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

Dear Madams and Sirs,

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

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

With reference to the judgments of the European Court of Human Rights (hereinafter: ECtHR) **in the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary**, and the Action Report on the implementation of these judgements submitted by the Government of Hungary, **the HHC respectfully submits the following observations** under Rule 9 (2) of the 'Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.'

The HHC submitted observations concerning the same cases in November 2022, expressing concern regarding the **surge in the number of persons detained** in Hungarian penitentiaries and the **underuse of alternatives**. The HHC's present submission further explains that during the pandemic, the Hungarian criminal justice system immediately resorted to custodial sanctions and measures, a solid indicator of the lack of a lasting solution to the structural problem of prison overcrowding and insufficient material detention conditions. A lasting solution to the structural problems discussed in this group of cases has yet to be implemented, which, as the HHC argues, requires the Government's

commitment through a criminal policy preferring restorative justice and alternative sanctions and investing in the institutional system of implementing alternatives. There are outstanding issues relating to the ineffective remedial system and the compensation system.

Consequently, the **HHC is still of the firm view that the case should not be closed at this point, and the Hungarian Government should be under scrutiny for not having tended to the issues above in a meaningful way that would have been in line with the content and spirit of the related ECtHR judgments.**

Executive summary

The **purpose of the HHC's submission** is, on the one hand, to provide the Committee of Ministers with a comprehensive view of the prison conditions in Hungary by sharing the practical experience and other information available to the HHC and, on the other hand, to refute or support the claims of the Government's latest Action Report on the basis of the available data and the HHC's practical experience and to make recommendations accordingly.

The **first part** of this submission deals with **prison overcrowding and its causes**. We demonstrate that overcrowding as a structural problem in Hungary remains unresolved and that alternatives to imprisonment are underused in all phases of criminal procedures. (See pp. 3-16.)

As regards the **other conditions of detention beyond overcrowding**, a number of conditions that lead to inhuman and degrading punishment (such as pest infestation or insufficient reintegration activities for detainees) remain unresolved as discussed in the **second part**. Adequate compensation for these circumstances is still not guaranteed. (See pp. 16-24.)

In the HHC's view, as set out in the **third part** of this document, there is still no **effective remedy** for prisoners against decisions taken in the prison system. Furthermore, **compensation** for their inadequate conditions also suffers from a number of shortcomings already clearly identified by the Committee of Ministers. (See pp. 24-31.)

The **fourth part** of the HHC's present communication addresses further shortcomings identified in Varga and Others v. Hungary, especially the situation of **persons with disabilities** in prisons, where, in the HHC's view, they continue to be deprived of adequate treatment and material conditions. (See pp. 32-34.)

In the **fifth and concluding part** of the HHC's submission, we have formulated **recommendations** which we respectfully bring to the attention of the Committee of Ministers and the Government in hope of a future satisfactory conclusion to this group of cases. In order to achieve full compliance with the pilot judgment both in spirit and in content, **the HHC respectfully recommends to the Committee of Ministers of the Council of Europe to continue to examine this group of cases under the enhanced procedure.** (See pp. 35-56.)

1. There is no lasting solution to the structural problem of prison overcrowding in Hungary yet

In its decision issued in March 2021, the Committee of Ministers 'noted with satisfaction the eradication of overcrowding on an average in each prison facility; recalled, however, that the only sustainable solution to control overcrowding is to moderate the number of persons sent to prison; strongly encouraged therefore the authorities to pursue their efforts in maintaining adequate occupation levels, in particular by further promoting the use of alternatives to detention, and strongly urged them to submit comprehensive updated statistical figures of yearly average allowing for an assessment of the trends of implementation of the different alternative measures.'¹ However, to date, the Hungarian authorities have failed to comply with this decision, as evidenced also by the Government's Action Report of 12 October 2023² with regards to information on penitentiaries operating above their operational capacities, as well as alternatives to imprisonment still being underused without which a long-term solution of the structural problem of prison overcrowding cannot be expected. In addition to the latest communication of the HHC to the Committee of Ministers, further information is provided below on the Government's lack of engagement in providing a lasting solution to the underlying problems of prison overcrowding, such as non-custodial sanctions and measures.

1.1. Occupancy rates in Hungarian penitentiaries³

It has been pointed out repeatedly to the Government that the expansion of places is a solution that can only temporarily reduce overcrowding. New prison buildings should not be used to increase the number of places but to replace old, outdated buildings.⁴ It is widely accepted among practitioners,⁵ academia,⁶ NGOs⁷ and international human rights bodies⁸ that developing a sustainable control over prison overcrowding requires a multi-faceted approach involving changes to policies, practice and societal attitudes towards people who offend. A significant element of this is the promotion of more frequent recourse to community sanctions and measures, and a generally wider use of alternatives to imprisonment.

¹ §4, [CM/Del/Dec\(2021\)1398/H46-12](#).

² §§ 14-16 and §§20-25 of Action Report, [DH-DD\(2023\)1213](#).

³ As mentioned in HHC's previous communication to the Committee of Ministers, it is now three years ago since the National Penitentiary Administration (NPA) has discontinued publishing on a regular basis [basic data on the operation on the penitentiary system](#), including the basic sociodemographic characteristics of detainees. Therefore (and since the data provided by the NPA to the National Office of Statistics are not sufficiently detailed for a thorough analysis), the HHC has to go through the process of submitting freedom of information requests to obtain all the data needed to conduct the thorough statistical monitoring related to the implementation of the judgments of the ECtHR in question.

⁴ Kazai, V. – Iványi, B.: Van még új a nap alatt. (2016). *Fundamentum*, [2\(4\)](#), p. 167.

⁵ See for example the article of the former Lieutenant General on the matter, Csóti, A.: A magyar bv. intézetek túltelítettsége, a zsúfoltság csökkentésének útjai. (2015). *Belügyi Szemle*, [63\(11\)](#), pp. 5-16; and Pallo, J.: Egyre jobban éget a seb... – A túlzúfoltság csökkentésének lehetséges útjai. (2015). *Börtönügyi Szemle*, [34\(1\)](#), pp. 18-25.

⁶ Rodrigues, A. M. – Antunes, M. J. – Fidalgo, S. – Pinto, I. H. – Ishy, K. T.: *Non-custodial sanctions and measures in the member states of the European Union. Comparative Report*. University of Coimbra, 2022.

⁷ See for example Penal Reform International's [Ten-Point Plan to Reduce Prison Overcrowding](#).

⁸ See for example § 33, [CPT/Inf \(2004\) 18](#)

The Action Report notes that in the first half of 2023 until the end of June, the Hungarian prison occupancy rate was at an overall average of 106%.⁹ On 31 October 2023, 14 penitentiaries were operating with an occupancy rate above 100%.

Table 1 – Operational capacity, number of detainees and occupancy rates in Hungarian penitentiaries, 31/10/2023¹⁰

Penitentiary institution	Operational capacity	No. of detainees	Occupancy rate
Állampuszta National Prison	1 207	1 134	94%
Bács-Kiskun County Remand Prison (Kecskemét)	223	214	96%
Balassagyarmat Strict and Medium Regime Prison	313	336	107%
Baranya County Remand Prison (Pécs)	184	177	96%
Békés County Remand Prison (Gyula)	107	117	109%
Borsod-Abaúj-Zemplén County Remand Prison (Miskolc)	967	923	95%
Budapest Strict and Medium Regime Prison	1 020	1 064	104%
Central Hospital of the Prison Service		5	-
Juvenile Prison (Tököl)	100	79	79%
Budapest Remand Prison	1 293	1 387	107%
Győr-Moson-Sopron County Remand Prison (Győr)	165	135	82%
Hajdú-Bihar County Remand Prison (Debrecen)	180	185	103%
Heves County Remand Prison (Eger)	143	151	106%
Forensic Observation and Mental Institution (IMEI)		254	-
Jász-Nagykun-Szolnok County Remand Prison (Szolnok)	130	125	96%
Kalocsa Strict and Medium Regime Prison	277	301	109%
Kiskunhalas National Prison	859	805	94%
Middle-Transdanubian National Prison I. (Baracska)	1 088	1 085	100%
Middle-Transdanubian National Prison II. (Székesfehérvár)	127	118	93%
Márianosztra Strict and Medium Regime Prison	505	528	105%
Pálhalma National Prison	1 332	1 292	97%
Sátoraljaújhely Strict and Medium Regime Prison	299	306	102%
Somogy County Remand Prison (Kaposvár)	134	128	96%
Sopronkőhida Strict and Medium Regime Prison	616	624	101%
Szabolcs-Szatmár-Bereg County Remand Prison	167	204	122%
Szeged Strict and Medium Regime Prison	1 350	1 452	108%
Szombathely National Prison	1 476	1 439	97%
Tiszalök National Prison	1 110	1 163	105%
Tolna County Remand Prison (Szekszárd)	96	85	89%
Tököl National Prison	1 273	1 336	105%
Vác Strict and Medium Regime Prison	646	700	108%
Veszprém County Remand Prison (Veszprém)	512	462	90%
Zala County Remand Prison (Zalaegerszeg)	99	93	94%
TOTAL:	17 998	18 407	102%

This data show that the measures introduced so far to increase prison capacity and balance overcrowding have not proven sufficient to provide a lasting solution to the underlying problem. The

⁹ §15 of Action Report, [DH-DD\(2023\)1213](#).

¹⁰ Source: Response no. 30500/5563-7/2023 issued by the NPA to the HHC's FOI request on 04/12/2023.

result is that Hungarian prisons are overcrowded again, having reached the highest prison population in 33 years at the end of 2022.¹¹ The steady increase is worrying. On 31 December 2022, there were more than 19,347 incarcerated people in Hungary, leaving the prison system at a 107% occupancy rate. The prison population rate in Hungary remains very high by European and regional standards.¹² This data also suggests that there is a lack of capacity within penitentiaries to properly accommodate female inmates. Firstly, Hungary has a very high proportion of incarcerated women in comparison with Council of Europe countries: the median value is 5.1% among Member States, while 8.1% of the Hungarian prison population consisted of female inmates on 31 October 2023. Secondly, placement of women had historically been concentrated in a few specialised penitentiaries, whereas these days, female detainees are dispersed in 25 prisons. Those penitentiaries where an above-average number of women were accommodated are highlighted in the table below. These seven prisons held 84% of the female prison population while 18 others held the rest of the women, some of them accommodating only very few of them.

Table 2 – No. of female detainees in Hungarian prisons¹³	
Bács-Kiskun County Remand Prison (Kecskemét)	32
Balassagyarmat Strict and Medium Regime Prison	13
Baranya County Remand Prison (Pécs)	10
Békés County Remand Prison (Gyula)	9
Borsod-Abaúj-Zemplén County Remand Prison (Miskolc)	77
Central Hospital of the Prison Service	2
Budapest Remand Prison	179
Győr-Moson-Sopron County Remand Prison (Győr)	11
Hajdú-Bihar County Remand Prison (Debrecen)	20
Heves County Remand Prison (Eger)	21
Forensic Observation and Mental Intuition (IMEI)	33
Jász-Nagykun-Szolnok County Remand Prison (Szolnok)	15
Kalocsa Strict and Medium Regime Prison	267
Kiskunhalas National Prison	301
Middle-Transdanubian National Prison II. (Székesfehérvár)	12
Pálhalma National Prison	221
Somogy County Remand Prison (Kaposvár)	7
Szabolcs-Szatmár-Bereg County Remand Prison	7
Szeged Strict and Medium Regime Prison	17
Szombathely National Prison	14
Tiszalök National Prison	131
Tolna County Remand Prison (Szekszárd)	4
Tököl National Prison	2
Veszprém County Remand Prison (Veszprém)	76
Zala County Remand Prison (Zalaegerszeg)	2
TOTAL	1 483

¹¹ 'Hungarian prison population reaches a 33-year high', available at: <https://helsinki.hu/en/hungarian-prison-population-reaches-a-33-year-high/>

