

Submission of the Justice and Rule of Law Programme of the
Hungarian Helsinki Committee
for the periodic visit to Hungary by
the European Committee for the Prevention of Torture and
Inhuman or Degrading Treatment of Punishment (CPT)

March 2023

The Hungarian Helsinki Committee (HHC) receives annually approximately 400 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 in penitentiaries. This information is augmented by the results of HHC's FoI requests, the cases taken by 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.



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1. Context on the rule of law backsliding in Hungary affecting the criminal justice system

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, the HHC recently prepared a paper that provides examples of the adverse effects of the rule of law backsliding in Hungary on institutions and mechanisms crucial for a well-functioning law enforcement and criminal justice system.¹

1.1. Independence of the judiciary and the prosecution service

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 Court² and the ordinary court system³ – has nearly come to full completion, with only one weak, but independent judicial self-governing body standing: the National Judicial Council (NCJ).

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.⁴ 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"⁵ 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.⁶

1.2. Attacks against attorneys

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;⁷ 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".⁸ In addition, a government-aligned news site listed by name attorneys who represented

¹ Hungarian Helsinki Committee, *Rule of law backsliding in Hungary from a criminal justice and law enforcement perspective*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HHC_criminal_justice_and_RoL_HU_012023.pdf

² See e.g.: <https://helsinki.hu/en/hungarys-government-has-taken-control-of-the-constitutional-court/> .

³ 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 .

⁴ 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.

⁵ 2022 Rule of Law Report Country Chapter on the rule of law situation in Hungary, p. 9.

⁶ 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.

⁷ The interview is available here in Hungarian: <https://hirtv.hu/magyarorszageleben/tuzson-az-nem-lehetseges-hogy-bunozoknek-fizet-a-magyar-allam-2493378>.

⁸ 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/>.

inmates in compensation cases in a negative context, publishing also the sums these attorneys allegedly “won” from the state.⁹ 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.¹⁰

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.¹¹

1.3. Non-cooperation of authorities and no civil-society access to monitor places of detention

The National Penitentiary Administration stopped publishing the most important statistical data on the operation of the penitentiary system in 2020. Therefore, freedom of information requests have to be submitted to obtain the data needed to conduct thorough statistical monitoring.

Most authorities refuse to cooperate with stigmatised CSOs and reject invitations to professional workshops and participation in research activities. For example, in 2019, a judicial official sent a circular to judges warning them not to attend a professional training programme organised by the HHC.¹²

Moreover, CSOs have no access anymore to places of detention. The HHC operated the only lay prison monitoring scheme in Hungary for over two decades, but in 2017 its cooperation agreements were terminated unilaterally by the National Penitentiary 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.

1.4. Lack of consultation on laws

In recent years, public consultation on draft laws has virtually ceased;¹³ “rules on the obligatory public consultation of draft legal acts and their impact assessments have been systematically disregarded”.¹⁴ The “absence of effective public consultation on draft laws” as pointed out by the EC’s 2022 Rule of Law Report¹⁵ 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,¹⁶ 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.¹⁷ In the last period 2022, ministries started to publish laws for public consultation, but several significant laws were omitted.

⁹ See: <https://www.origo.hu/itthon/20200129-magyar-gyorgy-irodajanak-felmilliar-dot-fizettek-ki.html>.

¹⁰ See: <https://www.origo.hu/itthon/20200120-budapesti-ugyvedei-kamara-szervezkedes-a-bortonkartritesek-leallitasa-miatt.html>.

¹¹ <https://www.direkt36.hu/tag/pegasus/>

¹² See e.g.: <https://index.hu/belfold/2019/05/24/obh-helsinki-bizottsag-hando-tunde-gerber-tamas-kepzes/>.

¹³ 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.

¹⁴ 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)

¹⁵ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/document/download/5ca0f861-b4d4-412d-bd7d-dbe3582af1c1_en?filename=40_1_193993_coun_chap_hungary_en.pdf p. 24.

¹⁶ 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.

¹⁷ 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

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),¹⁸ 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 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.¹⁹ The amendment finally entered into force in November 2020,²⁰ 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.²¹ Even though the changes concerned only a limited number and types of crimes,²² 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.

1.5. 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.

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.²³ The downgrading became final in March 2022.²⁴ In its March 2022 report, the SCA concluded,²⁵ confirming the concerns of Hungarian CSOs,²⁶ 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, LGBTIQI people,

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.

¹⁸ 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.

¹⁹ Act CXXX of 2010 on Law-Making, Article 17; Act CXXXI of 2010 on Public Participation in Preparing of Laws, Article 8(3)

²⁰ Act CVIII of 2020 on Amending Certain Laws to Improve the Protection of Victims of Serious Violent Crimes Committed against Relatives

²¹ 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.

²² See e.g.: <https://hungarytoday.hu/gyor-murder-justice-minister-rules/>.

²³ 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.

²⁴ <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIIs.pdf>, p. 13.

²⁵ 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.

²⁶ 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.

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.²⁷ 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.²⁸

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’s Office as well.²⁹ The merger was criticized both by domestic CSO representing protected groups and the Venice Commission,³⁰ with the latter raising the concern that the new system “is overall more complicated and thus has the potential to be less effective than the previous one”³¹ and that this is a risk “that may undermine the effectiveness of the work in the field of promoting equality and combating discrimination”.³² This conclusion is supported by a drop in the number of discrimination complaints after the merger.³³

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,³⁴ 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”.³⁵ 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.³⁶

²⁷ 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.

²⁸ 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>.

²⁹ 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.

³⁰ 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).

³¹ *Ibid.*, para. 40.

³² *Ibid.*, para. 59.

³³ 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.)

³⁴ *Gubacsi v. Hungary* group of cases – see in more detail section 6. of this paper.

