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**Subject: Communication from the Hungarian Helsinki Committee concerning the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary**  
(Applications nos. 14097/12, 15707/10, 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 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 more than two decades, between 1995 and 2017. During this period, the organisation carried out 1,237 monitoring visits to police jails, 48 visits at penitentiary institutions and made 51 inspections at places of immigration detention. The HHC has submitted numerous communications to various international forums (CPT, SPT, UNWGAD, 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, and one of the two applicants in the *Takó and Visztné v. Hungary* case). The HHC receives around 500 complaints a year from detainees and their relatives, and is frequently contacted by lawyers representing detainees in various legal proceedings. In addition, the HHC is a founding member of a grassroots organisation 'FECSKE Support Network for Detainees and their Families', which consists of people with lived experience of detention, their family members and professionals, including former members of the prison administration. As a result, the HHC has access to up-to-date information related to detention conditions. This information is supplemented by the results of the HHC's Freedom of Information (FOI) requests and the cases taken on by lawyers through the HHC's human rights legal counselling program.

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 December 2023, further explaining the causes behind the deeply concerning **surge in the number of persons detained** in Hungarian penitentiaries, the **underuse of alternatives, and the possible structural resolution of these problems**. Building on the finding of previous submissions, this communication highlights that 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. Furthermore, the HHC explains that **none of the prior concerns of the Committee of Ministers were addressed regarding the ineffective remedial and compensation system** in the latest Government Action Report, which also lacked the requested comprehensive information on these issues.

Consequently, the **HHC is still of the firm view that the supervision of the implementation of the group of cases should remain under the enhanced procedure. Moreover**, given the length of time this group has been pending implementation, the seriousness and widespread effect of the related issues **the HHC respectfully recommends the Committee of Ministers of the Council of Europe to consider issuing an interim resolution**, as the Hungarian Government should be under scrutiny **for not having addressed the issues above in a meaningful way that would have been in line with the content and spirit of the related ECtHR judgments**.

The HHC is of the view that the latest Revised Group Action Plan (hereinafter: Action Plan) does not cover key areas and continues to fail to address systemic deficiencies. The Government has neglected to comply with the guidance provided by the Committee of Ministers’ decision. Therefore, this communication aims to provide the Committee of Ministers with a comprehensive view of the issues regarding prison conditions in Hungary by sharing practical experience, research results, and other information available to the HHC. To provide a long-lasting resolution to the poor conditions of detention resulting mainly from a structural problem of overcrowding in prisons and the lack of effective preventive and compensatory remedies in this respect, as well as other detention-related violations, Hungary should address outstanding deficiencies in the following key areas:

- There is a lack of a comprehensive, coherent strategy to curb the growth of the prison population for the long term. Therefore, as foreseen by the HHC and in line with the long-standing experiences of international bodies (such as the CPT),<sup>1</sup> despite the continued expansion of the prison estate, the prison system of Hungary is still overcrowded because:
  - No comprehensive policy targets the root causes of prison population inflation. Therefore, it is impossible to ensure that imprisonment remains a measure of last resort.
  - The lack of emphasis on non-custodial measures – especially in less serious cases – at any stage of the criminal procedure undermines the proper implementation of alternative sanctions and measures.
- The outstanding issues related to material conditions beyond overcrowding (such as hygiene-related problems, lack of proper ventilation, unreasonably high costs of subsistence and

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<sup>1</sup> See for example § 44 of the CPT Report, [CPT/Inf \(2024\) 36](#), and §§ 103-107 of the substantial section on prison overcrowding in the [Extract from the 31<sup>st</sup> General Report of the CPT](#), 21 April 2022.

telephone calls) significantly impede humane detention. There is still no guarantee of adequate compensation for these conditions.

- No tangible progress was achieved regarding the numerous shortcomings of the compensatory remedy system already identified by the Committee of Ministers. Additionally, the Action Report fails to provide statistical data and a comprehensive case-law and practice analysis repeatedly requested by the Committee of Ministers.
- Despite some improvements, excessive restrictions on prisoners' visiting rights remain, including the general use of physical separation during visits, the infrequent allowance to visits under open conditions.
- Additional arbitrary restrictions arise from abuses of discretion and the lack of adequate individual security assessments, the lack of access to the documents of these procedures.
- Legislative and practical shortcomings in the treatment of detainees with disabilities, particularly their placement in barrier-free cells, therapeutic and psycho-social units, and concerns about number of specialised staff.
- Arbitrary placement in special security regimes with significant additional restrictions on rights, and lack of relevant data on implementation in practice.

The HHC's communication below elaborates on the outstanding deficiencies in these areas, following the structure of the Committee of Ministers' latest decision as regards to the recommended general measures, and concludes with recommendations on how to address them, including a recommendation for the consideration of issuing an interim resolution regarding this group of cases.

## **1. The lack of a comprehensive long-term strategy to resolve the structural problem of prison overcrowding and poor material conditions**

In its Decision issued on 14 March 2024, the Committee of Ministers (hereinafter: CM) repeatedly urged the authorities to adopt a comprehensive long-term strategy to resolve the problem by taking additional measures embedded in a coherent and overarching penal policy to sustainably and for the long-term maintain the occupancy rates of prisons below their maximum capacity and enhance their efforts in improving material conditions.<sup>2</sup> Additionally, the CM called on the authorities to double their efforts to increase the use of alternatives of detention and prepare a comprehensive assessment of the concrete impact of measures taken and underway, in addition to submitting comprehensive updated statistical figures allowing for an assessment of the trends of implementation of these alternative measures in practice and their impact on prison overcrowding.<sup>3</sup> As in the previous 12 years of the implementation of the judgment, to date, the Hungarian authorities have failed to comply with this decision, as evidenced by the latest Government Action Report of 10 December 2024, which only provides statistical evidence on the penitentiary system operating above capacity,<sup>4</sup> and on two marginally used types of early release, reintegration custody and home care detention.<sup>5</sup> According to the Action Report, 296 prisoners were placed in reintegration custody on 31 July 2024 (1.6% of the prison population; while 19 prisoners (0.1% of the prison population) were placed in home care

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<sup>2</sup> §§ 3-6 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>3</sup> §§ 3-6 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>4</sup> §§ 15-17 of the Action Report, [DH-DD\(2024\)1433](#).

<sup>5</sup> §§ 19-24 of the Action Report, [DH-DD\(2024\)1433](#).

detention.<sup>6</sup> As such, the Action Report only provides further evidence to the continued lack of engagement of the authorities with long-term, structural solutions to prison overcrowding embedded in the good practice and recommendations of the Council of Europe.