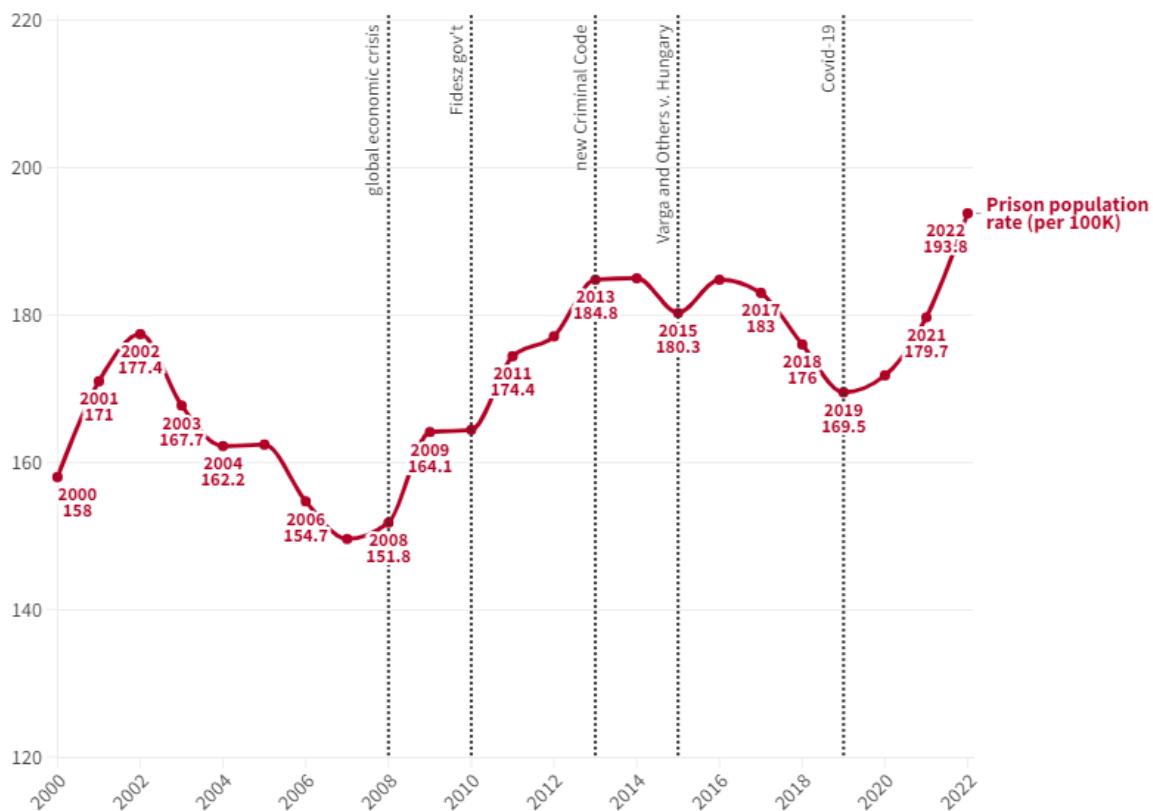
¹² Aebi, M. F., Cocco, E., & Molnar, L., (2023). SPACE I - 2022 – Council of Europe Annual Penal Statistics: Prison populations. Council of Europe and University of Lausanne, available at: <https://wp.unil.ch/space/space-i/annual-reports/>

¹³ Source: Response no. 30500/5563-7/2023 issued by the NPA to the HHC's FOI request on 04/12/2023.

Women represent a minority within prison populations globally; they face more significant stigma than men and criminal justice systems routinely overlook their specific needs.¹⁴ In HHC's experience, incarcerated women also face an even harsher societal response to their involvement in crime than men and, therefore, have decreased access to support in reintegration.¹⁵ It is doubtful that the penitentiary system can regard their specific needs if there is a lack of proper accommodation suited explicitly for them.

The figure below shows the effect some globally or locally relevant events might have had on Hungary's prison population rate. This figure shows that criminal policy and related changes might give a reason for a prison population surge and, therefore, cause overcrowding.

Fig. 1 – Hungarian prison population rate in light of globally and/or locally relevant events, on the 31st of January of each year¹⁶



The sharp increase in the prison population rate from 2019 is partially explained by the fact that during the coronavirus pandemic, the Hungarian criminal justice system resorted to custodial solutions. Between 2019 and 2021, most European countries 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. In HHC's view, a combination of different factors contributed to the continued growth of the prison population rate such as:

1. The increasing number of people in pre-trial detention (see more in section 1.2.1.).

¹⁴ See, for example, Penal Reform International's [short guide to the Bangkok Rules](#).

¹⁵ See, for example, 'Ott áll az ember egyedül, nincs hova elinduljon, semmije sincs már – nők a börtönben' at <https://helsinkifigyelo.444.hu/2021/11/24/ott-all-az-ember-egyedul-nincs-hova-elinduljon-semmije-sincs-mar-nok-a-bortonben>

¹⁶ Source: Longitudinal trends in Hungarian prison population rates in Council of Europe [Annual Penal Statistics – SPACE I](#)

2. The average length of imprisonment was 10.8 months in 2021, which is among the highest within Council of Europe countries.¹⁷
3. A large number of petty offence fines relating to the infringement of the special behavioural regulations during the special order related to the pandemic (such as mask-wearing and curfew rules) were imposed on the population.¹⁸ These were in large proportions converted to imprisonment because vulnerable, indigent people were less likely to be able to pay the fine or fulfil it through community service. These procedures went on longer than the pandemic, having a far-reaching effect on the prison population.
4. Moreover, criminalising poverty¹⁹ significantly affects the penitentiary system. Indigence and marginalisation are such societal problems that the prison system cannot solve. Therefore, accommodating individuals who did not commit a crime and are only there for a short while puts an unnecessary burden on the prison system and makes dealing with insufficient material detention conditions even more difficult.
5. Alternative sanctions and measures are underused in addition to severe problems with the implementation of community service (see more in section 1.2.2.1.).

Professional and academic literature stress that a system-wide approach, rather than one centred solely on the prison system, is needed to address prison overcrowding successfully. The literature categorises strategies and policies to reduce prison overcrowding into ‘front door’ and ‘back door’ solutions. Front door strategies include:

- 1) decriminalisation,
- 2) reducing the use and length of custody for persons on remand and custodial sentences, and
- 3) developing non-custodial measures, which include a restorative justice approach.

Back door strategies include using early release programmes and developing services to support released persons to facilitate successful reintegration into the community.²⁰ The HHC’s submission below will show that the Government has not engaged in either of these policy strategies, which is well evidenced in its latest Action Report.²¹

1.2. Factors contributing to the prison population inflation in Hungary

The Action Report²² fails to address the problem of how to increase the use of alternative measures to be able to sustainably control prison overcrowding. It notes, that the practice of penitentiary judges has become stricter regarding early release but it fails to provide an overview of why alternatives of imprisonment are severely underused and it is unclear how it will be addressed.

Based on HHC’s research results²³ it is apparent that systemic institutional deficits and a lack of professional focus on developing better implementation of alternatives to imprisonment lead to their underuse during the trial phase, at sentencing and at the penitentiary judge’s decision making

¹⁷ Source: Council of Europe [Annual Penal Statistics – SPACE I](#), p. 121.

¹⁸ See, for example ‘Ötvenezres bírság a születésnapi süti melflé’ on [HHC’s blog](#).

¹⁹ See, for example ‘Adósok börtöne – A borsodi falu, ahol a gyerekek ellögött órájáért szüleik a szabadságukkal fizetnek’ on [Radio Free Europe \(Szabadeurópa.hu\)](#) in Hungarian with English subtitles.

²⁰ The International Centre for Criminal Law Reform and Criminal Justice Policy: [Strategies and Best Practices against Overcrowding in Correctional Institutions](#), February 2009, p. 28.

²¹ On reintegration custody and home care custody see §§20-25, on contact with family members see §§33-43, and on criminal supervision see §§44-45 of Action Report, [DH-DD\(2023\)121](#).

²² §§20-25 of Action Report, [DH-DD\(2023\)121](#)

²³ Policy brief of HHC for enhancing the use of non-custodial alternatives to imprisonment, available here (in Hungarian): <https://helsinki.hu/szakpolitikai-ajanlasaink-az-alternativ-szankcioik-jobb-kihasznaltsaga-erdekeben/>

regarding whether to apply an early release institution. At the heart of these issues, there is a lack of political will to engage with a restorative/non-custodial centred criminal policy, leading to insufficient inter-agency cooperation and an underfunded system of social protection, which contributes to the unsuccessful implementation of restorative community sanctions, such as the penalty of community service (*közérdekű munka*)²⁴ and the measure of reparation work²⁵ (*jótételi munka*). The HHC is of the firm professional opinion based on international comparative research results²⁶ that without political investment, training, inter-agency cooperation, and awareness-raising, it is nearly impossible to escape the spiral of prison overcrowding and inhuman detention conditions.

1.2.1. Pre-trial detention remains frequently imposed by authorities

Public data from the Office of the Prosecutor General suggest that both the number of people in pre-trial detention and its average length is increasing.²⁷

*Table 3 – Number of detainees under pre-trial detention on 31 December and 30 June each year (2019-2023)*²⁸

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
31/12/2022	4,764
30/06/2023	4,219

According to the prior plans of the Government,²⁹ criminal supervision should have become a viable alternative to pre-trial detention as it involves neither a total deprivation of freedom of movement nor an increase in the prison population. In the light of recent statistical data, however, in practice, criminal supervision does not operate as a real alternative to pre-trial detention. According to statistics published by the Prosecutor General's Office, criminal supervision as a coercive measure is significantly under-utilised compared to pre-trial detention, suggesting that prosecutors consider pre-trial detention as the primary coercive measure to be initiated in criminal proceedings.

²⁴ Sections 33 (1)(d), 46-49 of the Act C of 2021 on the Criminal Code (hereinafter: Criminal Code)

²⁵ Sections 63 (1)(c), 67-68 of the Criminal Code

²⁶ Rodrigues, A. M. – Antunes, M. J. – Fidalgo, S. – Pinto, I. H. – Ishy, K. T.: *Non-custodial sanctions and measures in the member states of the European Union. Comparative Report*. University of Coimbra, 2022.

²⁷ Source: Office of the Prosecutor General, [Statistics on Criminal Prosecution 2020](#), p. 64.

²⁸ Source: Response no. 30500/12347-8/2021 and 30500/7297-10/2022 issued by the NPA to the HHC's FOI request on 02/01/2022 and on 29/08/2022.

²⁹ Section B 1(c) of Action Plan [DH-DD\(2021\)108](#). It is important to point out that the Government originally mentioned house arrest in its Action Plan. House arrest is a term used in the old Criminal Procedure Act (Act XIX of 1998 on criminal procedure), which has now been repealed. The new Criminal Procedure Act (Act XC of 2017 on criminal procedure) that replaced it uses the term criminal supervision, which includes in its content the legal institution formerly known as house arrest.

Table 4 – Practical utilisation of pre-trial detention and criminal supervision³⁰

	Pre-trial detention		Criminal supervision (with electronic monitoring)	
	2021	2022	2021	2022
motions made by the prosecutor to order	5151	5571	477	504
ordered by the court ex-officio	14	3	99	96

It is essential to point out that since 2018, the number of pre-trial detainees and their ratio to the total prison population has risen sharply. In recent years, pre-trial detainees comprise around a quarter of the total prison population.

Table 5 – Average number and ratio of pre-trial detainees within the average overall prison population, changes between each year 2009-2022³¹

Year	Av. no. of people detained in prisons	Change between years (%)	Av. no. of pre-trial detainees	% of pre-trial detainees within prison pop. (%)
2009	15 373	3,8%	4 502	29%
2010	16 203	5,1%	4 789	30%
2011	17 195	5,8%	4 842	28%
2012	17 517	1,8%	4 835	28%
2013	18 042	2,9%	5 379	30%
2014	18 204	0,9%	5 064	28%
2015	17 796	-2,3%	4 197	24%
2016	18 023	1,3%	3 909	22%
2017	17 944	-0,4%	3 611	20%
2018	17 251	-4,0%	3 106	18%
2019	16 664	-3,5%	2 721	16%
2020	16 726	0,4%	3 119	19%
2021	17 905	6,6%	3 908	22%
2022	18 887	5,2%	4 407	23%

On 31 October 2023, 24% (4,469 people) of the overall prison population were in pre-trial detention, while according to the Action Report,³² 1,920 persons were under criminal supervision. This data clearly shows that pre-trial detention is the more ‘popular’ coercive measure as there is an approximately 2:1 distribution between pre-trial detention and criminal supervision. Furthermore, the numbers reflect that both criminal supervision and pre-trial detention have shown an increase between 2021 and 2022, which suggestss that, in practice, criminal supervision does not properly function as an alternative to pre-trial detention.

³⁰ Data published by the Prosecutor General's Office considering years [2021](#) and [2022](#). Data considering year 2023 expected to be published around 2024 November.

³¹ Source: Data issued by the NPA in response to the HHC's several FOI requests. Changes in comparison to the previous year is based on the HHC's own calculation.

³² See §45 of Action Report, [DH-DD\(2023\)121](#).

