from the system. Data acquired by the HHC showed that in numerous cases the police still provide a very broad and general explanation for ordering an enhanced check.

6.2. Awarded, yet inaccessible compensation for detainees

A special instance of futile domestic court judgments is that since March 2020,⁶⁷ compensations awarded by the court for being incarcerated under inhumane conditions shall be transferred to the detainee's penitentiary depository account and shall be "reserved" for the time the detainee will be released. Accordingly, the amount is not accessible to detainees while serving their sentence. The prison governor may allow the detainee to forward the sum of the compensation or a part of it to their relatives or contact persons upon the detainee's request, but only under exceptional circumstances.⁶⁸

⁶² Response no. 30500/3918-11/2021 by the National Prison Administration to the HHC's freedom of information request, issued on 27 April 2021.

⁶³ Ibid.

⁶⁴ <https://hudoc.exec.coe.int/eng?i=004-10875>

⁶⁵ Application no. 48322/12, Judgment of 16 July 2015

⁶⁶ For more details, see the HHC's communication submitted to the CM in relation to this case in September 2022: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/09/HHC_Rule_9_Vig_final.pdf.

⁶⁷ Due to Article 4 of Act IV of 2020 on Urgent Measures to End the Abuse of Prison Overcrowding Compensations

⁶⁸ Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement, Article 133(4a)

In December 2022 the Constitutional Court delivered a decision⁶⁹ and dismissed a related individual constitutional complaint submitted by a detainee serving a life sentence. The inmate claimed that the inaccessibility of the amount awarded as compensation violates, among others, his right to property. However, the Constitutional Court did not examine the complaint in its merits and it stated that the restrictive legal provision did not affect the complainant directly, as he never requested the compensation awarded to be transferred to a relative.

7. Deficiencies of administrative decision-making in penitentiaries

The HHC receives approximately 300 submissions a year from detainees and their relatives and collects information from lawyers representing inmates in various legal procedures. Based on this information, inmates are in theory aware of the potential internal decision processes in penitentiary institutions, but these are practically unavailable for them. Furthermore, laws and internal regulations are not or adversely implemented in practice.

A blatant example of the latter is that according to the regulations and the official information issued by the National Prison Administration,⁷⁰ an inmate may receive a reward – having a strong effect on the possibility of early release – at any time without any limitation concerning its regularity, but in practice inmates are informed that they only can be rewarded once every half a year. (Nevertheless, inmates may receive a disciplinary sanction – strongly hindering the early release – at any time.)

The information received from the inmates often reflects their (and also their relatives’) highly dependent situation. Prison staff have an extremely powerful authority that discourages inmates to complain about the staff abuses and deters them from enforcing their rights, because they are afraid of the potential revenge and they do not trust in the success of the procedure. In the internal remedy procedures, including the disciplinary procedures, the equality of arms is not guaranteed between the staff and the prisoners, witnesses hardly testify against a staff member, legal representation is practically unavailable, therefore detainees do not have a real chance to receive justice. The same power scheme could be detected in the field of alleged ill-treatment committed by prison guards. The HHC receives numerous ill-treatment complaints from prisoners and relatives, but since in almost all cases, no video recording, no medical files and no witness-statements are available, these serious rights violations remain without consequences.

8. Shrinking civic space

Independent domestic CSOs have been vigorously attacked by the Hungarian government and the governing parties for years. Attempts to stifle CSOs included extensive smear campaigns and rhetorical attempts of intimidation, launching ill-founded legal procedures against CSOs, and hindering their work via various means.⁷¹ The series of attacks culminated in legislative steps, such as the law stigmatising certain CSOs as “foreign-funded organisations”, which the Court of Justice of the European Union (CJEU) found in violation of EU law in June 2020.⁷² Even though the latter law was

⁶⁹ Decision no. IV/2676/2021. of the Constitutional Court, delivered on 6 December 2022, available at: https://www.alkotmanybirosag.hu/uploads/2022/12/sz_iv_2676_2021.pdf.

⁷⁰ Source: letter no. 30500/10487-/2022.ált. by the National Prison Administration, issued on 12 December 2022.

⁷¹ For a comprehensive overview of the developments up until 2020, see: *Contribution of Hungarian NGOs to the European Commission’s Rule of Law Report*, May 2020, https://helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf, pp. 46-49.

⁷² Case C-78/18, *Commission v Hungary*

repealed (albeit with a considerable delay, as of July 2021), other laws violating the rights of and exerting a chilling effect on CSOs are still in force:

- Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life and accompanying amendments violate the rights of certain CSOs by making them subject of audits by the State Audit Office without adequate justification and legal safeguards, which cannot be reconciled with the constitutional mandate of the State Audit Office.⁷³
- The “Stop Soros” law that criminalised assistance to asylum-seekers was also found to be in breach of EU law by the CJEU in 2021.⁷⁴ In December 2022, the law was amended, but this amendment has failed to implement the CJEU’s judgment, and the criminalisation continues.⁷⁵

Smear campaigns against human rights and anti-corruption CSOs by government representatives and pro-government media have also continued in 2022. As a part of that, the narrative that CSOs receiving funding from abroad may pose a national security threat has resurfaced. In earlier years, the HHC was specifically targeted for its criminal justice work when government representatives accused the organisation that they are involved in a “prison business” built on compensations paid to inmates for inadequate detention conditions.⁷⁶

Most authorities refuse to cooperate with stigmatised CSOs, reject invitations to workshops and participation in researches. For example, in 2019, a judicial official sent a circular to judges warning them not to attend a training by the HHC.⁷⁷

CSOs have no access any more to places of detention. The HHC operated the only lay prison monitoring scheme in Hungary, but in 2017, after nearly two decades, its cooperation agreements were terminated unilaterally by the National Prison Administration and the National Police Headquarters. Since CSOs are not involved in the NPM’s monitoring visits either, abolishing lay monitoring has significantly weakened the protection of detainees’ rights and the chances of revealing systematic problems.

The National Prison Administration stopped publishing on a regular basis basic data on the operation of the penitentiary system. Therefore, freedom of information requests have to be submitted to obtain the data needed to conduct thorough statistical monitoring. Even the instructions determining the life of detainees, which were available to all until April 2018, were removed, and were made public again only after the court ordered it in a binding judgment.

⁷³ For more details, see: Hungarian Helsinki Committee, *LexNGO 2021 – a look into Hungary’s second anti-NGO law on its first anniversary*, 12 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_LexNGO2021_info_note.pdf.

⁷⁴ C-821/19, *Commission v Hungary*

⁷⁵ For more details, see: Hungarian Helsinki Committee, *Criminalisation continues – Hungary fails to implement CJEU judgment*, 21 December 2022, <https://helsinki.hu/en/criminalisation-continues-hungary-fails-to-implement-cjeu-judgment/>.

⁷⁶ See e.g.: <https://hirtv.hu/magyarorszageloben/tuzson-az-nem-lehetseges-hogy-bunozoknek-fizet-a-magyar-allam-2493378>, <https://www.kormany.hu/hu/miniszterelnoki-kabinetiroda/hirek/a-magyar-helsinki-bizottsag-rendezi-sorait-a-bortonbiznisz-ugyeben>. For background information on compensation payments, see: <https://www.helsinki.hu/en/compensations-for-inadequate-detention-conditions-threatened-by-the-government/>.

⁷⁷ See e.g.: https://index.hu/belfold/2019/05/24/obh_helsinki_bizottsag_hando_tunde_gerber_tamas_kepzes/.