### 1.1. Prison overcrowding and the expansion of the prison estate<sup>7</sup>

Despite the repeated requests of the CM,<sup>8</sup> the latest Action Report fails to provide new information on the proposed resolution to outstanding issues. It lacks a coherent strategy that employs a multi-faceted approach to address changes in policies, practice and societal attitudes towards people who offend. Consequently, the HHC must reiterate its observations and concerns<sup>9</sup> related to prison overcrowding and the five-year-long upward trend in prison population. However, in the second half of 2024, due to the closing of three prisons (affecting 404 places) and the delay in opening the new facility in Csenger, the currently available operational capacity of the prison system has been reduced by 2.2%.<sup>10</sup>

The prison population rate of Hungary once again showed an increase on 31 January 2023, with 211 prisoners per 100 thousand inhabitants (on 31 January 2022, it was 194).<sup>11</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: CPT) has recently published its country report on their periodic visit carried out in March 2023 to Hungary. The Report corroborates the HHC's previous observations communicated to the CM in the current group of cases in all respects. The CPT noted that as the primary measure to address the long-standing issue of prison overcrowding, the authorities have focused on increasing capacity to accommodate more detainees; therefore, 3,817 new places were created between 2018 and 2023.<sup>12</sup> Since the CPT's last visit in 2018, the prison population has increased by 15%, and during their visit in March 2023, the average occupancy rate was 109.5%. According to their report, the increase in the "number of prisoners was so acute that the authorities were using cells such as admission or medical observation cells for regular accommodation of prisoners". Out of the country's 33 prison establishments, 23 reported occupancy rates above 100%, out of which eight were over 110%. Additionally, they observed that the proportion of pre-trial detainees had risen from 18% to 24.7%, while the number of prisoners serving a life sentence also steadily increased between 2018 and 2023.<sup>13</sup> Furthermore, the latest

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<sup>6</sup> §§ 20 and 23 of the Action Report, [DH-DD\(2024\)1433](#).

<sup>7</sup> As mentioned in several of the HHC's previous communications to the CM, it is now five years ago since the National Penitentiary Administration (NPA) has discontinued publishing the [Review of Hungarian Prison Statistics](#), which used to contain basic data on the operation of the penitentiary system, including the socio-demographic 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.

<sup>8</sup> §§ 3-4 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>9</sup> See the HHC's following Rule 9(2) communications with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2022\)1384E](#), pp. 2-5; [DH-DD\(2024\)16E](#), pp. 3-9; [DH-DD\(2024\)288E](#), pp. 2-3.

<sup>10</sup> See the NPA's announcement (in Hungarian): [Another two obsolete prisons need to be emptied](#), 25/09/2024. The proportion of the decrease in operational capacity is based on the HHC's own calculation, source: Response no. 30500/4683/2024 issued by the NPA to the HHC's Freedom of Information (FOI) request on 16/10/2024.

<sup>11</sup> See [Key Findings of the SPACE I survey](#): Prisons and Prisoners in Europe 2023, p. 6.

<sup>12</sup> § 42 of the Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 May 2023 (hereinafter: CPT Report), [CPT/Inf \(2024\) 36](#).

<sup>13</sup> § 41 of the CPT Report, [CPT/Inf \(2024\) 36](#).

Government Action Report of 10 December 2024 provides statistical evidence that the penitentiary system operating above capacity in the first half of 2024, at 103%.<sup>14</sup> According to the latest FOI data available to the HHC, on 31 August 2024 the penitentiary system operated with 32 penitentiary institutions in total and at a 104% density with 17 prisons operating at occupancy levels above 100%, out of which three were above 110% and two above 120%.<sup>15</sup>

According to several Action Reports, in the hope of finding a long-term solution to overcrowding, the Government decided to further expand the prison estate by committing to build a new prison in Csenger, which was to be completed by the end of September 2024 but is still under construction.<sup>16</sup> The HHC concurs with the CPT report, which emphasises that considering the steady increase in occupancy levels, the efforts to establish new places in the prison system of Hungary in itself are not likely to provide a lasting solution to the problem of overcrowding, and it also falls short of the goal to provide all prisoners with appropriate living conditions.<sup>17</sup>

A piece of new information not included by the Action Report is that in the second half of 2024, three county remand facilities were closed: one in North-Western Hungary (Győr-Moson-Sopron County Remand Prison), one in Southern Hungary (Tolna County Remand Prison), and one in Northern Hungary (Heves County Remand Prison).<sup>18</sup> In the HHC's view, since no public consultations preceded these decisions, closing these three facilities indicates that the new prison under construction is nearly finished; therefore, the authorities seem to be preparing to rely on the 1,500 places Csenger will provide. At the same time, it is concerning that Csenger is very remote from most of the country, as it is near the North-Eastern border of Hungary, thus, far away from all the counties where the prisons were closed (between 210 and 455 kilometres away, approximately 2.5-4.5-hour drive by car, and an approximately 6.5-8.25-hour journey by public transport). Several factors are taken into account when determining the place of detention, with the family's place of residence being only one of them.<sup>19</sup> Other important considerations include the prison's occupancy rate, job opportunities, and the type of work the individual can perform. According to the HHC's experience, detainees are often placed in penitentiaries far away from their families, which is a crucial factor in being able to maintain meaningful contact with their family members and, therefore, can represent a significant hindrance in exercising their rights enshrined in Article 8 of the Convention.

## 1.2. Issues related to penal policy and the underuse of alternatives to detention

The Action Report fails to provide a comprehensive assessment of the concrete impact of measures taken underway, which indicates that the root causes of prison overcrowding are still to be addressed in the future by the Government. Furthermore, the Action Report does not mention how the

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<sup>14</sup> § 16 of the Action Report, [DH-DD\(2024\)1433](#).

<sup>15</sup> Response no. 30500/4683/2024 issued by the NPA to the HHC's FOI request on 16/10/2024.

<sup>16</sup> §18 of the Action Report, [DH-DD\(2024\)93E](#), 29/01/2024; §17 of the Action Report, [DH-DD\(2024\)1433E](#), 10/12/2024.

<sup>17</sup> §44 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>18</sup> See [The Hungarian prison map may be redrawn](#) (in Hungarian) on Magyar Hang online, 29/07/2024.