³⁵ CM/Del/Dec(2021)1419/H46-16, para. 7., <https://hudoc.exec.coe.int/eng?i=004-10515>

³⁶ CM/Del/Dec(2022)1451/H46-16, para. 10., <https://hudoc.exec.coe.int/eng?i=004-10515>

1.6. 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.³⁷ 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.³⁸ 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.

2. Growing number of detainees

2.2. Sharp increase in the number of detainees

In the pilot judgment issued in the *Varga and Others v. Hungary* case³⁹ in 2015, the ECtHR called on the Hungarian authorities to solve the structural problem of prison overcrowding by applying more non-custodial measures and minimising the recourse to pre-trial detention remain unresolved. As the data shows, regardless of the efforts invested in creating new places in the penitentiary system, the Government has failed to take steps towards promoting alternatives: while the country's population has been declining for decades, the overall number of detainees⁴⁰ 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. It appears 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.⁴¹ Since then, the number of detainees has continuously increased, reaching 19,347 on 31 December 2023.⁴²

³⁷ Source of data: HUDOC EXEC.

³⁸ See: <https://www.einnetwork.org/hungary-echr>.

³⁹ Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13, Judgment of 10 March 2015

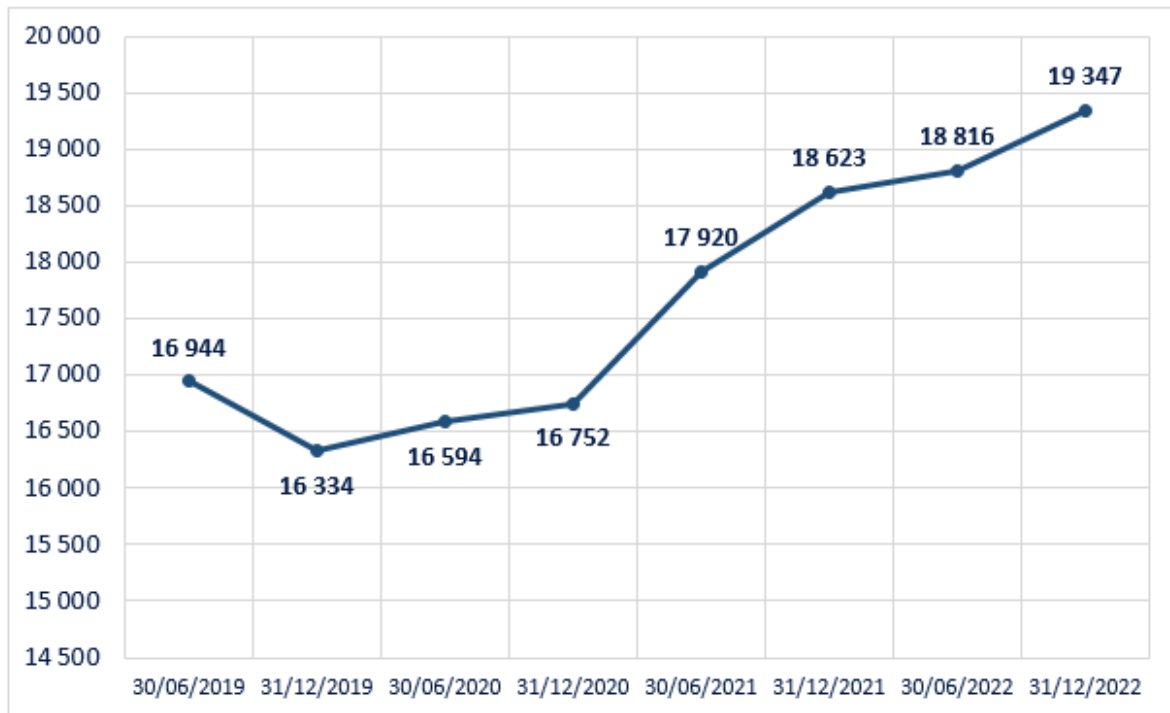
⁴⁰ See longitudinal trends in Hungarian prison population rates in Council of Europe Annual Penal Statistics – SPACE 2021, https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf, p. 33.

⁴¹ See longitudinal trends in Hungarian prison population rates in Council of Europe Annual Penal Statistics – SPACE 2021, https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf, p. 77.

⁴² Source: Response no. 30500/157-5/2023 issued by the National Penitentiary Administration to the HHC's FOI request on 02/02/2023.



Overall number of detainees in prisons in Hungary between 2019 and 2022



It is to be noted, that the overcrowding rates have also been increased. The average overcrowding rate on 31 December 2022 was 106%, in 8 institutions the overcrowding was higher than 110%.

Total number of inmates, within that the no. of PTD and prison density on 31/12/2022			
Name of penitentiary institution	No. of inmates	PTD	Prison density (%)
Állampusztai Országos Bv. Intézet	1 205	45	98%
Bács-Kiskun Vármegyei Bv. Intézet (Kecskemét)	252	182	113%
Balassagyarmati Fegyház és Börtön	376	126	120%
Baranya Vármegyei Bv. Intézet (Pécs)	191	131	103%
Békés Vármegyei Bv. Intézet (Gyula)	119	83	111%
Borsod-Abaúj- Zemplén Vármegyei Bv. Intézet (Miskolc)	929	295	96%
Budapesti Fegyház és Börtön	1 115	12	109%
Büntetés-végrehajtás Egészségügyi Központ	7	1	-
Fiatalkorúak Bv. Intézete (Tököl)	105	9	105%
Fővárosi Bv. Intézet (Budapest)	1 449	1 282	110%