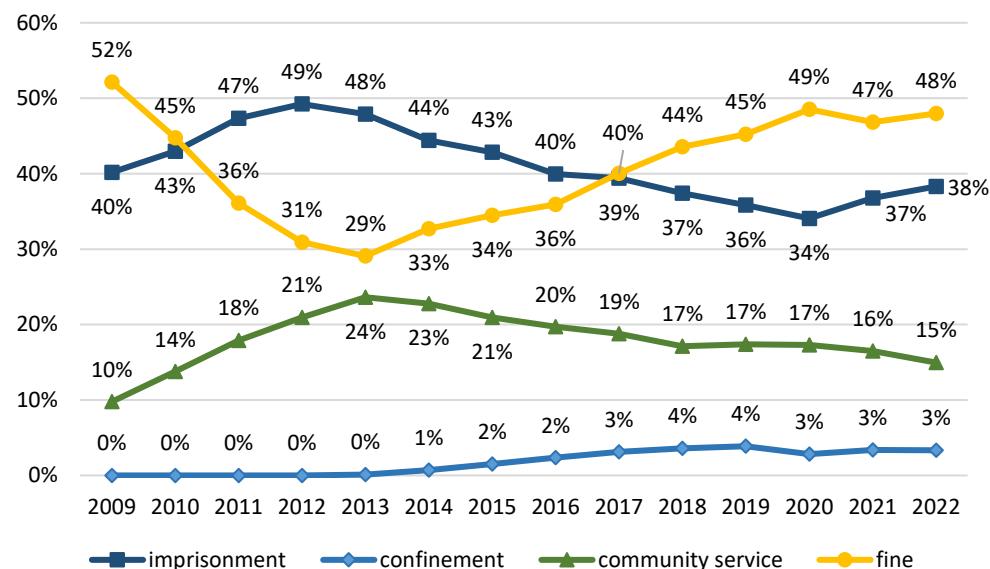
1.2.2. Custodial solutions dominate while reintegration is pushed to the background

The overuse of the prison system goes hand-in-hand with the underuse of its alternatives. Even though the Hungarian authorities were strongly urged³³ to submit comprehensive updated statistical figures allowing for an assessment of the trends of implementation of the different alternative measures, the latest Action Report does not contain any such statistical figures. Instead, it only shows data on one of the types of early-release schemes, reintegration detention³⁴ and conditional release. However, an early release is just one particular form of a non-custodial alternative to detention, a form that is always preceded by imprisonment. In contrast, several other non-custodial sanctions exist in the Hungarian legal system. There are several systemic issues related to the unsuccessful implementation of non-custodial sanctions, which have already been brought to the attention of the authorities to tackle.³⁵

1.2.2.1. Alternatives of imprisonment: severe problems of implementation are unsolved

According to data published by the Office of the Prosecutor General,³⁶ non-custodial sanctions and measures as alternatives to imprisonment are far from being utilised to their full potential, despite a broad range of alternatives to imprisonment being available by law in Hungary.

Fig. 2 – The ratio of defendants receiving penalties per type of penalty imposed (%)³⁷



³³ §4, [CM/Del/Dec\(2021\)1398/H46-12](#).

³⁴ Reintegration detention is the same legal institution the Government used to refer to as 'reintegration custody', e.g. § B 1(A) of Action Plan, [DH-DD\(2021\)108](#).

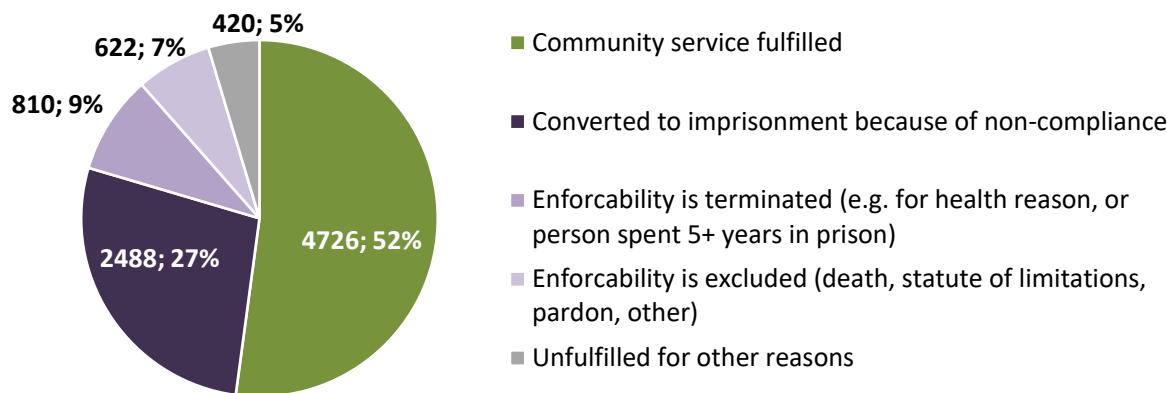
³⁵ Policy brief of HHC for enhancing the use of non-custodial alternatives to imprisonment, available here (in Hungarian): <https://helsinki.hu/szakpolitikai-ajanlasaink-az-alternativ-szankciok-jobb-kihasznaltsaga-erdekeben/> See also the HHC's country report on the use of alternative sanctions: Krámer, 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/>

³⁶ Source: Statistics on prosecution before criminal courts, Office of the Prosecutor General. For this report, we analysed longitudinal statistical data from the reports of 2014, 2016, 2021 and 2022, available online: <http://ugyeszseg.hu/statisztikai-adatok/buntetobirosag-elotti-ugyeszi-tevekenyseg/>

³⁷ Source: Statistics on prosecution before criminal courts, Office of the Prosecutor General. For this report, we analysed longitudinal statistical data from the reports of 2014, 2016, 2021 and 2022, available online: <http://ugyeszseg.hu/statisztikai-adatok/buntetobirosag-elotti-ugyeszi-tevekenyseg/>

The rate of courts applying community service showed a nine-percentage-point decrease between 2013 and 2022 (24-15%), while for example the restorative measure of reparation work is rarely applied (114-195 cases per year).³⁸ Fine is the most widely applied sanction, its application showed a ten-percentage-point increase between 2013 and 2022 (29-48%). 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. In 2022, a significant amount of imposed community service sentences were unfulfilled for several different reasons: a significant proportion, 27% (2,488 cases) were converted to imprisonment, while 52% were successfully implemented, and in the rest of the cases, the community service was not enforced because of other reasons.

Fig. 3 – Number and ratio of closed community service cases by the outcome in 2022³⁹



The HHC's research shows that enforcement difficulties create distrust in these institutions, making it less desirable for judges to apply either community service or reparation work sentences.⁴⁰ Individual circumstances and needs relating to material deprivation or reduced working capacity often lead to the non-enforceability of community service or its conversion to imprisonment, which directly causes the aforementioned erosion of trust in judges in the non-custodial institutions themselves as they see a lower chance that the special preventive purpose of punishment will be realised. One of the reasons for this is that before the enforcement of community service, individuals undergo an occupational health examination, and according to the law, those with a reduced capacity to work cannot serve a community sentence. Additionally, places for the enforcement of community service in Hungary are not able to accommodate persons with special needs. While social services provide work-based services to people with limited working capacity, this is not available for those who committed a criminal offence.

Moreover, the local offices of general probation are placed in an insufficient, overly bureaucratised organisational structure and they are overburdened with administrative tasks and high case numbers, as their yearly caseload is around 230-240 (a significant variation can be experienced based on geographical differences, the capital having the heaviest caseloads). As a result, they usually do not have time to provide sufficient support to their clients and to supervise the process of serving their punishments in a meaningful way.⁴¹ Probation officers and judges participating in HHC's research programmes pointed out that there are some factors hindering the successful application of reparation

³⁸ Source: Statistics on prosecution before criminal courts, Office of the Prosecutor General, available online: <http://ugyeszseg.hu/statistikai-adatok/buntetobirosag-elotti-ugyeszi-tevekenyseg/>

³⁹ Source: Statistical data of the Ministry of Justice on general probation at <https://igazsagugyistatistika.kormany.hu/partfogo-felugyeloi-tevekenyseg>

⁴⁰ Policy brief of HHC for enhancing the use of non-custodial alternatives to imprisonment, available here (in Hungarian): <https://helsinki.hu/szakpolitikai-ajanlasaink-az-alternativ-szankciok-jobb-kihasznaltsaga-erdekeben/>, p. 9

⁴¹ Ibid.

and community service; most important is that community service frequently ends up being ‘unsuccessful’ that is, converted to imprisonment, as different systemic reasons leave individuals unable to meet all sentence requirements.

1.2.2.2. Access to rewards and early release from imprisonment is alarmingly low

Prisoners, their relatives and professional criminal justice stakeholders frequently report to the HHC that they experience a reduction in the practice of granting rewards while imposing disciplinary measures is still frequent within penitentiaries. They report that it has become much more difficult to obtain rewards, which may be significant given that one form of reward under the Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (hereinafter: Penitentiary Code)⁴² is the removal of a disciplinary measure from the inmates’ record. Disciplinary measures are also considered by penitentiary judges, who tend not to grant conditional release⁴³ or reintegration detention⁴⁴ if the detainee has disciplinary measures or no rewards on their record, aggravating its importance. According to the regulations and the official information issued by the NPA,⁴⁵ an inmate may receive a reward at any time without any limitation concerning its regularity. However, inmates are informed that they can only be rewarded once every half a year. Nevertheless, inmates may receive a disciplinary sanction – strongly hindering the early release – at any time. Moreover, this has a further effect on granting early release.

It could contribute to increasing compliance, and thus to a reduction in disciplinary sanctions and an increase in rewards, if the prisoners were allowed to learn what the risk analysis report made on them during the reception procedure contains, in which the penitentiary institution has assessed the foreseeable risk that the personality and expected behaviour of the detainee will pose during the detention. According to the Penitentiary Code⁴⁶ the detainee is not allowed to learn what this report contains. In the HHC’s view, the availability of such an assessment would set a positive example for detainees to follow, as they would be aware of the behaviours to engage in or avoid to be rewarded and thus be able to benefit from early release or temporary leave.

The extent of applying either of the two early release schemes provided by the Penitentiary Code (conditional release and reintegration detention) has significantly decreased between 2019 and 2021, which the Government’s Action Reports corroborate.⁴⁷ It is important to note that the Action Report mentions the stricter practice of penitentiary judges and the pandemic as reasons for the negative changes in the number of inmates granted reintegration detention while there are no plans outlined on how to manage or prevent such negative tendencies influencing the practice of granting early release for detainees. Data show that between 2019 and 2023, the average prison population showed a significant surge while the number of inmates granted reintegration detention has decreased.

⁴² Section 165 (2)(k) of the Penitentiary Code

⁴³ Section 61 of the Penitentiary Code

⁴⁴ Sections 61/A–61/D of the Penitentiary Code

⁴⁵ Source: Response no. 30500/10487-3/2022 issued by the NPA to Borbála Ivány’s FOI request on 12/12/2022.

⁴⁶ Section 26 (4) b) of the Penitentiary Code

⁴⁷ Government Action Report §III/1 [DH-DD\(2022\)338](#), p. 7. and §§20-22 of Action Report [DH-DD\(2023\)121](#).

*Table 6 – No. of inmates granted conditional release or reintegration detention, no. inmates released at full length of sentence, ratio of each within all releases 2019-2023*⁴⁸*

		Released conditionally	Released to reintegration detention	Released at full length of sentence	Total
2019	n	2517	685	4814	8016
	%	31%	9%	60%	100%
2020	n	2041	608	4795	7444
	%	27%	8%	64%	100%
2021	n	1735	453	4767	7025
	%	25%	7%	68%	100%
2022	n	2100	547	5089	7738
	%	27%	7%	66%	100%
2023*	n	1555	524	3621	5700
	%	27%	9%	64%	100%

*2023 data refers to the period between 1st January and 31th October 2023.

Recent data show a relative improvement of these proportions. However, the number of persons granted conditional release was still significantly lower in 2023 than in 2019. If the 2023 trend continues, projecting from the data of the first ten months suggests that 1,866 detainees will have been granted conditional release by the end of the year, which is significantly fewer than in 2022. Based on the average monthly releases of each year a decrease by 15 percentage points between 2019 and 2023⁴⁹ is shown (2019: 668; 2023: 570 so far). Furthermore, as the table below shows, reintegration detention is still only available for such a small number of inmates that it has close to no real impact on the prison population.

Table 7 – No. of inmates granted reintegration detention 2019-2023; average no. of prison population; ratio of inmates granted reintegration detention within av. no. of prison population⁵⁰

Year	Reintegration detention	Av. prison population	Ratio of inmates granted reintegration detention within av. of prison population (%)
2019	686	16,664	4.12%
2020	623	16,756	3.72%
2021	482	17,905	2.69%
2022	549	18,887	2.90%
2023*	524	19,263	2.70%

*2023 data refers to the period between 1st January and 31th October 2023.

Data show that the vast majority of the prison population gets released at the full length of their sentence, which puts a burden on the prison system as spending a prison sentence without the

⁴⁸ Source: Response no. 30500/12347-8/2021, 30500/7297-10/2022, 30500/1347-7/2023 and 30500/4293-6/2023 issued by the NPA to the HHC's FOI request on 02/01/2022, 29/08/2022, 27/03/2023 and 01/09/2023.

⁴⁹ The total number of released persons was divided by ten to account for each month, reflected by the data available for 2023 from the first day of January to the last day of October.