<sup>19</sup> Three regulations determine the rules of placement in the penitentiary system. Section 97(1) of the Penitentiary Code states that the person convicted to imprisonment shall preferably placed in the prison closest to their address based on law or the national commander's decision. Additional rules of placement are contained by two pieces of subordinate legislation: Decree no. 16/2018 (VI. 7.) of the Minister of Interior on the Rules for the Designation of Penitentiary Institutions for the Enforcement of Imprisonment, Confinement, Detention Replacing a Court Fine, Pre-trial Detention and Petty Offence Detention and the Order no. 65/2020 (XII. 12.) of the National Penitentiary Administration on the implementation of the Decree no. 16/20218 (VI. 7.).

enhancement of the implementation of non-custodial sanctions is envisioned. Therefore, the HHC must reiterate its observations and concerns<sup>20</sup> related to the lack of a coherent and overarching penal policy based on well-established ways of reducing the prison population. This includes emphasizing the need to increase the use of non-custodial alternatives to detention.

### 1.2.1. Prison population inflation continues in Hungary

In the HHC's view, in recent years, the Government has only implemented measures permitting prison population inflation while failing to engage in evidence-based system-wide front-door and/or back-door policy strategies to address prison overcrowding successfully. The HHC must repeat related concerns.<sup>21</sup> Front-door strategies include measures aimed at reducing the number of the incoming prisoners, such as implementing alternatives that divert offenders from prisons and reducing both the use and length of custody, whether on remand or following sentencing. . Back-door strategies include promoting the implementation of early release programmes and developing services to facilitate successful reintegration into the community.

In contrast, in the HHC's analysis, a combination of factors continues to contribute to the inflation of the prison population in Hungary, such as:

1. Alternative, non-custodial pre-trial measures continue to be severely underused. On 31 August 2024, 4,436 people were in pre-trial detention, representing 24% of the prison population, which is a high proportion that contributes to the prison population inflation.<sup>22</sup> The *István Gábor Kovács* and *Varga and Others v. Hungary* group of cases is closely intertwined with the *X.Y. v. Hungary* group of cases, which concern different violations of detainees' right to liberty and security under Article 5 of the Convention during pre-trial detention. Regarding the *X.Y. v. Hungary* group of cases the HHC reported<sup>23</sup> to the CM in detail on a worrying trend between 2019-2022 regarding the overuse of pre-trial detention and the underuse of its alternatives. Data show that this trend continued in 2023:
  - The upward trend in the application of pre-trial detention during the investigative phase continued.<sup>24</sup>
  - Non-custodial alternatives to pre-trial detention remained severely underused.<sup>25</sup>

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<sup>20</sup> See the HHC's following Rule 9(2) communications with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2022\)1384E](#), pp. 5-7; [DH-DD\(2024\)16E](#), pp. 10-15; [DH-DD\(2024\)288E](#), p. 2.

<sup>21</sup> See the HHC's following Rule 9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 6-11.

<sup>22</sup> Response no. 30500/4683/2024 issued by the NPA to the HHC's FOI request on 16/10/2024.

<sup>23</sup> See the HHC's following Rule 9(2) communication concerning the execution of the judgments of the ECtHR in the group of cases *X.Y. v. Hungary*: [DH-DD\(2024\)638](#), pp. 6-11.

<sup>24</sup> See 2023 data on the number of proposals by the investigating authority, motions by the prosecution and court decisions aimed at ordering pre-trial detention at *Ügyészégi Statisztikai Tájékoztató – Büntetőjogi szakág. A 2023. évi tevékenység [The Statistical Information Leaflet of the Prosecution – Criminal Field. Activities in 2023]*, <https://ugyeszseg.hu/wp-content/uploads/2016/02/buntetojogi-szakag-2023.-ev.pdf>, p. 60, Table 59.

<sup>25</sup> See A büntetőbíróság előtti ügyészi tevékenység főbb adatai. A 2023. évi tevékenység [Main Data on Prosecutorial Activities before the Criminal Courts. Activities in 2023], <https://ugyeszseg.hu/wp-content/uploads/2016/02/buntetobirosag-elotti-ugyeszi-tevekenyseg-fobb-adatai-i.-2023.-ev.pdf>, 2023 data on the proportion of different types of coercive measures at the time of the indictment is available at p. 46.,

2. The average length of imprisonment in 2022 at 11.7 months was higher than the Council of Europe average.<sup>26</sup>
3. Custodial solutions dominate penal policy while reintegration is pushed to the background.<sup>27</sup>
4. The penitentiary system is significantly impacted by the inadequate functioning of non-custodial alternatives in cases involving petty offences and low-level criminal offences.
  - a. Petty offence detention is enforced in the prison system. Alternatives to petty offence detention, such as fines and community service, are frequently (18% of all imposed petty offence sanctions in 2024) converted into imprisonment.<sup>28</sup>
  - b. The same applies to some non-custodial alternatives to criminal detention: detainees for converted fine and community service sentences represented around 3% of the prison population, approximately six hundred people daily in the first half of 2024.<sup>29</sup>
5. At sentencing, non-custodial alternative sanctions and measures are underused. Additionally, severe problems are still indicated by the growing proportion of community service orders converted to imprisonment.<sup>30</sup> In 2023, less than half of community service orders were completed successfully: 2,679 (31%) adult offenders and 267 (47%) juvenile offenders' community service orders were converted to imprisonment.<sup>31</sup>
6. Access to early release is insufficient.<sup>32</sup> As previously reported by the HHC,<sup>33</sup> even professional stakeholders, such as prosecutors and penitentiary judges, have noted with concern the large-scale decrease in 'rewards' awarded to detainees, which have traditionally been an essential

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Table V/502; data on the proportion of different types of coercive measures at the time of the first instance court is available at p. 49, Table V/507.

<sup>26</sup> Source: Council of Europe [Annual Penal Statistics – SPACE I 2023](#), pp. 119-120.

<sup>27</sup> See the HHC's following Rule 9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 10-16.

<sup>28</sup> See the following tables of the Crime Statistics System of the Ministry of Interior [Bűnügyi Statisztikai Rendszer], the proportion here is based on the HHC's own calculation: the [No. of petty offence sanctions converted](#) [Kiszabott szankciók átváltoztatása] divided by the [No. of petty offence sanctions imposed](#) [Kiszabott szabálysértési szankciók].

<sup>29</sup> Response no. 30500/4683/2024 issued by the NPA to the HHC's FOI request on 16/10/2024.