Győr-Moson-Sopron Vármegyei Bv. Intézet (Győr)	174	137	105%
Hajdú-Bihar Vármegyei Bv. Intézet (Debrecen)	190	152	105%
Heves Vármegyei Bv. Intézet (Eger)	153	124	106%
Igazságügyi Megfigyelő és Elmegyógyító Intézet	268	22	-
Jász-Nagykun- Szolnok Vármegyei Bv. Intézet (Szolnok)	134	98	103%
Kalocsai Fegyház és Börtön	311	15	112%
Kiskunhalasi Országos Büntetés- végrehajtási Intézet	911	216	104%
Közép-dunántúli Orsz.Bv.Int.I. (Baracska)	1 064	73	95%
Közép-dunántúli Orsz.Bv.Int.II. (Székesfehérvár)	163	155	128%
Márianosztrai Fegyház és Börtön	535	6	105%
Pálhalmi Országos Bv. Intézet	1 344	189	100%
Sátoraljaújhelyi Fegyház és Börtön	326	1	109%
Somogy Vármegyei Bv. Intézet (Kaposvár)	129	104	96%
Sopronkőhidai Fegyház és Börtön	659	33	106%
Szabolcs-Szatmár- Bereg Vármegyei Bv. Intézet (Nyíregyháza)	201	171	120%
Szegedi Fegyház és Börtön	1 594	513	112%
Szombathelyi Országos Bv. Intézet	1 509	154	102%
Tiszalöki Országos Bv. Intézet	1 190	22	107%
Tolna Vármegyei Bv. Intézet (Szekszárd)	96	78	100%
Tököli Országos Bv. Intézet	1 333	133	104%
Váci Fegyház és Börtön	702	24	108%
Veszprém Vármegyei Bv. Intézet (Veszprém)	514	146	99%
Zala Vármegyei Bv. Intézet (Zalaegerszeg)	99	55	100%
TOTAL	19 347	4 787	106%

2.3. Surge in the number and proportion of pre-trial detainees

After years of decrease in the number and proportion of pre-trial detainees between 2014 and 2019, the trend has recently turned. From 31 December 2019 to 31 December 2021, the proportion of pre-trial detainees within the total prison population increased from 16.6% to 23.5%, while their number increased from 2,709 to 4,380.⁴³ The success rate of prosecutorial motions aimed at pre-trial detention during the investigative phase remains high: for example, in 2020, 88.8% of prosecutorial motions aimed at pre-trial detention were granted by judges.⁴⁴ In addition, alternative, non-custodial pre-trial measures continue to be underused. In 2018, a new Code of Criminal Procedure brought positive conceptual changes in terms of pre-trial measures, but it is still yet to be seen whether this will contribute to eliminating substantial deficiencies regarding judicial decision-making, given also that, based on publicly available information, no large-scale research has been conducted to assess the impact of the changes in the legal framework. Deficiencies identified earlier include that court decisions on pre-trial detention are often abstract, and fail to assess the defendant's individual circumstances and/or the possibility of alternative measures. The prosecution's arguments are more frequently accepted than those of the defence, which is coupled with the frequent lack of adequate reasoning in general. Furthermore, courts often fail to consider ECtHR case-law.⁴⁵ As a positive development, unlimited pre-trial detention pending a first instance judgment, possible since 2013, was finally abolished by the Constitutional Court in March 2021.⁴⁶

2.4. Normative framework on petty offences – primacy of custodial sanctions

Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereafter: Petty Offence Act) contains an extended list of offences punishable with confinement (to be executed in penitentiaries), and made confinement possible for the third petty offence within 6 month even if none of the offences would be otherwise punishable by confinement.⁴⁷ The law allows for converting a fine or community service into confinement without hearing the offender in case he/she fails to pay the fine or carry out the work,⁴⁸ which violates the European Convention on Human Rights (ECHR). Although in some cases non-custodial sanctions are provided by law, community service and mediation are heavily underused as independent sanctions.⁴⁹ Extremely strict deadlines and lack of plain language in official papers hinder the conversion of fines into community service instead of confinement.

The number of petty offence procedures and sanctions is very high, with a significant ratio of sanctions resulting the deprivation of liberty of the offender.⁵⁰

Sanctions imposed	2017	2018	2019	2020	2021	2022 I-IX
Seizure	3,553	5,025	4,527	4,102	3,784	2,543
Confinement	1,760	1,440	1,512	1,965	1,674	920
Warning	49,599	53,939	46,642	52,815	53,804	31,167
Confinement suspended	35	18	15	3	3	9

⁴³ *Yearbook of the Hungarian Prison Service for 2019*, p. 14; *Yearbook of the Hungarian Prison Service for 2021*, p. 15.

⁴⁴ *Ugyészségi Statisztikai Tájékoztató - Büntetőjogi szakág. A 2020. évi tevékenység [The statistical information leaflet of the prosecution – criminal field. Activities in the year 2020]*. Chief Public Prosecutor's Office, 2020, <http://ugyeszseg.hu/wp-content/uploads/2021/12/buntetojogi-szakag-2020.pdf>, p. 59, Table 59.

⁴⁵ See e.g.: Tamás Fazekas – András Kristóf Kádár – Nóra Novoszádek: *The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making. Country report – Hungary*, October 2015, http://www.helsinki.hu/wp-content/uploads/PTD_country_report_Hungary_HHC_2015.pdf; Report of the Curia's Judicial Analysis Group (2017).

⁴⁶ For more information, see: <https://helsinki.hu/en/unlimited-pre-trial-detention-is-declared-unconstitutional/>.

⁴⁷ Petty Offence Act, Article 23

⁴⁸ Petty Offence Act, Articles 12 and 15

⁴⁹ According to the National Penal Statistics, in 2017 from 703,521 cases only 1,406 ended with community service as an independent sanction.