⁵⁰ Source: Response no. 30500/12347-8/2021, 30500/7297-10/2022, 30500/1347-7/2023 and 30500/4293-6/2023 issued by the NPA to the HHC's FOI request on 02/01/2022, 29/08/2022, 27/03/2023 and 01/09/2023.

possibility of early release leads to a lack of motivation. This makes reintegration work inside penitentiaries more difficult and contributes to a growing prison population.⁵¹

1.2.2.3. Home care detention does not offer a solution to overcrowding

As of 21 February 2023,⁵² a detainee suffering from a chronic illness who is (i) unable to meet their basic needs, (ii) needs constant assistance and care in their daily activities and (iii) whose state of health is not expected to improve within a reasonable period, may be placed in home care detention if there is a person who has made a written declaration to take care of them.

While the HHC welcomes the introduction of home care detention, it still must be noted that in 2023 up until 31 October, 204 detainees applied for home care detention and less than 10% of that, only a total of 21 detainees were granted it until 31 October 2023.⁵³ A home care detention scheme would undoubtedly be a much-needed forward-looking institution in the Hungarian penitentiary system. However, it is not incorporated into the Penitentiary Code, but rather regulated by a state of danger Government Decree. Therefore, it is unclear whether home care detention is meant to be a permanent or temporary legal scheme. Also, the evidence provided by the Government in its Action Report⁵⁴ and the NPA data analysed here, suggest that some practical problems exist with the granting procedure. The low number of occasions when home care detention was granted indicate that it cannot remedy prison overcrowding.

The Action Report suggests⁵⁵ that the high number of refusals of applications for home care detention is because the applicant detainee does not meet the above criteria. One of the HHC's clients suffers from severe and multiple allergies for which the prison administration is not able to arrange the food she can eat aside from some oddities such as pork lard. In addition to food, there is a lack of appropriate allergen-free cleaning products and medicines. Her request for home care detention was refused based on the opinion of the doctor of the penitentiary, according to whom she was able to care for herself. On 6 December 2023, she had to receive a life-saving intervention because she came in contact with a type of medicine she was allergic to.⁵⁶ The example of the HHC's client demonstrates that home care detention is inherently inapplicable in certain cases where the prison system is otherwise unable to provide adequate care for a sick detainee. Thus, home care detention is unable to fulfil its purpose not only as a means to decrease the prison population, but also as a tool to address gaps in the health care system by putting those who cannot be treated in prison in a position to have to arrange for adequate health care with their families.

Another example of this is a detained client of the HHC with severe malignant lung cancer, who has less than a year left of his eighteen-year sentence. The detainee is currently placed in the Central Hospital of the Prison Service, from where he is regularly transported to receive treatment. Such transports take altogether more than 4 hours. The HHC's attorney requested that the client be placed in home care detention. The request has yet to be processed for a month and a half, despite the client's grave medical condition indicating urgency. In addition, the accuracy of the medical documentation is uncertain insofar as even though, in this case, the client is being held in the Central Hospital of the Prison Service, only the doctor of the penitentiary institution where they were detained before their

⁵¹ In its previous Communication to the Committee of Ministers, the HHC detailed the effect of excluding certain offenders from conditional release, see § 1.3.2. of [DH-DD\(2022\)1384](#), p. 7.

⁵² Minister of Interior Decree no. 6/2023. (II. 21.) on the different application of certain rules on the execution of sentences during a state of emergency

⁵³ Source: Response no. 30500/5563-7/2023 issued by the NPA to the HHC's FOI request on 04/12/2023.

⁵⁴ §24 of Action Report, [DH-DD\(2023\)1213](#).

⁵⁵ §25 of Action Report, [DH-DD\(2023\)1213](#).

⁵⁶ See more at the HHC's blogpost '[Ha börtönben ülsz, jobb, ha elfelejt az életveszélyes allergiádat – videó](#)'

illness can give the medical opinion, which is the basis for the penitentiary judge's decision to authorise home care detention. The HHC finds it alarming that doctors can issue medical opinions on home care detention without having seen the patient or having been able to conduct a substantive examination of the detainee in whose case they are taking a position.

1.2.3. Foreign detainees are not the main problem causing overcrowding

On 27 April 2023, the Government adopted an emergency decree (invoking the state of danger ordered with a view to the war in Ukraine)⁵⁷ prescribing that foreign detainees convicted of human smuggling (i.e. the facilitation of illegal entry into the country) and expelled in the judgement (which is mandatory for all foreign smugglers) shall be released. On the basis of the decree that was enacted without any consultation with the relevant stakeholders, the detainees concerned are formally placed in 'reintegration detention' (i.e. the option of spending the last six months of the imprisonment at home, with a specially designed electronic locating device – see p. 18 of the Government's Action Plan of 27 January 2021), but in practice there is neither reintegration, nor detention involved in the cases of foreign detainees serving their sentence for human smuggling. They are simply released and must leave the country on their own accord within 72 hours. According to media reports, these offenders are transported close to the border and let go.⁵⁸ Therefore, the European Commission decided to open an infringement procedure by sending a letter of formal notice to Hungary⁵⁹ for failing to fulfil its obligations under the relevant Council Directive⁶⁰ to impose effective, proportionate and dissuasive sanctions for the offence of facilitation of unauthorised entry, transit and residence into the EU (i.e. migrant smuggling) and under the Council Framework Decision⁶¹ that sets rules for criminal penalties regarding these offences.

It is worth noting that the Action Report uses the term 'trafficking in human beings',⁶² but human trafficking (*emberkereskedelem*)⁶³ and human smuggling (*embercsempészés*)⁶⁴ are two different acts penalised in the Criminal Code, and official statistics and government officials' media statements⁶⁵ make it clear that there has been, within the total number of registered offences, an increased proportion of human smuggling cases rather than human trafficking cases.

⁵⁷ Government Decree 148/2023 (27.IV.)

⁵⁸ See for example 'Háborognak a magyar rabok amiatt, hogy elengedi a kormány a külföldi embercsempészeket', <https://rtl.hu/hirado/2023/05/19/embercsempeszek-borton-kiengedtek>

⁵⁹ [INFR\(2023\)2095](#)

⁶⁰ Council Directive [2002/90/EC](#) of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

⁶¹ [2002/946/JHA](#): Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence

⁶² §16 of Action Report, [DH-DD\(2023\)1213](#).

⁶³ Section 192 of the Criminal Code sanctions 'any person who sells, purchases, exchanges, or transfers or receives another person as consideration'.

⁶⁴ Section 353 of the Criminal Code defines human smuggling as providing 'aid to another person to cross state borders in violation of the relevant statutory'.

⁶⁵ See for example the statement of the Secretary of State within the Ministry of Interior according to whom 'the detention of foreign traffickers has placed a disproportionate burden on Hungary', available on [HVG online](#).

Table 8 – Registered cases of human smuggling and human trafficking compared to all crimes registered, 2019-2023⁶⁶

		2019	2020	2021	2022	2023*
Human smuggling	no.	90	257	635	1 476	1 548
	%	0.1%	0.2%	0.4%	0.9%	1.0%
Human trafficking	no.	34	57	86	159	45
	%	0.0%	0.0%	0.1%	0.1%	0.0%
No. of all crimes registered		165 648	162 416	154 012	167 774	155 023

*2023 data refers to the period between 1st of January and 4th of December.

Moreover, data provided by the NPA do not corroborate the Action Report's claim that the increase in the average annual number of detainees registered in prisons 'was largely caused by the increased number of persons arrested and convicted for human smuggling. NPA data show⁶⁷ that on 31 October 2023, only 7% of the prison population consisted of foreign inmates, which is half as low as the median value (15.4%) of the proportion of foreign inmates on 31 January 2022 in Council of Europe countries.⁶⁸ And even before the mass release of foreign citizens convicted for human smuggling at the peak of this crisis it was at 15.0%, below the median value for Council of Europe countries. At the same time, the total number of inmates remained at 18,407, which is in the higher ranges compared to the previous years.

Finally: prison overcrowding and its causes are multifaceted issues. Solving the problem requires the state's commitment to investing in community sanctions, social services and to start a multi-agency discussion to foster cooperation working together for successful reintegration and crime prevention.⁶⁹ The ad hoc measure of releasing foreigners convicted for a specific offence does not offer a long lasting, sustainable solution for the problem (as shown by the fact that the number of prisoners has remained very high, and the Hungarian prisoner to population ratio continues to be large in a European comparison), while at the same time it has created significant tensions among the inmate population due to its arbitrariness.

2. Detention conditions

In its decision⁷⁰ issued in March 2021, the Committee of Ministers 'invited the authorities to present the current situation as regards the concerns about poor conditions of detention related to aspects other than overcrowding, and encouraged them to quickly resolve the relevant problems, taking advantage of the opportunity provided by the eradication of overcrowding.'

Even though the Committee of Ministers invited the Hungarian authorities to present the current situation as regards to concerns about poor conditions of detention related to aspects other than overcrowding, the Action Report fails to incorporate such a description in a practical approach that goes beyond the description of the legislative framework.

⁶⁶ See the Crime Statistics System of the Ministry of Interior, [BSR](#).

⁶⁷ Source: Response no. 30500/5563-7/2023 issued by the NPA to the HHC's FOI request on 04/12/2023.

⁶⁸ See Council of Europe comparative statistics on the proportion of foreign inmates in [Council of Europe Annual Penal Statistics – SPACE I 2022](#), pp. 3-4, 44-45, 63-66

⁶⁹ See the HHC's analysis of this matter '[How to gamble with criminal law: the Hungarian government lets foreign smugglers loose](#)'.

⁷⁰ Point 5 of CM Decision no. [CM/Del/Dec\(2021\)1398/H46-12](#)

The HHC receives approximately 500 complaints from detainees and their relatives per year by letter, e-mail or on the phone, and is frequently contacted by lawyers representing inmates in various legal procedures. Moreover, HHC is a member of a grass roots organisation 'FECSKE Support Network for Detainees and their Families' that consists of former people with lived experience of detention, their family members and professionals including former staff members of the NPA. As a result, the HHC has access to information on the most recent issues related to detention conditions. This information is supplemented by the results of HHC's FOI requests and the cases taken by lawyers in the framework of HHC's human rights legal counselling program.

2.1. Material detention conditions

2.1.1. Bedbugs and other pest infestations are frequent problems in prisons

Prison infestations with bedbugs have been a long-standing problem,⁷¹ which was brought to the attention of the CPT, which visited Hungary in 2023.⁷² Although the Decree 18/1998 (VI. 3.) of the Minister of Welfare on the epidemiological measures necessary for preventing communicable diseases and epidemics stipulates that pest control is compulsory twice a year in prisons, the HHC receives many complaints about bedbug bites. As of September 2023, bedbugs have been reported by detained clients and their relatives from 20 institutions in total. One client reported bedbug bites comparable to the size of a bank card.⁷³

It is important to stress that carrying out pest eradication alone does not always reduce pest infestation. A family member of a detainee sent a public interest report to the relevant authorities on the dire bedbug infestation within the penitentiary her relative was held in. The Government Office responded that the prison had carried out the twice-yearly compulsory pest control but also pointed out: *'During eradication, it is hard to maintain a permanent field of poison on the sprayed surface. The sprayed surface must not be mopped or washed for ten days for effective eradication. However, prisoners do not always adhere to this (the pesticide is water-soluble, which can be contaminated by moisture and loses its effectiveness when mixed with water).'*

Given the prison population data, it is hardly feasible that cells affected by extermination should not be used for ten days after the spray of the insecticide. The presence of detainees in these cells exposes the pesticide to moisture since even the greatest care cannot avoid contact with sweat or other moisture resulting from normal living conditions (e.g. drinking, using a kettle or doing daily cleaning), which can significantly reduce the effectiveness of the extermination.

Therefore, the conclusion can be drawn that even though the legislative environment is supportive, practical experience suggests that this alone cannot control the pest problem in prisons. According to the HHC's view, it is the duty of the penitentiary that, in addition to complying with legal requirements, the extermination of pests is carried out in accordance with the instructions for use of the insecticide and that insect bites are treated appropriately.

2.1.2. Insufficient insulation leaves prisoners vulnerable to extreme weather conditions

Government Decree 353/2022 (IX. 19.) stipulated that the buildings of state institutions (including prisons) could be heated only to a maximum of 18 degrees Celsius. The HHC received numerous

⁷¹ See for example the following reports of the OPCAT NPM (Commissioner for Fundamental Rights): [AJB-1682/2023](#) and [AJB-1224/2023](#).

⁷² The CPT has not published its report on the visit until today. https://helsinki.hu/en/wp-content/uploads/sites/2/2023/09/HHC_CriminalJustice_CPT2023-web.pdf.

⁷³ See more on the bedbug situation here: <https://helsinki.hu/en/bed-bugs-in-hungarian-prisons/>

complaints⁷⁴ from prisoners who, in addition to the unbearably low temperatures, complained of cold-related illnesses (such as colds, flu and other respiratory diseases), insufficient quantity of hot water and restrictions on the use of electrical devices. It is important to note that the regulation setting a maximum temperature of 18 degrees Celsius is no longer in force, but the restriction on heat-generating electrical devices is still in force.