<sup>30</sup> Reasons for the systemic institutional problems in implementing non-custodial sanctions, especially community service, were uncovered by the HHC's research: (i) the imprisonment-centred mindset of judges and (ii) their lack of trust in these sanctions, (iii) the insufficient institutional background provided for the implementation of community service, such as probation professionals being overburdened and under-resourced. At the same time, the organisational restructuring of probation in Hungary had a negative impact on the work of probation officers, making the institutional setting significantly less appropriate for carrying out their vital tasks in implementing non-custodial sanctions and measures. See for details: Policy brief of the HHC for Enhancing the Implementation of Non-custodial Alternatives to Imprisonment, available here (in Hungarian): <https://helsinki.hu/szakpolitikai-ajanlasaink-az-alternativ-szankciok-jobb-kihasznaltsaga-erdekeben/>; See 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.; and (in Hungarian) Krámer L.: Replacing Prison with Control and Support – Alternative Sanctions in Hungary and Europe, *Kriminológiai Közlemények (83)*, 2023, pp. 179-191.

<sup>31</sup> Source: [Statistical data of the Ministry of Justice on general probation 2023](#), pp. 5-7.

<sup>32</sup> See the HHC's following Rule 9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 12-15.

<sup>33</sup> [Ibid.](#), pp. 12-15.

element of making a favourable decision on early release in the practice of penitentiary judges. At the same time, the number of disciplinary sanctions – in HHC’s experience, very often based on minor acts – has slightly grown in recent years. The following table shows the shift in the accessibility of rewards and the number of disciplinary sanctions:

*Table 1 – Access to rewards and frequency of disciplinary sanctions<sup>34</sup>*

| Year  | Rewards | Disciplinary sanctions |
|-------|---------|------------------------|
| 2021  | 12,464  | 11,069                 |
| 2022  | 7,871   | 11,272                 |
| 2023  | 675     | 11,863                 |
| 2024* | 600     | 8 475                  |

\*Data of 2024 includes the period between 01/01/2024 and 24/09/2024.

From 1 March 2024, a new credit- and category system was introduced that replaced the previous regime system to enhance the individualisation of the prison sentence, motivate inmates to participate in reintegration programmes, and allow inmates’ progression to more lenient detention conditions (e.g. where they can have more frequent contact with their family members). According to policymakers and penitentiary officials, the category system may also enhance the implementation of early-release schemes.<sup>35</sup> The HHC continues to monitor this system and its impact on prison conditions and the application of early release.

### **1.2.2. Severe issues related to the implementation of alternatives to detention remain unresolved**

The HHC must reiterate that the overuse of the prison system goes hand-in-hand with the underuse of its alternatives. Although the authorities have been strongly urged<sup>36</sup> to double their efforts to increase the use of alternatives to detention and to provide comprehensive statistical data to enable to assess their implementation, the latest Action Report fails to publish such statistics.<sup>37</sup> Instead, in its section on alternative sanctions, it only mentions two types of early release schemes: reintegration custody and home care detention, even though there are numerous other non-custodial sanctions available in the Hungarian legal system. The Action Report shows that reintegration custody<sup>38</sup> and home care detention<sup>39</sup> remain available for an undeniably small proportion of the prison population, with the former at 1.6% and the latter at 0.1%.

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.<sup>40</sup> The Action Report does not provide any data on most alternatives to detention: no data was published on conditional

<sup>34</sup> Response no. 30500/4683/2024 issued by the NPA to the HHC’s FOI request on 16/10/2024.

<sup>35</sup> See the HHC’s post [Introducing a credit system in Hungarian penitentiary institutions](#) and the HHC’s [detailed information materials](#) available in Hungarian.

<sup>36</sup> § 5 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>37</sup> §§ 19-24 of the Action Report, [DH-DD\(2024\)1433E](#).

<sup>38</sup> § 20 of the Action Report, [DH-DD\(2024\)1433E](#).

<sup>39</sup> § 23 of the Action Report, [DH-DD\(2024\)1433E](#).

<sup>40</sup> Policy brief of the HHC for Enhancing the Implementation of Non-custodial Alternatives to Imprisonment, available here (in Hungarian): <https://helsinki.hu/szakpolitikai-ajanlasaink-az-alternativ-szankciok-jobb-kihasznaltsaga-erdekeben/>; See 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.; and (in Hungarian) Krámer L.: Replacing Prison with Control and Support – Alternative Sanctions in Hungary and Europe, *Kriminológiai Közlemények (83)*, 2023, pp. 179-191.



release or any further non-custodial community sanctions and measures in Hungary's criminal justice system. The HHC had previously reported on the causes of prison population inflation and feasible ways out of the spiral of prison overcrowding, i.e. the enhanced implementation of non-custodial sanctions<sup>41</sup> and continues to monitor related public data.

The authorities respond only sporadically to the Council of Europe's SPACE II statistical questionnaires; therefore, the latest Report of 2023 does not contain data on Hungary. The data communicated in the 2022 SPACE II publication show that, on average, community sanctions and measures are less likely to reach completion in Hungary than on average in other Council of Europe Member States. In Hungary, 53% of probationers exited probation by completing community sanctions and measures during 2021 (Council of Europe average [*mean*] 79%), while 12% of these non-custodial measures ended in imprisonment (Council of Europe average [*mean*] 6%).<sup>42</sup>

### 1.3. Material conditions of detention

Despite the CM's call on the Hungarian authorities to step up their efforts to improve the material conditions of detention,<sup>43</sup> the issue of inadequate detention conditions remains unresolved. In this respect, as the ECtHR has pointed out,<sup>44</sup> the substandard material conditions of detention that accompany overcrowding may contribute to degrading treatment in detention. In the absence of tangible and widespread developments since its last communication, the HHC maintains its position that **material conditions in Hungarian prisons continue to outline problems that significantly impede humane detention**. Deficiencies related to adequate temperature control, such as inadequate insulation, heating or ventilation (in both winter and summer) are of particular concern. Old buildings in poor condition are particularly vulnerable to temperature-related problems. Similarly, persistent pest infestations, poor hygiene and limited access to showers, hot water and adequate clothing are all outstanding issues. Another common problem is that in-cell toilets are not properly partitioned and lack ventilation.

As the CPT noted during its 2023 visit to Hungary, "overcrowding and limited resources continued to affect the prison regime adversely, with most prisoners having no or limited access to work, education or other out-of-cell activities".<sup>45</sup> The problem is particularly acute for remand and high-security prisoners, a significant proportion of whom are confined to their cells for 23 hours a day. A further concern raised during the visit was the lack of adequate yards, which are cage-like, with little or no shelter, no means of rest and limited views of the sky, while prisoners may not be allowed to rest on their beds or exercise in their cells during the day.<sup>46</sup> Prisoners are also routinely strip-searched as they move in and out of their cells, which further aggravates their treatment. The CPT has also drawn attention to the unreasonably high costs of subsistence and telephone calls, given that the vast majority of prisoners have no source of income, leading to particularly dire situations for those who are unemployed and without outside support.<sup>47</sup> In the light of the above, the HHC is of the view that

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<sup>41</sup> See the HHC's following Rule 9(2) communications with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2022\)1384E](#), pp. 5-7; [DH-DD\(2024\)16E](#), pp. 10-15; [DH-DD\(2024\)288E](#), p. 2.