⁵⁰ Source: Criminal Statistics System of the Ministry of Interior, see: <https://bsr.bm.hu/Document>.

for a probation period						
On the spot fine	538,840	494,210	438,941	492,827	472,469	441,322
Driving ban	15,290	17,080	19,343	21,187	14,863	10,683
Ban from a place	7	4	7	4	7	10
Community service	1,521	1,223	1,146	998	842	589
Fine	128,175	136,194	128,183	139,382	157,439	106,560
Total	738,780	709,133	640,316	713,283	704,885	593,803

Converting sanctions to confinement	2017	2018	2019	2020	2021	2022. I-IX.
On the spot fine	76,891	56,051	104,714	125,768	179,928	116,454
Community service	58					
Fine	37,404	19,931	40,288	44,406	70,833	44,111
Other	93					
Total	114,446	76,982	104,714	125,768	179,928	116,454

Juveniles may also be taken into petty offence confinement, which, in violation of Article 37 of the 1989 Convention on the Rights of the Child is not applied only as a measure of last resort. Confinement of juveniles shall be **executed in penitentiary institutions** instead of juvenile reformatories (having a less strict regime), going also against the Beijing Rules.

2.5. Non-custodial sanctions are underused

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).⁵¹ 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 analysis⁵², 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%).

3. Ill-treatment

In recent years, both inmates and their relatives have reported systematic and regular serious physical and verbal abuse by guards at the National Penitentiary Institute in Tiszalök. According to the reports, the continuous and recurrent pattern of unjustified violence by a group of guards has been not

⁵¹ 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/>

⁵² Ibid. p. 34-40.

uncommon. The HHC represents victims of ill-treatment, and there are other complaint procedures pending. The HHC also receives several complaints regarding the National Penitentiary Institute of Szombathely about the ill-treatment of prisoners by guards or other staff members.

One reason behind the reported growing tension in prisons is that the penitentiary staff is overburdened and the system suffers from a permanent staff shortage. In August 2022, the total number of staff was 9,391 for the nearly 19 thousand inmates – 13% of the positions were unfilled. Prison staff, especially guards, have an excessively powerful authority that determines the most essential decisions concerning inmates' everyday life and in cases even their chances for early release.

Furthermore, 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.

Based on HHC's 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,⁵³ 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.)

4. Visiting seriously ill relatives, attending funerals of family members

Detainees could not attend the funerals of their close relatives in numerous cases. 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**.⁵⁴ 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 has successfully litigated cases⁵⁵ before the ECtHR in relation to prison authorities violating detainees' right in respect to their private and family life when denying the permission to visit terminally ill close relatives, not permitting that they can attend the funeral of their family member.

5. Disciplinary procedures and early release

According to complaints the HHC receives, laws and internal regulations are not or are adversely implemented in practice. A blatant example of the latter is that according to the regulations and the

⁵³ Source: letter no. 30500/10487-/2022.ált. by the National Prison Administration, issued on 12 December 2022.

⁵⁴ 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".

⁵⁵ 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).

official information issued by the National Penitentiary Administration,⁵⁶ 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.)

6. Life sentence violating ECHR standards

The Hungarian law still allows for imposing life imprisonment without the possibility of parole (whole life sentence). In 2014, the ECtHRs ruled in the *László Magyar v. Hungary* case⁵⁷ that by sentencing an applicant to whole life imprisonment, Hungary violated the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights. After the judgment, a “mandatory clemency procedure” was introduced for whole lifers, to be conducted after they have served 40 years. The Court examined the conformity of the new procedure with the Convention in the *T.P. and A.T. v. Hungary* case,⁵⁸ concluding that it was not persuaded that “the applicants’ life sentences can be regarded as reducible for the purposes of Article 3 of the Convention”, and established the violation of the Convention once again. This assessment was confirmed by further decisions of the Court. In a recent case⁵⁹ the Court also concluded that the Hungarian rules for life imprisonment with a possibility of parole (“simple” life sentence) also violate Article 3 of the Convention, since they allow judges to set 40 years as the minimum term to be served for parole.⁶⁰

On its 1443rd meeting, 20-22 September 2022 (DH) the Committee of Ministers noted that *„[g]iven that the relevant 40-year-waiting period of the first “whole life sentence” started running in 2000, in 2025, the first whole life prisoners will have served 25 years of their sentence without having benefitted from domestic legislation affording “both a prospect of release and a possibility of review” as required by the Convention and the Court’s case-law. Against the background that the Court underlined that these must exist from the imposition of the sentence and given that the lifers’ individual situation depends on the adoption of general measures, the necessary reform should be put in place without further delay. The urgency of the reform is confirmed by the 2018 country visit report published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) which revealed serious difficulties concerning the dealing with prisoners serving “whole life sentences”, as well as suicidal tendencies among these inmates despite the introduction of the “mandatory clemency procedure”.*⁶¹

7. Reintegration activities

According to inmates and their relatives seeking legal support from the HHC, prisoner reintegration and educational activities operate at low intensity in Hungarian penitentiaries. According to the complaints, there are very few programmes available in practice; 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 relies on the penitentiary system to provide sufficient opportunities to keep meaningful contact with relatives.

⁵⁶ Source: letter no. 30500/10487-/2022.ált. by the National Penitentiary Administration, issued on 12 December 2022.

⁵⁷ Application no. 73593/10, Judgment of 20 May 2014

⁵⁸ Application nos. 37871/14 and 73986/14, Judgment of 4 October 2016

⁵⁹ Applications nos. 52374/15 and 53364/15, 28 October 2021

⁶⁰ For a detailed description of the problem, complete with statistical data, see the HHC’s communication to the Committee of Ministers of the Council of Europe from July 2022: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/08/HHC_Rule_9_Laszlo_Magyar_072022.pdf.

⁶¹ <https://hudoc.exec.coe.int/ENG?i=CM/Notes/1443/H46-12E>

8. Material conditions

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

In relation to the 2022 summer heatwave (with 35-40 degrees centigrade on consecutive days), in certain penitentiaries, only two showers a week were allowed to be taken even during the heat wave. In numerous prisons, the view blockers block the ventilation too; some cell windows can only be tilted (for example 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.