Considering the latter, mention should also be made to Decree 6/2023 (II. 21.) of the Minister of Interior on the Different Application of Certain Prison Rules During the State of Danger, which prohibits prisoners from carrying specific electrical devices capable of generating heat (e.g. kettles with a power rating of more than 500 watts or hair dryers with a power rating of more than 700 watts).⁷⁵ Although not a substitute for heating the building, the detainees were left with no better option than to use these devices to cope with low temperatures. For example, a report of the NPM⁷⁶ states: '*At the time of the visit, several detainees indicated that there had been no hot water in the penitentiary for four days before the visit. They, therefore, complained that the kettles they had purchased from the Institute had been confiscated from them, as many had used the kettles to heat water to wash themselves in the cells when, for other reasons, there was no hot water at the penitentiary.*'

The HHC is unaware of any general measure across all prisons that – in case of cold weather - entitles prisoners to extra blankets or clothing. Yet, low temperature and its consequences are problems with which all the penitentiaries are faced.

No legal provision was in force, upon submission of this communication that would restrict the heating of penitentiaries. However, it is essential to point out that the problem of insufficient heating during cold weather has long been present, especially in old or new, light-way constructed facilities. Low temperatures, lack of adequate heating, insufficient hot water, or lack of seasonal clothing have been identified in several previous Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment National Preventive Mechanism (hereinafter: OPCAT NPM) – which is fulfilled by the Commissioner for Fundamental Rights – reports as problems related to detention conditions.⁷⁷

Low temperatures in winter and extreme heat waves in summer make conditions unbearable. In the case of summer heat waves (when temperatures outside can reach 40 degrees Celsius), the HHC's experience shows no transparent regulation. It is not clear whether the imposition of a heat alert by the Chief Medical Officer of Hungary automatically applies to prisons and, if so, what special measures (if any) this entails, what additional obligations the prison has to ensure adequate hydration and a healthy environment for detainees, and what possible benefits (e.g. reduction of compulsory wearing, provision of drinking water during outdoor stays, etc.) may be granted to detainees. The potential consequences of the heat alert are not mentioned in the Government's Action Report.⁷⁸ Another problem raised by detainees and confirmed by the OPCAT NPM's report⁷⁹ is that the bars on the windows of the cells could – in some institutions – prevent proper ventilation, adding to the extreme temperature.

⁷⁴ <https://helsinki.hu/borton-tapasztalatok-a-hidegrol/>

⁷⁵ Section 4 of Minister of Interior Decree no. 6/2023 (II. 21.) on the Different Application of Certain Prison Rules During the State of Danger

⁷⁶ Report of the OPCAT NPM no. [AJB-1682/2023](#).

⁷⁷ See for example the following report of the OPCAT NPM no.: [AJB-1298/2023](#), [AJB-1024/2023](#) and [AJB-1152/2023](#).

⁷⁸ Action Report, [DH-DD\(2023\)1213](#).

⁷⁹ Report of the OPCAT NPM no. [AJB-1023/2023](#).

2.2. Other conditions of detention: understaffing, reintegration activities, family relationships and special regimes

2.2.1. Staff shortages affecting 19 of 33 penitentiaries

On 1 November 2023 9,441 staff members were employed by the penitentiary system all across its operation, including administration, in-house training personnel and management.⁸⁰ This constitutes a staff shortage of 12% when compared to the number of positions necessary to operate the penitentiary system (10,695). NPA data reveals above-average staff shortages in eight individual penitentiaries, between 12-25%. Moreover, data show that severe staff shortages are more likely to occur in larger prisons, and occupancy levels correlate with these data. On 1 November 2023, the most severely understaffed penitentiaries were the following:

Table 9 – The most understaffed penitentiaries as of 1 November 2023⁸¹

	No. of detainees	Staffing level	Occupancy rate
Budapest Strict and Medium Regime Prison	1,064	78%	104%
Budapest Remand Prison	1,387	80%	107%
Győr-Moson-Sopron County Remand Prison	135	82%	82%
Márianosztra Strict and Medium Regime Prison	528	83%	105%
Szeged Strict and Medium Regime Prison	1,452	88%	108%
Szombathely National Prison	1,439	75%	97%
Tiszalök National Prison	1,163	87%	105%
Tököl National Prison	1,336	84%	105%

Reports on prison visits by the Commissioner for Fundamental Rights noticed the staff shortage in several institutions. The OPCAT NPM has repeatedly stated that the staff shortage and the resulting overtime may jeopardise the prohibition of torture and inhuman or degrading treatment. Health and supervisory departments are reported to be the most difficult areas to staff.⁸²

For example, in the National Penitentiary Institute in Tiszalök, in 2020, 10 of the 25 posts in the Health Department were vacant, i.e. 40% of the posts (incl. the head of the department and 3 specialist doctors).⁸³ During its 2021 visit to the National Penitentiary Institute in Állampuszta, the OPCAT NPM learned that staff members working as drivers or in the finance department also performed supervisory duties and worked in the detainee wards.⁸⁴ In 2021, the staff of the Tolna County Penitentiary reported that due to a staff shortage in the security department, the health department staff had to perform security tasks (e.g. clothing search) occasionally. According to the relevant report, the trust between medical staff and prisoners is negatively affected when medical staff perform security tasks.⁸⁵ According to a recent report on a visit in 2023, recent reorganisations of the prison

⁸⁰ Source: Response no. 30500/5563-7/2023 issued by the NPA to the HHC's FOI request on 04/12/2023.

⁸¹ Source: Response no. 30500/5563-7/2023 issued by the NPA to the HHC's FOI request on 04/12/2023.

⁸² See the following reports of the OPCAT NPM. It is important to note that written reports of visits typically are not published until years later. Thus, the majority of the most recent reports published in 2023 are for visits in 2020 and after. Written reports on visits in 2023 (with a few exceptions) have yet to be published.

Report [AJB-1152/2023](#); Report [AJB-1056/2023](#); Report [AJB-1028/2023](#); Report [AJB-1024/2023](#); Report [AJB-1224/2023](#); Report [AJB-1030/2023](#); Report [AJB-1151/2023](#); Report [AJB-1682/2023](#).

⁸³ OPCAT NPM Report [AJB-1030/2023](#).

⁸⁴ OPCAT NPM Report [AJB-1224/2023](#).

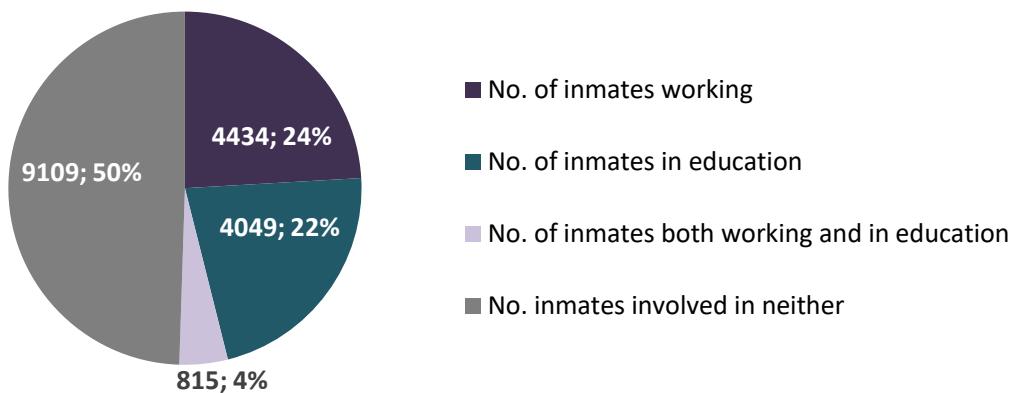
⁸⁵ OPCAT NPM Report [AJB-1152/2023](#).

system have negatively impacted the morale of the staff of the Hajdú-Bihar County Penitentiary. For example, several staff members have been demoted to lower positions, reducing their salaries. According to the staff, restructuring with such adverse effects has never happened before in the history of the prison service.⁸⁶

2.2.2. Reintegration activities: work and education in penitentiaries

Data provided by the NPA show that prisoner reintegration and educational activities operate at low intensity in Hungarian penitentiaries. On 31 October 2023, the overall proportion of inmates working or participating in education was 51%. It is particularly problematic that in the Juvenile Prison (Tököl) out of 79 detainees, only 35 participate in some kind of education and an additional 7 work.

Fig. 4 – Number of inmates working, in education, both and neither on 31/10/2023⁸⁷



This is corroborated by the complaints the HHC receive, there are very few programmes available; 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 intensify the prominent role of the family in successful reintegration, while the preservation of family bonds rely on the penitentiary system to provide sufficient opportunities to keep meaningful contact with relatives.⁸⁸

2.2.3. Previously raised issues regarding restrictive contact-policies remain unresolved

As reported by the HHC in several previous Rule 9 communications,⁸⁹ there are two main areas of contact with the outside world, where the NPA pursues an unnecessarily and disproportionately strict policy, which are:

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

⁸⁶ OPCAT NPM Report [AJB-1682/2023](#).

⁸⁷ Source: Response no. 30500/55663-7/2023 issued by the NPA to the HHC's FOI request on 04/12/2023.

⁸⁸ Several NPM reports seem to corroborate similar concerns. For example, in Report no. [AJB-2726/2020](#), the NPM urged to ensure the organisation of compulsory group sessions for prisoners in the therapeutic units of Szeged Strict and Medium Regime Prison.

⁸⁹ The HHC prepared several Rule 9 submissions with regards to the execution of the judgments of the European Court of Human Rights in the cases of Varga and Others v. Hungary and Isván Gábor Kovács v. Hungary (Application no. 14097/12 and 15707/10) that contained information on the disproportionate and unnecessary restrictions of detainees' contact with the outside world. See pages 13-15 of HHC's Rule 9 communication submitted on [20 April 2020 here](#), See pages 3-7 of HHC's Rule 9 communication submitted on [26 January 2021 here](#), See page 5 of HHC's Rule 9 communication submitted on [2 February 2021 here](#), See pages 15-22 of HHC'S Rule 9 communication submitted on [22 November 2022 here](#).

- extraordinary temporary leave.

2. Phone calls.

2.2.3.1. The general rule of complete physical separation during visits remain

As a general rule, visits are still being carried out with the complete physical separation of the inmates from the visitors, regardless of the detainees' assigned security regime and risk category, no individual assessment is provided. In its recent judgment, the ECtHR found a violation of Article 8 of the European Convention of Human Rights (hereinafter: ECHR) in which it was established that this practice of the NPA cannot be considered necessary in the absence of any established, individual security risk.⁹⁰

The only exception to this rule is during 'family visits', where physical contact between detainees and their visitors is allowed. Data show that family visits are extraordinarily rare.⁹¹

Table 10 – Number of requests and granted family visits between August 2022 and June 2023⁹²

Time period	No. of detainees requesting a family visit	No. of detainees granted a family visit
01/08/2022-31/12/2022 (8 months)	7	0
January 2023	1	0
February 2023	0	0
March 2023	10	10
April 2023	8	8
May 2023	29	29
June 2023	28	28
Total (14 months)	83	75

It is reported to HHC that since the outbreak of the COVID-19 pandemic, prisoners prefer not to even apply for family visits, both because they are discouraged by staff and because their experience has shown that there is close to no chance of a family visit being granted anyway. The table above shows how under-utilised this visitation regime is. During 14 months, there were only 75 detainees who were able to receive visitors in a way where they were allowed physical contact. This data should be compared to the average number of detainees in this period: between January and June 2023 it was 19,263. Evidently, a very small minority of detainees, some 0.34% had access to family visits then.

Moreover, even in the general strict regime where physical contact is prohibited, data show that only a minority of detainees (22-23%) receive visitors at all within one month.

⁹⁰ Takó and Visztné Zámbó v. Hungary, Applications nos. [82939/17](#) and [27166/19](#).

⁹¹ Source: Response no. 30500/1347/2023 issued by the NPA to the HHC's FOI request on 17/03/2023; Response no. 30500/4293/2023 issued by the NPA to the HHC's FOI request on 04/09/2023.

⁹² Source: Response no. 30500/1347/2023 issued by the NPA to the HHC's FOI request on 17/03/2023; Response no. 30500/4293/2023 issued by the NPA to the HHC's FOI request on 04/09/2023.

Table 11 – Number of visits, detainees receiving visits and the ratio of detainees receiving visits within the average number of detainees (19,263)⁹³

Time period	No. of detainees receiving visit(s)	No. of visits	Ratio of detainees receiving visitors
January 2023	4 192	6 061	22%
February 2023	4 211	6 055	22%
March 2023	4 351	6 240	23%
April 2023	4 289	6 087	22%
May 2023	4 439	6 403	23%
June 2023	4 434	6 492	23%

Comparing the above data with the average number of prisoners between 1 January and 30 June 2023 (19,263), it is clear that less than one-fourth, 22–23% of the average total prison population received visitors each month. Dividing the number of occasions by the number of prisoners gives a figure of 1.4 to 1.5 visits per prisoner, meaning that nearly one in two prisoners received two visitors in the first half of 2023, and one in ten prisoners received only one visit. These proportions show that the majority of people incarcerated in Hungary are left without any opportunity to have personal contact with their loved ones.