<sup>42</sup> See [SPACE II 2022](#), Table 14, p. 83.

<sup>43</sup> See § 6 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>44</sup> See § 89 of *Varga and Others v. Hungary* (Application nos. [14097/12](#) and 4 others).

<sup>45</sup> § 74 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>46</sup> §§ 72 and 76 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>47</sup> § 82 of the CPT Report, [CPT/Inf \(2024\) 36](#).

further measures are needed to ensure that detainees are held in conditions consistent with respect for human dignity.

## 2. No tangible progress regarding the compensatory remedy system

In its latest decision, the CM *“noted with regret that, given the lack of statistical data regarding the functioning of the compensatory remedy from 2022 onwards, it is not possible to assess its effectiveness; noting with interest the statutory prohibition of the deduction of detention-related costs from the compensation amount, noted nevertheless with deep concern that in particular three other issues identified in document [H/Exec\(2021\)5](#) remain without response; urged the authorities to take concrete steps to address those remaining concerns”*.<sup>48</sup>

Document [H/Exec\(2021\)5](#) is a memorandum assessing and overviewing the new general compensation rules in force since 1 January 2021. In this memorandum, the Department for the Execution of Judgments of the ECtHR (hereinafter: DEJ) identified five issues concerning the general compensation rules that replaced the former Convention-compliant specific preventive remedy scheme, which can be summarised as follows:

- i. *If sufficient living space is provided, even in the case of other inadequate material conditions (such as unsanitary conditions) compensation is ineligible.*
- ii. *Issues regarding access to a remedy in the first two months in inappropriate conditions.*
- iii. *Attachment with respect to violation-related debts to the State.*
- iv. *Issues regarding interest on penitentiary accounts and access to the sums before release.*
- v. *Payment of legal costs and expenses.*

In the same decision, the CM *“noted also with concern that over three years after the abolishment of the Convention-compliant specific preventive remedy, and despite the Committee’s previous calls, statistical data allowing for the assessment of the effectiveness of the remaining general preventive mechanism, relied upon by the authorities, is still outstanding; strongly urged them to either reintroduce a specific preventive remedy or to provide comprehensive case-law and practice demonstrating the functioning of the general remedy, while also inviting them to consider the reintroduction of judicial review”*.<sup>49</sup>

In its latest Action Report, the Government did not respond to these concerns, noting only that *“[t]here has been no backtracking on preventive complaints in the context of compensation, given that in most cases the circumstances leading to compensation is resolved as soon as possible, and the exceptional case of someone being placed in overcrowded accommodation lasts on average only 14.44 days.”*<sup>50</sup> The Action Report provides no statistical data or comprehensive case-law and practice analysis proposed by the CM in its latest decision.<sup>51</sup>

The HHC regrets that the Government failed to comment on the concerns raised by the CM and long unresolved in this group of cases in its latest Action Report. The statistics provided by the Government on the average time detainees spend within cells lacking the statutory minimum living space do not indicate that the concerns of the Committee of Ministers mentioned above are resolved.

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<sup>48</sup> § 7 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>49</sup> § 8 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>50</sup> § 18 of the Action Report, [DH-DD\(2024\)1433](#).

<sup>51</sup> § 8 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

## 2.1. Ineligibility for compensation for inadequate material conditions if sufficient living space is provided

Considering eligibility for compensation for inadequate material conditions if sufficient living space is provided, a former CM Note pointed out 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.”*<sup>52</sup>

The law remains unchanged, resulting in detainees’ inability to successfully claim compensation for inadequate material conditions if they were provided with sufficient living space.<sup>53</sup> Filing a civil action based on infringement of personality rights is not a viable option; as such, civil court proceedings can be terminated without an award of compensation, even if the court has found inadequate or inhumane detention conditions.<sup>54</sup>

Thus, once sufficient living space is provided, detainees cannot claim compensation for other inadequate conditions alone.<sup>55</sup> It needs to be clarified, however, what the correct interpretation of the law should be in cases when sufficient living space is lacking for a shorter period than other inadequate conditions amount to inhuman treatment are present. It is unclear for which period compensation can be claimed in such cases. This is why it is crucial that the Government provides access to an in-depth, comparative analysis of case law, which would clarify the state of play about the abovementioned issues, which the CM has repeatedly called for.

## 2.2. Access to a remedy in the first two months in inadequate conditions

As the Memorandum [H/Exec\(2021\)5](#) pointed out,<sup>56</sup> a compensatory claim can only be submitted if the detainee has spent two months in inadequate conditions, unless they have been released or placed in adequate conditions before the expiration of that time limit.<sup>57</sup> Thus, detainees cannot seek effective remedies in the first two months, during which they experience inadequate conditions.

According to the Government’s position,<sup>58</sup> the inaccessibility to the compensation scheme within the first two months is not problematic, as detainees are entitled to make a general request to the commander of the penitentiary institution<sup>59</sup> at any time, including the first two months of inadequate conditions of detention, and thus request adequate detention conditions.

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<sup>52</sup> § 2 a) i) (General measures) of the CM Notes, [CM/Notes/1398/H46-12](#).

<sup>53</sup> Section 75/B (1) of the Penitentiary Code.

<sup>54</sup> 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 [...]”* For further information see the HHC’s following Rule9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary and István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 28-31.

<sup>55</sup> Section 75/B (1) of the Penitentiary Code.

<sup>56</sup> § 2 of the Memorandum prepared by the DEJ of the ECtHR, [H/Exec\(2021\)5](#).

<sup>57</sup> Section 75/D (2) of the Penitentiary Code

<sup>58</sup> § 2 of the Memorandum by the DEJ of the ECtHR, [H/Exec\(2021\)5](#).

<sup>59</sup> Sections 20-21 of the Penitentiary Code

In the HHC's view, however, neither general requests nor complaints to the prison commander, nor other requests or submissions to other supervisory bodies or authorities could be considered an effective remedy under Article 13 of the ECHR for inhumane detention conditions. If such applications or requests are rejected, dismissed or otherwise unsuccessful, (e.g. because the law allows the decisionmaker a high degree of discretion), except for the civil lawsuit based on the infringement of personality rights with limited possibility and effectiveness,<sup>60</sup> there is no possibility to seek judicial review.