According to the energy-usage related restrictions introduced in October,⁶² penitentiaries shall not be heated over 18 degrees. HHC receives numerous complaints about the cold and increased number of respiratory tract infections. No measures to mitigate the consequences of cold have been introduced.

- Detainees are not allowed to put on a sweater on top of their uniform or
- use their blankets during the day.
- Exercising in the cells is prohibited.
- 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.

Further complaints HHC has been receiving include

- cockroach and bedbug infestation, frequent bedbug bites;
- 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;
 - or inmates are simply not let out for open air time for weeks;
- 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.

The HHC receives an outstanding number of complaints regarding the quality and quantity of the **food**. In 2022, the budgeted per inmate rate for meals was HUF 520 (approx. EUR 1.3) per day.⁶³ This was been undoubtedly insufficient even for an institution operating on wholesale prices and producing some goods.⁶⁴ As of January 2023 the rate has been increased to HUF 956 (approx. EUR 2.4). Despite the sufficient increase, it can be doubted whether the rate is enough to provide adequate meals to detainees as prescribed by Hungarian and international norms.

9. Phone calls

Each detainee is given an own mobile phone device by the prison service if the required deposit (HUF 35,000, EUR 87.5) is paid. The cost of all phone calls is paid by the inmate, therefore calls are only possible if the inmate has enough money available on her virtual account.

⁶² 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.

⁶³ Source: Response no. 30500/6854/2022 issued by the NPA to the HHC's FOI request on 28/07/2022.

⁶⁴ Rule 22.1, 22.2, 22.3 of the European Prison Rules

The **tariff of phone calls is excessive** compared to the average tariff outside the penitentiary institutions. Within the penitentiary, the tariff with taxes is HUF 75 (approx. EUR 0,2). These prices seem excessive especially in light of the fact that outside the detention facilities mobile companies are striving for gaining more customers by decreasing their tariffs which in general is around HUF 20 (EUR 0,05) and do not exceed HUF 35 (EUR 0,09). The **unused balance is cancelled without reimbursement** when the detainee is released, passes away or is removed to reintegration detention. The high tariffs were also criticised by the Hungarian ombudsperson.⁶⁵

In addition, the **cost of the reparation of the mobiles is high** and the process of reparation **takes long** while the affected detainees cannot have regular contact with their relatives or their lawyers, since the only way of calling them is by using the mobile phones provided by the penitentiary institution.

These **mobile phones** (which cost in fact HUF 20,627 including taxes, approx. EUR 51.6) **can be purchased for a deposit of HUF 35,000** (EUR 87.5) to be paid by the detainee. The deposit will be reimbursed once the detainee is released but only if the phone is intact. (This deposit has to be paid also by the detainees sentenced to life imprisonment.) In certain exceptional cases, detainees are allowed to pay the deposit in more instalments, however if the relatives send money to the virtual account of the detainee for the purchase of food, the money will be taken by the institution for the coverage of the deposit.

A detainee without a penitentiary mobile has limited access also to his or her lawyer. For those, who do not possess the mobile or do not have the money for the high tariff, the penitentiary personnel provides a **"joker" phone for the communication with the lawyer.** In this case, the member of the penitentiary personnel is in the proximity of the detainee that leads to the **violation of the lawyer-client privilege.** In case the detainee in question is illiterate annihilating the possibility of written communication, the right of the detainee to access the lawyer is severely restricted.

An additional practical problem related to the communication by phone is that there is **no separate room or space ensured for phone calls**, therefore inmates can only call from the eventually overcrowded cells leading to problems of privacy (their cell mates hear the conversation with the relatives or the lawyers).

10. Personal contact with the relatives and lawyers

Detainees are **not provided the right to get into physical contact with their family members** during their visits, e.g. they cannot give a kiss to them, cannot take their children in the lap. Family members are separated from the detainee by a **plexiglass wall**. This general measure that was introduced without any differentiation with regard to security concerns systematically decreases the opportunities of all detainees to exercise the right to personal contact. The HHC has received complaints including statements that the visitors and the detainees do not hear each other well due to the plexiglass wall. In certain cases the detainees waive their right to receive visitors in order not to have the embarrassing situation of talking to their family members through a plexiglass wall and not having the chance to hug their children. In addition, complaints referred to the **routine practice of strip and search of detainees before and after the visits** in order to search for illegal items even in institutions where strict security measures are taken, e.g. the use of the plexiglass wall, video-recording of the visits, presence of the penitentiary personnel.

Physical circumstances given in the **consultation rooms** and the plexiglass wall placed in them frequently **restrict the right for the access to a lawyer.** Due to the plexiglass wall, the lawyer does not hear the words of the detainee clearly either.

An additional problem with regard to personal contact with relatives is that in many cases detainees are held in a **penitentiary institution far from the place of their regular residence.** An obvious advantage is that after release it is less probable that the former detainee meets the penitentiary

⁶⁵ <https://www.ajbh.hu/-/a-buntetes-vegrehajtas-alatt-allo-szemelyek-telefonos-kapcsolattartasaval-osszefuggesben-foglalt-allast-az-alapveto-jogok-biztosa>

personnel in the streets of his/her town. However, it results in **an extreme financial burden on the relatives** who have to travel hundreds of kilometre for visiting the detainee. The worse financial situation the family is in, the more probably personal contact is annihilated.