2.2.3.2. High phone tariffs remain

Previously raised serious problems concerning the high phone call tariffs have not been resolved either. Deposit (which is 35 000 HUF, approximately 92 EUR) and minute tariffs for penitentiary-administered mobile phones continue to constitute a serious financial difficulty for several inmates. Minute tariffs (69 HUF, approximately 0,2 EUR per minute) are fixed and are several times higher than the tariffs available at any outside service provider.⁹⁴ This problem is exacerbated by the fact that detainees' phones cannot be called back, meaning that only the detainees can make calls from them at the abovementioned cost.

2.2.3.3. Short-term temporary release schemes remain vastly under-used⁹⁵

According to the Penitentiary Code, three types of short-term temporary release (*kimaradás, eltávozás, reintegrációs eltávozás*)⁹⁶ are available as a form of detainees' contact with the outside world. Data provided by the NPA show that the different kinds of short-term temporary release schemes⁹⁷ are available to such low proportions of inmates that they can be regarded as virtually non-existent. Between 1 May and 31 July 2022, 30 detainees filed 38 requests for short-term temporary release out of which only one detainee was granted their request by the prison commander. As later uncovered by the press, this person was someone invited to high-profile government-meetings during these temporary leaves.⁹⁸ Data show that it is still nearly impossible for detainees to access a short-

⁹³ Source: Response no. 30500/4293/2023 issued by the NPA to the HHC's FOI request on 04/09/2023.

⁹⁴ See Order 35/2020. (VII. 16.) of the NPA on the tasks relating to the operation of the Telekom networked non-public mobile telecommunications service for prisoners

⁹⁵ In its previous Communication to the Committee of Ministers, the HHC gave a detailed description of each short-term leave scheme available in the Hungarian system, [DH-DD\(2022\)1384](#), p. 17.

⁹⁶ Sections 173(1)(f-h) and 179-180 of the Penitentiary Code.

⁹⁷ Sections 173(1)(f-g) and 179-180 of the Penitentiary Code. In its previous Communication to the Committee of Ministers, the HHC gave a detailed description of each short-term leave scheme available in the Hungarian system, [DH-DD\(2022\)1384](#), p. 17.

⁹⁸ See HHC's blogpost '19 ezer rab közül csak egy kapott kimenőt a börtönből' here:

<https://helsinkifigyelo.444.hu/2023/07/03/19-ezer-rab-kozul-csak-egy-kapott-kimenot-a-bortonbol>

term leave: in total, 7 detainees were allowed on some form of short term leave between 1 May 2022 and 30 June 2023.⁹⁹ These low numbers are corroborated by the Action Plan as well.¹⁰⁰

Additionally, the Penitentiary Code allows for extraordinary temporary release (*rendkívüli eltávozás*)¹⁰¹ as a compassionate measure for convicted prisoners to visit a seriously ill close relative or attend a close relative's funeral. Extraordinary temporary release is similarly underused. Between 1 January and 31 July 2023, 68 detainees requested permission to visit their terminally ill family members or attend a close relative's funeral and only 13% of them, only 9 people were granted the request.

The HHC welcomes that there are several forms of short-term temporary release listed in the Penitentiary Code under the possible forms of contact for detainees. However, it is worrying that these legal institutions remain vastly underused. Detainees and their family members frequently ask the HHC whether these opportunities only exist on paper.

2.2.4. Special units

The Action Report contains a list of measures that are said to be available for detainees with disabilities under the title 7 'Treatment of detainees with disabilities'.¹⁰² The mother-child unit is also listed under this title,¹⁰³ and some other categories of detainees are mentioned under this chapter of the Action Report, such as foreigners and juveniles.¹⁰⁴

The HHC welcomes that special regimes are available in the Hungarian penitentiary system as described in the Action Report.¹⁰⁵ These are necessary tools to provide a programme for inmates targeted at supporting the reduction of the risk of recidivism. However, the Government should have included the number of available places and the number of detainees needing certain special interventions in its Action Report. According to FOI data from the NPA requested by the HHC, 'the precise determination of the number of places is the responsibility of the commander of the agglomeration centre, for which reason the NPA has no information on the capacity' [of places available within special regimes].¹⁰⁶ Even though, the number of inmates placed in different special regimes was available,¹⁰⁷ this data in itself, is not sufficient to determine the occupancy rates of the special regimes, due to the lack of an accurate total number of places. Thus, due to gaps in the available data, it is impossible to determine (i) the occupancy rate of each special regime and (ii) whether the capacity to accommodate all detainees with the characteristics that would otherwise justify placement in a special regime is ensured.

⁹⁹ Source: Response no. 30500/1347-7/2023 and 30500/4293-6/2023 issued by the NPA to the HHC's FOI request on 27/03/2023 and 01/09/2023.

¹⁰⁰ § 43 and Table 5.5. of Action Report, [DH-DD\(2023\)1213](#).

¹⁰¹ According to Section 123(1) of the Penitentiary Code 'On the basis of permission issued by the commander 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.'

¹⁰² §§ 47-61 of Action Report, [DH-DD\(2023\)1213](#).

¹⁰³ § 49 of Action Report, [DH-DD\(2023\)1213](#).

¹⁰⁴ §§ 52 and 55 of Action Report, [DH-DD\(2023\)1213](#).

¹⁰⁵ §§ 60-61 of Action Report, [DH-DD\(2023\)1213](#).

¹⁰⁶ Source: Response no. 30500/4293/2023 issued by the NPA to the HHC's FOI request on 04/09/2023.

¹⁰⁷ Ibid.

Table 12 – No. of detainees placed in some special units on 31 October 2023¹⁰⁸

Name of penitentiary	Special unit for first-time offenders	Special unit for elderly inmates	Psycho-social unit
Állampuszta National Prison	47	-	44
Balassagyarmat Strict and Med. Regime Prison	2	-	-
Middle-Transdanubian National Prison	27	29	-
Győr-Moson-Sopron County Remand Prison	-	1	-
Bács-Kiskun County Remand Prison (Kecskemét)	-	-	-
Kalocsa Strict and Medium Regime Prison	-	20	-
Kiskunhalas National Prison	20	-	-
Márianosztra Strict and Medium Regime Prison	-	-	5
Borsod-Abaúj-Zemplén County Remand Prison	44	-	-
Budapest Strict and Medium Regime Prison	-	-	21
Pálhalma National Prison	50	-	88
Sátoraljaújhely Strict and Medium Regime Prison	-	6	-
Sopronkőhida Strict and Medium Regime Prison	-	-	30
Szeged Strict and Medium Regime Prison	-		14
Szombathely National Prison	27	47	-
Tököl National Prison	45	-	39
Tiszalök National Prison	-	-	14
Vác Strict and Medium Regime Prison	-	16	-
Veszprém County Remand Prison (Veszprém)	14	-	-
TOTAL	276	119	255

The Government reports¹⁰⁹ that complex therapeutic activities are provided in the Psycho-social unit. Academic literature widely accepts that the prevalence of mental disorders among prisoners is much higher than those in the general population: some 65% of the prison population may have a personality disorder, and another 10% may get diagnosed with major depression.¹¹⁰ Taking this into account, the number of detainees placed in a Psycho-social unit (255) seems relatively low.

The same concern arises when it comes to first-time offenders and elderly detainees.¹¹¹ On 31 October 2023, 12% of first-time offenders were placed in a specialised unit catering to their needs, and 13% of all 60+ year-old detainees were placed in a specialised unit for elderly detainees.¹¹²

3. Preventive and compensatory remedies

In its decision¹¹³ issued in March 2021, the Committee of Ministers is '*noting the entry into force of the revised compensatory remedy scheme and the fact that the apparent main aim of the amendment, namely making it easier for victims of crime to ensure payment of awards of criminal injuries compensation from the sums awarded to detainees in respect of poor conditions of detention, is in line with the principles of the Convention, regretted however that this amendment has been adopted without taking into account the Secretariat's comments on the draft proposals; firmly called on the authorities to ensure the Convention-compliant application of the revised compensatory remedy and*

¹⁰⁸ Ibid.

¹⁰⁹ § 60 of Action Report, [DH-DD\(2023\)1213](#).

¹¹⁰ See Section 3.4.3 of the [European Psychiatric Association's guidance on forensic psychiatry](#)

¹¹¹ § 61 of Action Report, [DH-DD\(2023\)1213](#).

¹¹² Source: Response no. 30500/4293/2023 issued by the NPA to the HHC's FOI request on 04/09/2023.

¹¹³ Point 6 of CM Decision no. [CM/Del/Dec\(2021\)1398/H46-12](#)

invited them to provide the Committee with concrete information on its implementation in practice, as well as on the concerns identified in document [H/Exec\(2021\)5](#).

In the same decision,¹¹⁴ the Committee of Ministers ‘*noted with regret that the specific preventive remedy has been abolished with the revision of the remedies’ scheme, while also noting the authorities’ assessment that the general complaints mechanism provides for similar possibilities to complain of poor detention conditions; invited them to submit further information, in particular a presentation of the relevant case-law and practice, for the assessment of the effectiveness of the remaining general preventive mechanism, and to consider the introduction of a judicial review in respect of complaints concerning rights guaranteed under Article 3.*’

The relevant CM Note¹¹⁵ further specifies these issues, pointing out – among other things – the following:

‘i) The amended remedy does not entitle detainees to claim compensation for inadequate material conditions of detention (e.g. unsanitary circumstances) if the statutory minimum of living space is ensured.

[...].

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

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

To the HHC’s regret, none of the above issues have been decisively resolved to date. The domestic remedies system is incapable of functioning as required by law and as described in the government’s Action Report,¹¹⁶ and even if it could, the recommendations of the Committee of Ministers mentioned above would not be met. It is not clear from the Action Report how the domestic remedies system effectively serves in practice, in a manner supported by case law, to redress detainee grievances arising from inadequate detention conditions.

Detainees are still not allowed to claim compensation for inadequate material conditions of detention (e.g. unsanitary circumstances) if the statutory minimum of living space is ensured. The mandatory setting aside of compensations on an escrow account has also not been remedied.

3.1. Domestic remedies and organizations with supervisory power

There is no special legal remedy available in the Hungarian legal system to redress detainees’ grievances due to inadequate prison conditions. If a detainee feels that they are being held in inappropriate prison conditions, they can exercise their right to legal remedy under the general legal remedy system. It is also important to highlight that a preventive special remedy system could only be effective if there is sufficient reception capacity available within the penitentiary system, which, as is clear from Point 1 of this submission, is not currently the case.

In practice, the general system of legal remedies regulated in the Penitentiary Code and described by the Government in its Action Report¹¹⁷ does not provide detainees with an effective legal remedy in

¹¹⁴ Point 7 of CM Decision no. [CM/Del/Dec\(2021\)1398/H46-12](#)

¹¹⁵ [CM/Notes/1398/H46-12](#)

¹¹⁶ §§ 76-80 Action Report, [DH-DD\(2023\)1213](#).

¹¹⁷ §§ 76-80 Action Report, [DH-DD\(2023\)1213](#).

many cases, thus the exercise of their right to legal remedy under Article 13 of the ECHR is not effectively guaranteed in practice.

In the enquiries received by the HHC, detainees and their relatives very often report that they do not exercise their right to legal remedy because they fear reprisals. This is a nearly universal belief among detainees.

3.1.1. Legal remedies within the penitentiary system

The HHC has received many enquiries from detainees who have reported that their requests and complaints filed on papers have not been registered by the prison staff despite the relevant legislation.¹¹⁸ Introducing the electronic detainee contact point, called KIOSK, may partly address the above problem, as requests lodged through the KIOSK will be recorded in the system without further action. However, to the best of the HHC's knowledge, KIOSKs are far from being accessible to all detainees, and the approval of the reintegration officer is required for the request or complaint to be forwarded to the recipient. It is evident that the number of KIOSKs per detainee and their accessibility should be improved.

In an enquiry to the HHC, a detainee reported that during almost a year of detention, he was only allowed to use the KIOSK system once and only in the presence of an officer, despite repeated requests. The HHC has also received complaints from other detainees about the lack of time and a discreet environment free from the intrusive attention of the prison staff to use the KIOSK. Detainees who spend more time locked up in their cells under the regime rules that apply to them have fewer opportunities to use the KIOSKs installed outside their cells. There were also complaints that the KIOSK user interface is too complex, even for higher-education detainees.

It is important to highlight that from 1 January 2023, requests and complaints within the prison system can only be submitted on a paper form established for this purpose or through the KIOSK system. Failure to use this form will result in the rejection of the request or complaint without a substantive examination.¹¹⁹ The HHC has received several complaints from detainees that the forms are not easily accessible; sometimes, it takes days for detainees even to obtain a form itself, which enables them to word their requests or complaints.