Regarding requests or complaints addressed to prison commanders under Section 20 of the Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (hereinafter: Penitentiary Code),<sup>61</sup> it is common that such requests are not registered and are only rejected orally. Thus, there is no written record of the submission of the request, making it impossible to seek redress.<sup>62</sup> Considering complaints to the prison commander, the CPT found during its 2023 visit to Hungary that “[t]he virtual absence of complaints in the establishments clearly indicates that prisoners lack confidence in the complaints’ procedures and, as some prisoners told the delegation, their fear of reprisals and negative impacts on their case if they did complain.”<sup>63</sup>

Regarding the supervisory powers of the prosecutor's office, the HHC's experience shows that prosecutors typically find a violation only if a specific provision of the Penitentiary Code or other sectoral, prison-related legislation is violated. In the absence of such specific, well-defined breaches of legal provisions, they typically find the complaint unfounded, even if there is a violation of human dignity or inherent personality rights.<sup>64</sup>

Regarding the powers and procedures of the National Preventive Mechanism (OPCAT NPM), it lacks general power to investigate individual complaints.<sup>65</sup> Also, in June 2021, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) recommended that the Commissioner for Fundamental Rights (hereinafter: CFR), who is also responsible for the OPCAT NPM (hereinafter: NPM) in Hungary, be downgraded from an A to a B status as a national human rights institution due to its alleged lack of independence stemming from the CFR's

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<sup>60</sup> Hungarian law allows for the decision of several public authorities to be reviewed, even in the absence of infringement of personality rights, by a court in an administrative dispute if the person affected by the decision brings an action before the administrative court. However, decisions of prison commanders, prosecutors or the Commissioner for Fundamental Rights cannot be the subject of such administrative disputes. Thus, such decisions can only be taken to court if the decision infringes a personality right. In such a case, a civil action based on infringement of personality rights can be brought, the effectiveness of which is at least questionable. For further information, see the HHC's following Rule9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 28-31.

<sup>61</sup> In their communications to the Committee of Ministers, the Government regularly introduces new ways of translating the names of Hungarian legal acts. In their Action Report, in this case, they call this law Prison Act. The HHC continues to use Penitentiary Code, as it is more descriptive and prevails consistency throughout HHC communications across different cases monitored by the Committee of the Ministers.

<sup>62</sup> For further information, see the HHC's following Rule9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 28-31.

<sup>63</sup> § 167 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>64</sup> See § 3.1.2 of the HHC's following Rule9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), p. 27.

<sup>65</sup> For further information see § 3.1.3 of the HHC's following Rule9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 27-28.

failure to effectively engage on and publicly address all human rights issues, including in relation to vulnerable groups such as ethnic minorities, LGBTI, refugees and migrants as well as constitutional court cases deemed political and institutional, media pluralism, civic space and judicial independence.<sup>66</sup> The downgrading became final in March 2022.<sup>67</sup> Considering the CFR's activity as the NPM, its effectiveness is questionable. Even though there are some forward-looking developments (such as the workshop organised in September 2022 on systemic problems arising in misdemeanour procedures providing an opportunity for a gap-filling professional dialogue between different organisations and stakeholders), the NPM's professional work is hindered by financial and staff shortages, as well as a lack of willingness to engage with competent civil society organisations actively. It is common that NPM reports on visits to penitentiaries contain only general findings and recommendations, do not reflect on the systemic problems identified and are released to the public with significant delay.<sup>68</sup>

In the HHC's view, there is still no effective remedy in the meaning of Article 13 of the ECHR for inadequate conditions of detention if the compensation mechanism is not accessible for some reason (e.g. in the first two months of inadequate conditions or if the statutory minimum living space is provided).

### 2.3. Deduction from the amount of compensation

An amendment<sup>69</sup> to the Penitentiary Code, which came into force on 1 March 2024, has changed the amounts and titles of deduction from a detainee's escrow account and the conditions under which the penitentiary can make deductions.

The general rule remains that the amounts paid as compensation cannot be used to deduct the costs of imprisonment.<sup>70</sup> However, amended Section 134 (8) of the Penitentiary Code allows the costs of imprisonment and other expenses<sup>71</sup> to be deducted from the amount paid as compensation for inadequate detention conditions if the detainee voluntarily signs a form of consent.<sup>72</sup>

The HHC has received several reports from detainees or their relatives about prison officers trying to persuade detainees to sign the above-mentioned voluntary declaration form, allowing further deductions and derogating from the general prohibition of deductions from the compensation amount. Detainees are in a vulnerable position, often lacking the means to fully understand or resist such demands, which risks transforming a safeguard intended to protect detainees into a tool of coercion that undermines their rights.

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<sup>66</sup> For further information see the HHC's analysis [The last piece of the puzzle? Assessing the performance of Hungary's national human rights institution](#), pp. 2-3.

<sup>67</sup> See: <https://helsinki.hu/en/peers-from-other-countries-recommend-that-the-ombudsperson-is-downgraded-as-a-national-human-rights-institution/>

<sup>68</sup> *Ibid.*, pp. 6-18.

<sup>69</sup> Section 47 of Act XCIV of 2023 Amendment of criminal and related laws

<sup>70</sup> Section 75/B (6) of the Penitentiary Code

<sup>71</sup> Other expenses include for example the amount to be set aside for release and other costs the costs to be reimbursed by the detainee under the Penitentiary Code

<sup>72</sup> The consent form is standardised in Annex 14/A of Order 30/2023. (IV. 28.) of the NPA on the Management of Prisoners' Deposits and the Implementation of Certain Financial Provisions instructions. It is available here: [https://njt.hu/document/54/5471EJR\\_5990783-4R01047.pdf](https://njt.hu/document/54/5471EJR_5990783-4R01047.pdf).

## 2.4. Access to the amount of compensation paid

Under the general rule in force, detainees can access the compensation awarded for inhuman and degrading prison conditions only after their release.<sup>73</sup> The amount set aside cannot be used for investment purposes, and no interest is paid for the compulsory deposit. The mandatory deposit amount cannot be used to keep contact with relatives (e.g., making phone calls or sending letters) either; thus, the restriction might hinder reintegration. The restriction might as well interfere with or, in the case of whole life sentences (imprisonment without the possibility of parole), totally deprive detainees' 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. The 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.<sup>74</sup>

In exceptional cases, with the permission of the prison commander, the prisoner may have access to the compensation awarded before their release.<sup>75</sup>

However, in the experience of the HHC, commanders do not apply this additional rule. For example, a client of the HHC wanted to access his deposited compensation to erect a gravestone for his deceased foster father as well as buy medications for the minor child of his cousin. His request was rejected orally and, after a subsequent request, in a written decision by the prison commander. The detainee filed a complaint to the commander of the Region (who is responsible for deciding complaints lodged against the decisions of prison commanders). The commander of the Region failed to deliver a decision within the thirty-day time limit laid down by the law.<sup>76</sup>

Another client of the HHC sentenced to long-term imprisonment requested to spend his deposited compensation to improve the living standards of his ill partner and son. The competent prison authorities refused his request. Thus, the case is pending before the ECtHR.