11. Detention by the police

11.1. Continuing lack of independent and adequate medical examination of detainees

Despite recommendations by the UN Human Rights Committee,⁶⁶ and the Committee of Ministers of the Council of Europe,⁶⁷ the Hungarian government has still not established a separate independent medical examination body mandated to examine alleged victims of ill-treatment; and, despite the recommendation of the CPT,⁶⁸ detainees presenting injuries and making allegations of ill treatment do not have the right to be examined by an independent doctor. Moreover, the right to access an external doctor of one's own choice during detention in general is not formally guaranteed. Thus, it continues to be the case that physicians employed by the police (either the medical service of the police or the state or municipal health service contracted by the police) are the ones who examine detainees before their placement in the police detention facilities and record their health status, including potential injuries.⁶⁹

In addition, there is no publicly available information that would indicate that the Hungarian authorities have taken or undertaken any measures to improve the quality of the medical examination of detained persons in police holding facilities complaining of ill-treatment since the CPT's last visit, even though during that visit the CPT observed that "examinations carried out by police health-care professionals were not always as thorough as they should be" and that "injuries were poorly recorded, if at all, in Budapest in particular".⁷⁰

11.2. Presence of police officers at medical examinations of detainees still a main rule

In its report on its 2018 visit, the CPT "repeat[ed] its longstanding recommendation that arrangements be made to ensure that medical consultations are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff with no health-care duties".⁷¹ However, in its response to the CPT's report, the Hungarian government made it clear that it does not intend to comply with this recommendation by stating that the recommendation "is not feasible in the majority of the cases as the protection from bodily injuries of the health care staff must be ensured".⁷² In line with this statement, the government has not ensured the full confidentiality of detainees' medical examinations in practice to date. This means that the presence of police officers at medical examinations of detainees remains the main rule, as per an instruction of the National Police Chief.⁷³ This rule and practice, which hinders the fair and independent medical examination of torture allegations and may strongly contribute to the latency of ill-treatment cases and may prevent police

⁶⁶ See: *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=60kG1d%2FPPRiCAqhKb7yhnm97%2BRfSonZvOyDICMC7to7IkIHViwiffCrjxVJVYr7AYGd1bD3LqpWwx7fjwdowp0XO09j1KeHx2S0%2Be4%2FGUaUGe1SjLDRKk0CZ8Ce6o4>, § 36(c).

⁶⁷ CM/Del/Dec(2021)1419/H46-16, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a4ac54, 7. b)

⁶⁸ *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009*, CPT/Inf(2010)16, § 15.

⁶⁹ Decree 56/2014. (XII. 5.) BM of the Ministry of Interior on the Order of Police Cells, Article 34(1)

⁷⁰ *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec> § 36.

⁷¹ *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec> § 37.

⁷² *Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 20 to 29 November 2018*, CPT/Inf (2020) 9, <https://rm.coe.int/16809ce9ed>, p. 23.

⁷³ Section 8 of Instruction 22/2010. (OT 10.) ORFK of the National Police Chief on Implementing the Recommendations of the CPT sets out the following: "If it does not violate the requirements of the safety of guarding and of personal safety, upon the request of the doctor or the detainee, it shall be arranged that the medical examination or treatment be out of the hearing and – if possible – out of the sight of police officers."

officers committing ill-treatment being called to account, was criticized by the UN Human Rights Committee⁷⁴ as well.

11.3. No progress regarding the video recording of interrogations

Even though the CPT recommended already in 2013 “the accurate recording of all police interviews [...], which should be conducted with electronic recording equipment,”⁷⁵ the video recording of police interrogations is still not obligatory in Hungary in all criminal proceedings.⁷⁶ The respective legal framework has remained the same since the CPT’s last visit in November 2018, and so the scope of instances where video recording of interrogations is mandatory has not been extended since then. This goes against the guidance provided by the Committee of Ministers of the Council of Europe in its 2021 decision concerning general measures necessary to execute the judgments in the *Gubacsi v. Hungary* group of cases.⁷⁷ In addition, the HHC was informed by the National Police Headquarters in 2020 that the police do not collect data on the number or proportion of recorded police interrogations,⁷⁸ even though that would be inevitable to assess the efficiency of any related envisaged measure aimed at increasing the number of recorded interrogations.

Furthermore, it remains the rule that it is obligatory to record a procedural act upon the request of the defendant, the defence counsel or the victim only if they advance the costs of such a recording.⁷⁹ This rule continues to deprive indigent suspects of their rights by virtue of their economic status, which was also criticised by the UN Human Rights Committee already in 2010.⁸⁰

11.4. Training and investigation techniques

In its latest report on Hungary, the CPT made recommendations showing that the training (and, consequently, the investigation techniques) of the Hungarian police leave much to be desired, and emphasised that in order to “mitigate the risks of ill-treatment during police interviews, the CPT considers that interviewing officers should be less focused on confessional evidence”.⁸¹ It recommended that “the Hungarian authorities develop further guidance, procedures and training on how police interviews should be carried out, drawing on an investigative interviewing approach and on the introduction of electronic recording of police interviews. In this context, it should be made clear to police officers that the aim of police interviews must be to obtain accurate and reliable information in order to seek the truth about matters under investigation and not to obtain a confession from a person already presumed, in the eyes of the interviewing officers, to be guilty.”⁸² However, in its response to the CPT’s report, the Hungarian government failed to react in any meaningful way to this suggestion, and has not made any pledge in this regard.⁸³ Similarly, the government failed to present any plan to address this issue in its latest action plan⁸⁴ submitted to the Committee of Ministers of the Council of

⁷⁴ *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/466/91/PDF/G1046691.pdf?OpenElement> § 14; *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPFPRICAqhKb7yhsnm97%2BRfSonZvOyDICMC7to7IkIHViiwifCrijxVJYr7AYGd1bd3LqpWwx7fjwdowp0XO09j1KeHx2S0%2Be4%2FGUaUGe1SjLDRKk0CZ8Ce6ol4> § 35.

⁷⁵ *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013*, CPT/Inf (2014) 13, <http://rm.coe.int/doc/0900001680696b7f> § 14. See also: *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec> § 32.