Detainees often do not receive a written decision on the rejection of the complaint or request without a substantive investigation. Instead, they are 'lectured by the probation officer', meaning the decision is communicated to them orally. Such a practice gives rise to abuse and hinders the right to an effective remedy under Article 13 of the ECHR since the exact content of the decision and the mandatory remedy instructions (e.g. which forum you can appeal to against the decision) are very difficult to reconstruct afterwards. One detainee indicated that he had requested a hearing with the prison commander on several occasions through the KIOSK system. Still, the reintegration officer responded to his request each time by labelling it as 'the detainee was lectured by his probation officer', making it impossible for the hearing to occur.

Finally, it is essential to note that in some cases, requests may be decided only at a late stage, when it is practically impossible to appeal against the decision effectively. The HHC is aware of several cases where – similar to the facts in cases represented by HHC lawyers before the ECtHR *Pintér v. Hungary*¹²⁰

¹¹⁸ Section 10 a) of the Ministry of Justice Decree no. 16/2014 on the detailed rules on the execution of imprisonment, detention, pre-trial detention, and detention as a substitute for fines.

¹¹⁹ See Section 140 (2), Section 75/F d) and Section 141 (5) of the Penitentiary Code.

¹²⁰ *Pintér v. Hungary*, Application no. [39638/15](#).

and Császy v. Hungary¹²¹ – a detainee has requested to attend the funeral of a relative, but the decision on the rejection of the request was taken only on the day of the funeral, thus making it impossible to effectively appeal against the negative decision.

3.1.2. Supervisory powers of the prosecutor's office

As regards the procedure of the prosecutor's office in charge of the legal supervision of the penitentiary system, prosecutors typically find a violation only if a specific provision of the Penitentiary Code or other sectoral, prison-related legislation is violated. If there is no such violation, but for example, a violation of certain inherent personality rights, such as human dignity or health, they typically find the complaint unfounded, even though these rights are not limited by the Penitentiary Code and are expressly guaranteed by the Fundamental Law or the Civil Code of Hungary, or even by international conventions such as the ECHR.

3.1.3. Powers of the National Preventive Mechanism (OPCAT NPM)

Considering the operation of the Commissioner for Fundamental Rights, it could be said that 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, 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.¹²² The downgrading became final in March 2022.¹²³ In its March 2022 report, the SCA concluded,¹²⁴ confirming the concerns of Hungarian CSOs,¹²⁵ 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.

¹²¹ Császy v. Hungary, Application no. [14447/11](#).

¹²² 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.

¹²³ <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>, p. 13.

¹²⁴ 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.

¹²⁵ 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.

In addition to its above roles, the Commissioner for Fundamental Rights is Hungary's national preventive mechanism (NPM) under the OPCAT since 2015. In 2021, the Committee of Ministers of the Council of Europe, in the framework of supervising the execution of judgments by the ECtHR issued in a group of cases related to police ill-treatment,¹²⁶ 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".¹²⁷ 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.¹²⁸

As for the alleged remedy functions of the NPM as mentioned is the Action Report, the law¹²⁹ provides the right to apply to the OPCAT NPM. However, the OPCAT NPM has no general powers to investigate individual complaints.

An inmate extradited from the Netherlands on the basis of an assurance had different complaints concerning his detention's non-compliance with the assurance. In 2017, he wrote to the Ministry of Justice concerning the perceived breaches of the assurance the Netherlands was given in the course of his extradition proceedings. The Ministry of Justice informed him in a letter that the body vested with the task of overseeing compliance with assurances is the Ombudsman. Based on this, the inmate contacted the Ombudsman, who, in December 2018, informed him that he was not responsible for overseeing compliance with assurances either, since in his capacity as the National Preventive Mechanism under the OPCAT he does not look into individual complaints but monitors detention conditions in general: 'With regard to the assurance you are referring to, I would like to point out that assurances are provided by the judicial authorities of the given States. In your case, it was provided by the Ministry of Justice on behalf of the Hungarian State. The CPT requirements listed in the assurance – such as the provision of 6 and 4 square meters of free space for single and joint placement in a cell respectively – are monitored in a general manner by the employees of the OPCAT National Preventive Mechanism Department operating within my Office, when they visit places of detention. These visits are conducted on the basis of an annual work plan, they are not announced in advance, the monitors freely choose whom to talk to, which documents to inspect. **The OPCAT does not deal with individual complaints** [emphasis added].'

3.2. Compensation

Despite the straightforward findings of a former CM note,¹³⁰ in the HHC's view, it is still not ensured that detainees can receive adequate compensation if the minimum living space is guaranteed, but other conditions of detention violate the prohibition of torture, inhuman and degrading treatment. Detainees can indeed file a civil action based on infringement of personality rights. However, this is a general civil law claim decided upon in a general civil law procedure rather than a specific procedure tailored to prison conditions. Thus, it is typically a multi-stage litigation that lasts for years. It may also be costly: in case of losing the lawsuit, the plaintiff prisoner has to pay the court fees (6% of the

¹²⁶ *Gubacsi v. Hungary* group of cases – see in more detail section 6. of this paper.

¹²⁷ CM/Del/Dec(2021)1419/H46-16, para. 7., <https://hudoc.exec.coe.int/eng?i=004-10515>

¹²⁸ CM/Del/Dec(2022)1451/H46-16, para. 10., <https://hudoc.exec.coe.int/eng?i=004-10515>

¹³⁰ [CM/Notes/1398/H46-12](#) point out – among other things – that 'the amended remedy does not entitle detainees to claim compensation for inadequate material conditions of detention (e.g. unsanitary circumstances) if the statutory minimum of living space is ensured.'

compensation claimed) as well as the other party's legal costs. (The other party's legal costs must be paid even if due to the inmate's indigence a legal aid lawyer is appointed for them and they are exempted from the court fees.)

Furthermore, despite the changes in the system of civil law compensation and the rules pertaining to detention, some of those fundamental problems that are mentioned in the Varga and Others judgment regarding the prospective success of civil litigation into the conditions of detention are still in place. As § 56 of that judgment points out, '[e]ven in cases where the courts established that the conditions of detention constituted an infringement of the plaintiffs' personality rights, they absolved the prison facility of any liability, finding [...] a lack of fault on the respondents' side [...]. In this latter scenario, the courts' findings were apparently based on the underlying proposition that the prison authorities were only accountable for damage caused by culpable conduct or omission [...]''. One example for such a domestic decision concluded that 'given the lack of financial resources the capacities of the detention facility could not be improved and the management was not in a position to refuse new admissions', therefore, no culpability could be established on the part of a respondents (including the NPA and the prison where the plaintiff was detained, see: § 23 of the Varga judgment). There is no reason to assume that the Hungarian courts would come to a different conclusion as far as the non-pecuniary damages for substandard detention conditions (beyond the lack of sufficient living space) are concerned even if the so-called 'objective sanctions' (such as the conclusion that a violation has taken place, a ban from future violations or an apology) are indeed applicable irrespective of culpability.

3.2.1. Deduction from the amount of compensation

The Penitentiary Code prohibits the penitentiary from deducting the costs of imprisonment from the compensation awarded to the prisoner and held in a separate escrow account.¹³¹ However, Order 30/2023. (IV. 28.) of the NPA on the Management of Prisoners' Deposits and the Implementation of Certain Financial Provisions provides that, with the prisoner's written consent on a form, up to half of the prisoner's 'protected money' (which, among others, includes the amount paid as compensation)¹³² may be deducted for certain expenses.¹³³ Under the Fundamental Law of Hungary, the Penitentiary Code takes precedence over the NPA's order. Still, the order will not automatically be invalid simply because it contradicts the Penitentiary Code's provisions.

The HHC is unaware of any cases where money received by a detainee as compensation has been deducted by the prison. Still, there have been several reports from detainees or their relatives that prison officers have tried to persuade detainees to sign the abovementioned voluntary declaration, allowing further deductions.

3.2.2. Compulsory depositing compensation on a deposit account kept by the penitentiary

Under the general rule in force, prisoners can access the compensation awarded for inhuman and degrading prison conditions only after their release.

This restriction is particularly severe for those who (i) do not work during their imprisonment, (ii) are not financially supported by their family, and/or (iii) serve a lengthy prison sentence. It is common that, although the prisoner has a substantial amount of money in a deposit account, they cannot spend it on food or telephone calls for many years, which can contribute to the deterioration of their health

¹³¹ Section 75/B (6) of the Penitentiary Code

¹³² Section 1 a) of Order 30/2023. (IV. 28.) of the NPA and Art. 6 (2) of the Minister of Justice Decree no.

15/2014. (XII. 17.) on the management of the deposits of convicted prisoners and other persons held in prisons and on the procedure for handling foreign currency in their possession.

¹³³ Section 67/A of Order 30/2023. (IV. 28.) of the NPA.

and losing contact with the outside world, thus significantly reducing their chances of reintegration. Consequently, contrary to the Government's position expressed in its action report, the compulsory depositing of the compensation awarded can rather be an obstacle than a facilitator to successful reintegration.

In the case of life imprisonment, (i) reintegration as a goal is incomprehensible, and (ii) the mandatory depositing of the compensation awarded results in total deprivation of the rights to property under Article 1 of the *ECHR Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* and to an effective remedy under Article 13 of ECHR.

Prisoners are also not allowed to use the amount awarded as compensation for investment purposes, so the amount compulsory set aside in the deposit account, especially in the case of long prison sentences, is exposed to inflation, which is extremely high by European standards.¹³⁴ Thus, inflation could make the deposited compensation valueless over the years, impeding its ability to lay the foundation for reintegration upon the prisoner's release.

In exceptional cases, with the permission of the prison commander, the prisoner may have access to the compensation awarded before their release. However, in the experience of the HHC, commanders do not apply this additional rule. One of HHC's clients wanted to hire a nurse for his partner, who was suffering from terminal cancer, but the commander refused his request, citing a lack of invoices. Another detainee wanted to have a gravestone erected for his foster father, but his request was rejected. Yet another inmate with reduced mobility wanted to buy crutches for himself, but his request was also rejected by the prison commander.

Finally, it must be mentioned that the mandatorily deposited money cannot even be spent on attorney's fees or other legal costs (e.g. court fees if the inmate wants to start legal actions), thus potentially posing a serious obstacle to the inmates' access to justice, which is especially problematic if this concerns a legal dispute between the inmate and the penitentiary administration.

3.2.3. Access to effective legal services in compensation cases

As far as the Government's arguments related to the rule preventing the payment of compensation into an attorney's escrow account is concerned, the following must be pointed out.

First, there is not another type of case regarding which such a limitation exists: in all other cases, it is up to the client and the attorney to agree on the method and procedure of payment. This means an interference into the inmate's right to dispose of their property with a serious hindering effect regarding their access to justice. For such an interference a pressing and legitimate aim would be needed, however, the Government's action report does not make reference to any such legitimate aim.

Even working prisoners make very little money, and inmates' families are often indigent (often not independently from the fact that their relative is in prison). The financial problems of the families tend to become more and more severe as the criminal proceedings progress, e.g. because if the defendant is taken into pre-trial detention, their income is lost, the legal fees often eat into the family's savings if there are any, etc. Therefore, while it is true that 'lawyers had acted for the convicted person of for a person detained on other legal grounds (whether in criminal proceedings or in other prison cases) even before the compensation' had been introduced, it is obvious that the situation of persons deprived of their liberty is precarious regarding their ability to pay legal fees and thus regarding their access to

¹³⁴ For data of October 2023 see: <https://ec.europa.eu/eurostat/documents/2995521/17907993/2-17112023-AP-EN.pdf/ed17ee00-c92c-3bac-8dc7-a4a2bb78074a>

professional legal assistance, and it becomes increasingly precarious with the passing of time and the waning financial resources of concerned families. It is common knowledge and has been reported by both HHC clients and lawyers themselves that for these reasons the limitations regarding attorneys' escrow accounts have significantly decreased the willingness of lawyers to take prison overcrowding cases due to the increased risk of not being paid for their work.

Finally, the possibility of having a lawyer appointed for an inmate wishing to launch a compensation procedure, does not offer a viable solution for the problem for the following reasons. Under Decree 32/2017 (XII. 27.) of the Minister of Justice on the Fees Payable to Appointed Lawyers (paid by the State to the lawyer),¹³⁵ an appointed counsel is only entitled to an appointed lawyer's fee in court proceedings or during the pre-charge phase of criminal proceedings.¹³⁶

The compensation procedure starts with a claim filed to the penitentiary. The penitentiary examines the claim and rejects it if there are apparent grounds for refusal (e.g. because the claim is not made by the person entitled to make it or because it was submitted late). If the claim is justified and there are no other particular circumstances to concern (e.g. civil compensation payable to the victim of a crime committed by the applicant prisoner), the institution awards compensation ('simplified procedure'). The institution only refers the claim to the penitentiary judge if no simplified procedure is possible.¹³⁷

In light of the rules mentioned above, the appointed counsel is only entitled to a fee if and from the moment the claim is forwarded by the penitentiary to the penitentiary judge since then the procedure can be considered as a court proceeding within the meaning of Section 1 (1) of Decree 32/2017 (XII. 27.) of the Minister of Justice. Even in this case, the appointed counsel is only remunerated if they (i) participate in a procedural act,¹³⁸ (ii) prepare for a procedural act,¹³⁹ or (iii) consult their client.¹⁴⁰ Appointed lawyers are not remunerated for preparing and submitting documents.