## 2.5. Legal costs and expenses

The compulsory depositing of the compensation award also means that the amount cannot be used to cover the fees of the lawyer who provides legal representation in the compensation procedure. This significantly reduces the willingness of attorneys to provide legal assistance in compensation proceedings, as a significant proportion of prisoners cannot cover legal fees from their assets. The possibility of having a lawyer appointed for an inmate wishing to launch a compensation procedure does not remedy the problem, as appointed counsels are only entitled to attorneys' fees in a few narrow cases, as defined by law, in the compensation procedure.<sup>77</sup>

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<sup>73</sup> Section 133 (4a) of the Penitentiary Code

<sup>74</sup> For further information on the mandatory deposit and its effects see § 3.2.2 of the HHC's following Rule9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 29-30.

<sup>75</sup> Section 133 (4a) of the Penitentiary Code

<sup>76</sup> Section 21 (5) of the Penitentiary Code

<sup>77</sup> For further information on how mandatory depositing hinders access to efficient legal services and why appointed counsels are considered a viable alternative, see § 3.2.3 of the HHC's following Rule9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 30-31.

### 3. Issues related to the implementation of the judgments related to other violations found by the ECtHR

In its latest Decision,<sup>78</sup> the CM urged the Hungarian authorities to reconsider their restrictive approach and to remove excessive restrictions on prisoners' visiting rights. Despite recent changes, visits are still generally conducted under closed conditions. Access to open visits for all categories of detainees, including those with children, is limited to one visit every six months, and the lack of adequate individual assessments and abuses of discretion often result in additional arbitrary restrictions.

Legislative and practical shortcomings in the treatment of detainees with disabilities, namely their placement in barrier-free cells, therapeutic and psycho-social units, and the concerns regarding the appropriate number of specialised staff, remain unresolved. The lack of reasonable accommodation for detainees with disabilities highlights a systemic failure to ensure equal access to detention facilities and services, perpetuating their marginalisation and undermining their fundamental rights. Thus, in practice, it is still not guaranteed that prisoners with disabilities are accommodated in prison facilities appropriate to their condition. As regards the monitoring of the implementation of special security regimes in practice, the lack of relevant data remains a major obstacle. This is particularly worrying as special security regulations continue to impose significant additional restrictions on rights, further aggravating the situation of the detainees concerned.

#### 3.1. Persisting issues related to restrictions on visits

In relation to detention conditions, the HHC has closely monitored the current restrictions on visits in Hungarian prisons since their introduction in 2017, which continue to result in widespread rights violations. In December 2024, the HHC submitted a detailed communication to the Committee of Ministers on the latest developments and persisting problems regarding visits in the case of *Takó and Visztné Zámbo v. Hungary*.<sup>79</sup> At this stage, despite some positive developments, the **current legislation and practice continue to raise concerns, both in terms of excessive restrictions on physical contact and the mandatory use of the plexiglass partition during visits**. In addition, it is important to stress that the recently adopted amendments lack essential safeguards and that their implementation may entail further restrictions.

With regard to developments in the legislation and practice of visits, the HHC welcomes the replacement of the previous ceiling-high partitions with lower partitions from mid-2024, and the allowance of contact during greetings and farewells for prisoners in low and medium risk categories (I, II and III).<sup>80</sup> However, the HHC notes with concern that, despite the changes, physical contact during visits is still generally prohibited for all categories of prisoners and the use of the glass partition remains in place, meaning that **visits are still generally conducted under closed conditions**. In addition, for the time being, the general prohibition on physical contact continues to apply to higher risk prisoners (approximately 30% of the prison population)<sup>81</sup> and to prisoners who have been disciplined in the previous year for the possession of a prohibited item, regardless of the circumstances of the incident.

<sup>78</sup> § 9 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>79</sup> See the HHC's Rule 9(2) communication with regard to the execution of the judgment of the ECtHR in the case of *Takó and Visztné Zámbo v. Hungary* (Application nos. [82939/17](#) and [27166/19](#)): [DH-DD\(2025\)13](#).

<sup>80</sup> Section 10/B of the Order 12/2020 (IV. 24.) of the National Penitentiary Administration on the procedural rules for the implementation of visits.

<sup>81</sup> Response no. 30500/4683/2024 issued by the NPA to the HHC's Freedom of Information (FOI) request on 16/10/2024.

A further improvement is that, under the latest amendment to the law, prisoners without children who meet certain requirements will also be entitled to an open visit every six months.<sup>82</sup> At the same time, according to the amendments entering into force on 1 March 2025, it is of concern that access to open visits for prisoners with children has also been limited to a maximum of one visit every six months, while a waiting period of between six months and two years has been introduced for all prisoners. As this is clearly not frequent enough to be considered regular for children with imprisoned parents, the new legislation cannot be considered satisfactory in light of ECtHR standards,<sup>83</sup> the UN Convention on the Rights of the Child (hereinafter: UN CRC)<sup>84</sup> and the Council of Europe Recommendation CM/Rec(2018)5 concerning children with imprisoned parents.<sup>85</sup>

In addition to the lack of regular open visits, systemic problems such as the lack of adequate individual assessment and abuses of discretion remain unaddressed under the new regulations.<sup>86</sup> While differentiating prisoners by category, **the Government has not offered a solution to the substantive shortcomings of individual risk assessments**, and decisions requiring individual assessment are often subject to arbitrary and non-transparent decision-making. Blanket restrictions remain prevalent (e.g. the normalisation of glass partitions, bans on contact for certain categories of prisoners, and limiting open visits to once every six months regardless of the category classification)<sup>87</sup> and additional restrictions are imposed despite the continued failure of domestic authorities to provide substantive reasons for the need to restrict visits. In parallel, violations often result from ill-defined discretionary powers and disregard for the hierarchy of legislation, as visiting and contact rights are further restricted at the discretion of the authorities and through subordinate legislation.

Against this background, **excessive restrictions on prisoners' visiting rights in Hungary continue to result in systemic violations** of the right to respect for private and family life of tens of thousands of people, including children, every year. A further concern is the lack of adequate data provision, which makes it impossible to monitor the proportion of the prison population that is restricted to closed visits. Physical contact during visits is particularly important as other forms of personal contact provided for in the law remain vastly underused.<sup>88</sup> Additionally, disproportionately high telephone tariffs persist.<sup>89</sup> In this context, the HHC wishes to emphasise that improving access to open visits, both in terms of conditions and regularity, as well as ensuring the conditions for evidence-based individual assessment, are essential steps towards remedying the unlawful restrictions on prison visits in Hungary.