⁷⁶ For more details about the respective legal rules, see the HHC’s communication from April 2020 to the Committee of Ministers of the Council of Europe: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)394E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)394E), pp. 3–4.

⁷⁷ CM/Del/Dec(2021)1419/H46-16, 6. a)

⁷⁸ Response of the National Police Headquarters to the HHC’s FOI request, 29000-197/19-70/2020.KOZA, March 2020

⁷⁹ Act XC of 2017 on the Code of Criminal Procedure, Article 358(4)

⁸⁰ *Concluding observations of the Human Rights Committee – Hungary*, CCPR/C/HUN/CO/5, 16 November 2010, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/466/91/PDF/G1046691.pdf?OpenElement>

⁸¹ *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec> p. 5.

⁸² *Ibid.*, § 32.

⁸³ *Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 20 to 29 November 2018*, CPT/Inf (2020) 9, <https://rm.coe.int/16809ce9ed>, p. 20.

⁸⁴ DH-DD(2021)972, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)972E](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)972E)



Europe in relation to the *Gubacsi v. Hungary* group of cases in September 2021. There is no other publicly available information that would indicate any steps or envisaged measures in this regard, or any public commitment towards providing police officers with training on investigative (non-coercive, non-accusatory) interviewing techniques, such as on the PEACE model,⁸⁵ or on the Méndez Principles.⁸⁶

⁸⁵ Cf. e.g.: *28th General Report of the CPT, 1 January - 31 December 2018*, CPT/Inf(2019)9, §§ 73–81.

⁸⁶ Principles on Effective Interviewing for Investigations and Information Gathering,
<https://www.apt.ch/en/resources/publications/principles-effective-interviewing-investigations-and-information-gathering>

10. Detainees with specific needs

10.1. Foreign detainees

As of 31 December, 15 % of the Hungarian prison population was 19,347, out of those 2,893 were foreigners.

Breakdown by nationality (31 December 2022)

(Number of persons in detention per country) _____

Afghanistan - 19	Israel - 3	Italy - 25
Albania - 35	Yemen - 2	Russia - 23
Algeria - 8	Jordan - 3	Austria - 28
United States of America - 1	Cameroon - 1	Armenia - 5
Azerbaijan - 13	Canada - 2	Pakistan - 11
Bangladesh - 1	Kazakhstan - 4	Palestine - 8
Belgium - 28	China - 11	Portugal - 2
Bulgaria - 119	Kyrgyzstan - 2	Romania - 591
Bosnia and Herzegovina - 34	Kosovo - 14	Sierra Leone - 1
Brazil - 3	Cuba - 2	Spain - 6
Czech Republic - 55	Kuwait - 1	Sri Lanka - 1
Dominican Republic - 1	Poland - 73	Switzerland - 2
Egypt - 10	Latvia - 30	Sweden - 10
Estonia - 8	Lebanon - 8	Senegal - 1
Belarus - 19	Libya - 2	Serbia - 404
Finland - 1	Lithuania - 29	Serbia-Montenegro (Yugoslavia) - 2
France - 28	Macedonia - 29	Syria - 118
Philippines - 1	Mali - 1	Slovakia - 89
Ghana - 1	Morocco - 6	Slovenia - 4
Greece - 5	Moldova - 163	Somalia - 1
Georgia - 86	Mongolia - 5	Sudan - 1
Netherlands - 16	Montenegro - 28	Tajikistan - 2
Stateless - 7	Mozambique - 1	Turkey - 95
Croatia - 17	Great Britain and Northern Ireland - 5	Tunisia - 15
India - 10	Germany - 67	Turkmenistan - 3
Ireland - 2	Niger Republic - 1	Ukraine - 357
Iraq - 25	Nigeria - 11	Uzbekistan - 20
Iran - 4	Norway - 2	Vietnam - 5

Source: NPA

As of 13 January, the Government Decree 3/2023 on the application of certain rules of the Penitentiary Code (hereinafter: Decree) introduced specific rules on non-Hungarian detainees. The Decree tries to address the issue of the increasing number of detainees, unprecedented in the past 30 years.

The Hungarian government terminated the state of danger on 1 November 2022 and then re-declared it on the same day. The newly introduced state of danger refers to the war in Ukraine and allows the government to override Acts of Parliament via emergency government decrees. The government can rule by decree without any parliamentary oversight and without any public consultation or impact assessment.

According to the Decree, upon the request of a non-Hungarian convicted detainee, the head of the National Prison Administration (NPA) shall suspend the execution of the sentence of imprisonment and have the detainee transferred to another country if certain conditions are met; most importantly i) the Minister of Justice (MoJ) declares that the transfer of the enforcement of the custodial sentence is not excluded, and ii) if the foreign detainee consents to the enforcement of the custodial sentence in another State.

The enforcement of a custodial sentence may not be suspended if:

- there is another custodial sentence to be served in Hungary;
- criminal procedure is pending against the foreign detainee in the territory of Hungary;
- the foreign convict is sentenced to life imprisonment;
- there are five years or more remaining on the term of imprisonment; or
- the foreign national has been sentenced to a custodial sentence to be served for certain gravious offences.