Under the Penitentiary Code, the penitentiary judge can decide on a compensation claim based on the case file without holding a hearing.¹⁴¹ In such cases, no procedural act takes place, thus the only activity for which the appointed counsel may claim remuneration throughout the whole compensation procedure is the consultation with their client, but not for obtaining information from the penitentiary institution, for compiling and submitting the claim itself, nor for appealing against a decision by the penitentiary judge. The public fee for the consultation is HUF 4200 (approximately EUR 11) per hour, set by the law.¹⁴² This obviously hinders effective and proactive rights enforcement, and therefore cannot offset the negative impact of the limitation of having the compensation paid to the lawyers' escrow account.

¹³⁵ Section 75/C (1) of the Penitentiary Code.

¹³⁶ Section 7 (1) of the Decree 32/2017 (XII. 27.) of the Minister of Justice of the Minister of Justice on the fees payable to a lawyer acting in loco parentis, a guardian ad litem and a public defender.

¹³⁷ See Sections 75/D – 75/G of the Penitentiary Code.

¹³⁸ Section 7 (2) of the Decree 32/2017 (XII. 27.) of the Minister of Justice.

¹³⁹ Section 7 (3) – (4) of the Decree 32/2017 (XII. 27.) of the Minister of Justice.

¹⁴⁰ Section 7 (5) – (5a) of the Decree 32/2017 (XII. 27.) of the Minister of Justice.

¹⁴¹ Section 75/J (2) of the Penitentiary Code.

¹⁴² See Section 69 (4) of Act XXV of 2022 on the 2023 central budget of Hungary; Sections 1 (2) and 7 (5-5a) of the Decree 32/2017 (XII. 27.)

4. Treatment of detainees with disabilities

In its decision¹⁴³ issued in March 2021, the Committee of Ministers 'strongly urged the authorities to clarify the outstanding issues related to the other violations found by the Court in this group (concerning the treatment of disabled detainees, special security regimes and visits, as well as the lack of effective remedies in these respects) on a bilateral basis with the Secretariat, and to submit up-to-date information on the measures adopted or envisaged, including up-to-date statistical data allowing for an assessment of the relevant developments and a presentation of the implementation of the measures in question.'

Even though the Committee of Ministers strongly urged the Hungarian authorities to submit up-to-date information, including statistical data on the measures adopted or envisaged concerning the treatment of disabled detainees, the Action Report is merely a description of an idealised prison environment targeted by the legislative framework, which is not substantiated in the submission and is not corroborated by any of HHC's practical experiences or additional FOI data.

4.1. Disabled persons in unlawful petty offence detention

According to Section 10(a) of the Petty Offence Act, disabled persons shall not be subjected to petty offence detention (such detention is also executed in penitentiaries). Even so, the HHC has several clients with disabilities who were detained under the petty offence procedure without sufficient legal ground. For example, HHC's 20-year-old client with mental disabilities was repeatedly fined for littering and other similar petty offences and since he did not pay the fines, he was subjected to unlawful petty offence detention for altogether 71 days. In the HHC's view, there is a legal hiatus in these cases: the court often transforms petty offence fines into confinement without the offender's presence and hence, the information regarding their 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 Code does not contain the apparent disability of the offender as a ground for refusing a person's admission to the penitentiary institution.¹⁴⁴

In the HHC's view, the legal hiatus relating to petty offence detention and confinement of people with disabilities has still not been addressed by the legislator. As a result, (i) it remains common for the court to impose petty offence detention or to convert a previously imposed fine into detention without the personal presence of the offender, and (ii) the prison is still obliged to accommodate persons with disabilities who have been unlawfully sentenced to petty offence detention in the absence of a legal mandate to refuse the admission of such people. Once a person with a disability who has been unlawfully detained is admitted to the penitentiary, releasing them is typically a time-consuming and labour-intensive process for bureaucratic reasons, even for a competent lawyer.¹⁴⁵

An HHC client was detained because of committing a petty offence and not paying the fine.¹⁴⁶ The client was under guardianship. He raised this fact in the prison, which did not take any action to release him. Upon the request of the client's partner, an HHC lawyer contacted via phone and wrote 8 official

¹⁴³ § 8 of CM Decision no. [CM/Dec/Dec\(2021\)1398/H46-12](https://www.cmdecisions.org/en/decisions/2021/1398)

¹⁴⁴ Section 90 of the Penitentiary Code

¹⁴⁵ It is also worth noting that in such case, turning to the Commissioner for Fundamental Rights does not appear to be effective either. A detainee who has been held in petty offence detention despite their disability, has yet to receive a response since three years and nine months for their complaint from the Commissioner for Fundamental Rights. See more here: <https://www.valaszoltekozmaekos.hu/ugyek/jogsabalyellenesen-fogvatartott-fogyatekossaggal-elok-ugye-helsinki>

¹⁴⁶ See more in Hungarian at 'A Helsinki Bizottság közelépése kellett ahoz, hogy kiengedjenek a börtönből egy fogyatékos embert', <https://helsinki.hu/a-helsinki-bizottsag-segitett-a-fogyatekos-embernek/>.

letters within 7 days to the prison administration, to the prosecution supervising the enforcement of the sentences and to the guardian in order to have the client released. First, the prosecution service claimed that even though the client is under full guardianship he might not have disabilities. Also, the prison service refused to consider the fresh psychiatric report issued in another procedure raising GDPR claims. Finally, as a result of the intensive advocacy work, the client was released after 7 days of unlawful detention.

4.2. The claim of the existence of barrier-free cells needs to be substantiated

Introducing a range of barrier-free cells to accommodate people with various sensory and mobility impairments is a positive and welcome development. However, the HHC has not received any information from the concerned population or their relatives concerning either of these developments, nor about the availability of sign language interpretation.¹⁴⁷ The HHC's practical experience shows that it is not ensured that all people with disabilities are accommodated in the appropriate accessible cell, which indicates that the capacity of barrier-free cells needs to be improved.

An HHC client is blind practically from his birth. He was detained in one of the most newly constructed prisons (National Penitentiary Institution in Tiszalök) from 2019 for 1 year and 9 months. With the help of the HHC, he sued the prison because he was treated in exactly the same way as any other detainee. The first instance court decision stated that he was accommodated in an average cell and had the same daily routine and obligations as the others. As a result of this he could not move, do his shopping, get a shower, go to the phone or Skype, read his mail, write his mail and claims, eat, clean the cell, or arrange his belongings alone. He also could not participate in any of the leisure activities, he could not work, he was not provided with a radio, nor with a white stick or a service dog, and neither with a Braille-book. Furthermore, he did not benefit from any derogations from the rules. He was never assisted by any of the prison staff members, so he was forced to ask other prison mates to help him with his activities. The court also established that the prison was not accessible for a blind person and none of the prison staff were trained to help and handle such a disabled person. After the 2-year period concerned, even though the client is not ill, he was transferred to Unit III (Algyő-Nagyfa) of the Szeged Strict and Medium Regime Prison, which serves as a Chronic After-Care Unit of the penitentiary system, where he is helped by the prison staff. This unit is not accessible for blind people, there are no activities or care tailored to them.

Upon the aforementioned client's submission, the Commissioner for Fundamental Rights established in 2023 in his letter that given the prison is not barrier-free, his situation is vulnerable. The Commissioner called the Lieutenant General of the NPA to place disabled detainees in accessible prisons appropriate to their status and to contact organisations dealing with disability rights to map the necessary interventions in prison settings. The HHC has not received any follow-up information concerning the eventual measures taken.

4.3. Staff shortages affecting treatment of detainees with disabilities

Individualised treatment and care of prisoners with a variety of special needs (including those with disabilities or addictions, those who are ostracised or otherwise unable to care for themselves) is undoubtedly a welcome and desirable goal in the prison system. In the experience of the HHC, however, translating these significant goals into practice often faces obstacles, one of the most significant of which is the shortage and heavy workload of prison staff. The staff shortage can only be measured in quantitative terms in relation to the total number of centrally defined posts and the

¹⁴⁷ §5 of Action Report, [DH-DD\(2023\)1213](#).

vacancy of such posts. A further hypothetical issue, however, is that even if the centrally defined total number of posts were filled, which is not the case (see Point 2.2.1 above), it is not certain that there would be sufficient and appropriately skilled staff to meet the defined targets.

In 2023, a prison psychologist was heard as a witness in a court case for an HHC client. According to him, there are about 250 prisoners per prison psychologist in the specific prison. In previous years, the number was even higher. They said that nearly half of the detainees in the penitentiary are considered psychologically vulnerable.

The means and tools listed by the Government as available to the prison service to ensure the appropriate treatment of prisoners with disabilities or other special needs have to be substantiated. The HHC would welcome these developments because they would undoubtedly be impressive and forward-looking. Still, they can only be effective if there is staff to operate them. There are no publicly available statistical data on prison staffing showing separately the proportion of prison staff with qualifications to work with prisoners with the abovementioned special needs and on prison capacity considering the placement of detainees with special needs; thus, the HHC respectfully recommends the Committee of Ministers to request the Government to provide evidence (including photos) of such barrier-free cells listed in the Action Report¹⁴⁸ and objective statistical data to demonstrate that the necessary staff are in place to effectively implement the means listed in Section 7.1 of the Action Report.

4.4. Treatment of detainees with psychosocial disabilities

In its previous communication to the Committee of Ministers, the HHC has communicated comprehensive information on problems related to the treatment of inmates with severe psychosocial disabilities at the Forensic Observation and Mental Institution (IMEI).¹⁴⁹ It is to be noted that the Government has not provided any information regarding this matter in its Action Report.¹⁵⁰

¹⁴⁸ §46 of Action Report, [DH-DD\(2023\)1213](#).

¹⁴⁹ §4.1.2. of HHC's NGO Communication, [DH-DD\(2022\)1384](#), pp. 13-15.

¹⁵⁰ §§62-75 of Action Report, [DH-DD\(2023\)1213](#).

5. Recommendations

5.1. Procedural recommendations

- The HHC respectfully recommends to the Committee of Ministers of the Council of Europe **to continue to examine this group of cases under the enhanced procedure.**

5.2. Substantive recommendations

New recommendations

- The HHC respectfully recommends to the Committee of Ministers of the Council of Europe to urge the Hungarian Government to engage in a comprehensive reform of criminal policy, including but not limited to the issue of limiting or moderating the number of persons sent to prison. Such policy-making effort should envisage a multi-agency cooperation between all professional and non-professional stakeholders of the criminal justice chain to seek solutions that benefit the whole society and prevent harms of over-criminalisation. To this aim, it is of utmost importance that the Government starts a multi-stakeholder dialogue on tackling inhuman detention conditions that includes people with lived experience of incarceration – ex-inmates and their family members-, practitioners, academics and NGOs representing people affected by inhuman detention conditions.
- The HHC respectfully recommends to the Committee of Ministers of the Council of Europe to urge the Hungarian Government to reduce the prison population by means detailed hereby in order to provide greater flexibility for the prison administration to renovate existing prison buildings and transfer prisoners in unavoidable cases. Upon achieving this, the Government should enact legislation that provides an effective and specific preventive remedy mechanism for detainees in inadequate prison conditions. Until this is achieved, the Government should take swift and practical steps to ensure that the general system of domestic remedies currently laid down works in a genuinely effective manner within the meaning of Article 13 ECHR.
- The Government should address and follow up on widely accepted policy indicators that show whether a prison system is in danger of overcrowding such as the length of sentences, the use of short-term sentences, pre-trial detention numbers etc.
- Efforts should be made by the Government to create evidence-based policy on reducing the reliance on imprisonment within Hungarian criminal justice, even seeking out good practices that provide real alternatives all around Council of Europe countries. To that end, the Government should be urged to implement several relevant Council of Europe Recommendations, such as
 - [Recommendation No. R \(99\) 22](#) concerning prison overcrowding and prison population inflation,
 - [Recommendation Rec\(2006\)2-rev](#) of the Committee of Ministers to member States on the European Prison Rules
 - Recommendation [CM/Rec\(2010\)1](#) of the Committee of Ministers to member states on the Council of Europe Probation Rules
 - Recommendation [CM/Rec\(2017\)3](#) of the Committee of Ministers to member States on the European Rules on community sanctions and measures
 - Recommendation [CM/Rec\(2018\)8](#) of the Committee of Ministers to member States concerning restorative justice in criminal matters
 - Recommendation [CM/Rec\(2018\)5](#) of the Committee of Ministers to member States concerning children with imprisoned parents

Outstanding recommendations from previous Rule 9 communications

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