The main steps of the procedure as prescribed by the Decree:

1. The non-Hungarian convicted detainee may submit his request for the suspension of the enforcement of the sentence of imprisonment at the penitentiary institution. In the request the detainee shall include the State in respect of which he consents to the transfer of the enforcement of the custodial sentence and his personal circumstances in relation to the State, and also the legal basis for his right of residence there, the documentary evidence of his right of residence and the way in which his return to the country concerned by the transfer of the enforcement of the custodial sentence is ensured.
2. The prison forwards the foreign prisoner's application to the head of the NPA, which shall examine whether there is any obstacle to the suspension.
3. If the execution can be suspended, the request is forwarded to the MoJ, to the penitentiary judge and to the National Directorate-General for Aliens Policing (NDGAP).
4. The MoJ declares that the transfer of the enforcement of the custodial sentence is not excluded, and forwards the declaration to the NDGAP.
5. The MoJ declares whether the transfer of the enforcement of the custodial sentence is excluded, and indicates the shortest period of custodial sentence that may be transferred.
6. The penitentiary judge or the judicial secretary informs the detainee on the essential circumstances and consequences of the transfer of the enforcement of the custodial sentence and asks him to provide information on his relevant personal circumstances. The hearing has to be video recorded.
7. The penitentiary judge sends the minutes of the hearing to the NPA.
8. The NDGAP provides a preliminary opinion on the execution of the expulsion order.
9. The head of the NPA delivers a decision on the suspension of the conviction based on the information provided by the authorities and the minutes of the detainee's hearing. The head of the NPA may grant or decline the request of the non-Hungarian detainee. The NPA informs the NDGAP on the decision without delay.
10. Within three working days of the delivery of the decision, a judicial review may be submitted by the foreign detainee and by the prosecutor's office against the decision rejecting the application for suspension of the enforcement of the sentence of imprisonment. This has a suspensive effect on the enforcement of the expulsion. The court delivers its decision on the basis of the documents submitted by the penitentiary judge.

The reduction of the overcrowding of Hungarian prisons is a legitimate aim, however it is yet to be seen how the necessary guarantees, such as access to quality legal aid, and interpretation, and the assessment of non-refoulement are secured for foreign detainees.

10.2. Detainees living with disabilities

According to the Petty Offence Act, disabled persons shall not be subjected to petty offence detention⁸⁷ (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, the Penitentiary Code⁸⁸ does not contain the apparent disability of the offender as a ground for refusing a person's admission to the penitentiary institution.⁸⁹

The **Forensic Observation and Mental Institution (IMEI)** where an especially vulnerable group of detainees, those with psychosocial disabilities are held has not received a monitoring body at its facilities since 2016, when the Hungarian NPM conducted its last visit.⁹⁰ The NPM had several serious concerns regarding the staff shortage and overcrowding. According to the NPM's report at the time of their visit, 230 patients were placed in IMEI,⁹¹ while the total number of staff was 178.⁹² 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,⁹³ while the total number of staff was 178.⁹⁴ The number of detainees has risen to around 270,⁹⁵ while the total number of staff is 158.⁹⁶

Additionally, the increased amount of detainees being placed in the institution raises concerns of severe overcrowding as the NPM reported related to its 2016 visit that rooms and cells were, in general, large and overcrowded,⁹⁷ when in fact, the number of detainees were significantly (15%) lower than in 2022. The NPM has raised concern over finding that "patients live in an extremely unstimulating environment, practically no leisure activities were organised for them."⁹⁸ Moreover, several professional publications have raised concerns about the insufficient amount of psychotherapy⁹⁹ as well as the unnecessary and disproportionate practice of partitioning visiting rooms with plexiglas and prohibiting patients and their visitors physically contacting each other.

⁸⁷ Article 10(a) of the Petty Offence Act

⁸⁸ Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement

⁸⁹ Article 90 of the Penitentiary Code

⁹⁰ Report no. [AJB-766/2017](#) in Hungarian and its [Executive Summary](#) in English

⁹¹ Report no. [AJB-766/2017](#), p. 12.

⁹² Report no. [AJB-766/2017](#), p. 21-22.

⁹³ Report no. [AJB-766/2017](#), p. 12.

⁹⁴ *Ibid.*, p. 21-22.

⁹⁵ Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

⁹⁶ Source: Response no. 30500/7902-/2022 issued by the NPA to Borbála Ivány's FOI request on 26/09/2022.

⁹⁷ Executive Summary of Report no. [AJB-766/2017](#),

https://www.ajbh.hu/documents/14315/2611959/IMEI_osszegzes_EN.pdf/783d20b5-489e-41cf-aafc-097b16ba4af3

⁹⁸ Executive Summary of Report no. [AJB-766/2017](#),

https://www.ajbh.hu/documents/14315/2611959/IMEI_osszegzes_EN.pdf/783d20b5-489e-41cf-aafc-097b16ba4af3

⁹⁹ See for example: Hamula, J. – Uzonyi, A.: *Az Igazságügyi Megfigyelő és Elmegyógyító Intézet csoportterápiás rendszerének bemutatása*, Börtönügyi Szemle 2015; 34(4),

http://epa.oszk.hu/02700/02705/00104/pdf/EPA02705_bortonugyi_szemle_2015_4_035-048.pdf p. 38. and Bacsák, D. – Krámer, L.: "Punishment-therapy" – Chances of Psycho-rehabilitation for Mentally Disordered Offenders Under Forced Medical Treatment (in Hungarian), *Lege Artis Medicinae* 2020; 30(1-2): 67-74., <https://elitmed.hu/kiadvanyaink/lege-artis-medicinae/buntetesterapia-kenyszergyogykezeles-alatt-allo-betegek-pszichorehabilitacios-lehetosegei-magyarorszagon> p. 70-72.



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,¹⁰⁰ while the total number of staff was 178.¹⁰¹ Since then, the number of detainees has risen to around 270,¹⁰² while the total number of staff is 158.¹⁰³

¹⁰⁰ Report no. AJB-766/2017, https://www.ajbh.hu/documents/14315/2611959/IMEI_osszegzes_EN.pdf/783d20b5-489e-41cf-aafc-097b16ba4af3 p. 12.

¹⁰¹ Ibid, p. 21-22.

¹⁰² Source: Response no. 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 29/08/2022.

¹⁰³ Source: Response no. 30500/7902-/2022 issued by the NPA to Borbála Ivány's FOI request on 26/09/2022.