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<sup>82</sup> Section 177/A(7) of the Penitentiary Code after the amendment entering into force on 1 March 2025.

<sup>83</sup> See, for example, the case of *Deltuva v. Lithuania* (Application no. [38144/20](#)), in which the ECtHR ruled (§§ 9, 11) that the best interests of the child must be a primary consideration in any decision affecting the child and that children separated from their parents in prison have the right to regular and continuous contact with their parents and, in this context, to preserve and maintain the family bond.

<sup>84</sup> Article 9(3) of the UN Convention on the Rights of the Child. See also the [HHC's CSO coalition submission](#) to the UN CRC's Draft General Comment No. 27 (202x) on children's rights to access to justice and effective remedies, p. 3.

<sup>85</sup> See rules 17 and 30-31 of the Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents.

<sup>86</sup> See in detail in [DH-DD\(2025\)13](#), pp. 7-10.

<sup>87</sup> As opposed to ECtHR standards, see e.g. § 11 of *Takó and Visztné Zámbo v. Hungary* (Applications nos. [82939/17](#) and [27166/19](#)).

<sup>88</sup> See the HHC's Rule 9(2) communications with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2022\)1384](#), p. 17.; [DH-DD\(2024\)16](#), pp. 22-23.

<sup>89</sup> See p. 5 of the CPT Report [CPT/Inf \(2024\) 36](#).



### 3.2. Outstanding issues regarding the treatment of detainees with disabilities

As documented in the CM Notes to the Agenda of the 1492<sup>nd</sup> meeting of 12-14 March 2024,<sup>90</sup> the Government's position is that there is adequate care available for detainees with disabilities in the penitentiary system, which was not corroborated by the experience of the HHC. In their related decision, CM requested information on the practical implementation of the measures.<sup>91</sup>

The latest Action Report thus describes certain improvements that are to be welcomed, such as the increased number of special accommodation facilities and the plans in place to design these cells in such a way that they meet the needs not only of prisoners with reduced mobility but also of those with hearing or visual impairments.<sup>92</sup> However, in the HHC's view, the Action Report does not provide sufficient information on the practical implementation of the measures. It has to be noted that the current capacity for accommodating detainees with disabilities is clearly still insufficient, as evidenced by the Action Report.<sup>93</sup> According to this, 104 places of special accommodation are available, and there are 123 prisoners with reduced mobility, 32 of whom are placed in the Medical Centre of the Prison Service, which is a hospital essentially; therefore, its purpose is not to segregate people with reduced mobility from the general prison population (and reintegration programmes). Additionally, neither the number of detainees with other disabilities nor any information on their placement is communicated by the Action Report. Furthermore, the HHC's experience continues to show serious shortcomings concerning the treatment of disabled detainees.

#### 3.2.1. Practical problems concerning the placement of disabled detainees persist

Upon their periodic visit to Hungary, the CPT visited four penitentiary institutions, out of which their Report describes the cells for the accommodation of persons with disabilities in two penitentiary institutions.<sup>94</sup> The CPT notes that Tiszalök National Prison disposed of several cells for persons with disabilities (reportedly two cells on every level). The special single cells for persons with disabilities were more spacious than other cells and featured disability-friendly equipment as well as an adapted shower, sink and toilet, which a prisoner could use in a wheelchair. The cell visited by the delegation was clean, with good access to fresh air and natural light. The call bell was sufficiently low to be reached without difficulty. However, the toilet was visible through the hatch in the cell door, and access to the yard was difficult. In Szabolcs-Szatmár-Bereg County Remand Prison (Nyíregyháza), there was a single cell for persons with disabilities located on the ground floor, in acceptable condition and of decent size (6.8 m<sup>2</sup>). However, it was not purposely adapted for persons with physical disabilities. The toilet was partitioned with a curtain in a poor state of hygiene.

In its previous Rule9(2) communication, the HHC has already described in detail the daily hardships endured by one of its clients, who has been blind practically from birth.<sup>95</sup> Despite being detained in one of the most recently constructed prisons (Tiszalök National Prison) for one year and nine months from 2019, he faced significant challenges due to the lack of appropriate accommodations for his disability. With the legal representation of the HHC, he successfully litigated the fact that throughout

<sup>90</sup> § 6 of the CM Notes, [CM/Notes/1492/H46-18](#).

<sup>91</sup> § 9 of the CM Decision no. [CM/Del/Dec\(2024\)1492/H46-18](#).

<sup>92</sup> § 24 of the Action Report, [DH-DD\(2024\)1433](#).

<sup>93</sup> § 25 of the Action Report, [DH-DD\(2024\)1433](#).

<sup>94</sup> § 70 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>95</sup> See the HHC's following Rule 9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary* (Application nos. [14097/12](#) and [15707/10](#)): § 4.2. of [DH-DD\(2024\)16](#), p. 33.

his imprisonment, the prison service failed to implement any measures of reasonable accommodation to address his disability. Instead, he was placed in a standard cell and 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. None of the prison staff members ever assisted him, forcing him to rely on other inmates to help him with his daily activities. The court 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. However, in their appeal against the judgment the prison argued – *inter alia* – that the detainee should have specifically requested assistance to be eligible for help and special treatment (which he did on multiple occasions) and that there would be no concern with the fact that other inmates helped him because he received help from his family members in his free life as well. The second instance court also found – in line with the HHC’s arguments – that the prison had violated the applicant’s right to human dignity, privacy, equal treatment and health by failing to provide him with the treatment justified by his visually impaired condition when serving his prison sentence, and so did the Curia (also known as the Supreme Court of Hungary). This case demonstrates very well the reluctance of the prison service to accommodate the needs of disabled detainees. **Despite the alleged improvements stated by the Action Report, the practice of prisons does not seem to change significantly – a recent complaint submitted to the HHC in December 2024 by the mother of a young female prisoner with severe visual impairment demonstrates once again the lack of any special accommodation or treatment for detainees with disabilities.**

Another example is the case of an HHC client who has a leg amputated above the thigh, making the location and conditions of his placement critically important – however, none of the three prisons where he stayed would provide him with adequate accommodation. In one prison (where he spent approximately two months in 2021), he was housed upstairs, in the second prison (for approximately 3 months in 2021-2022), in the last cell of a long corridor – where it frequently happened that when limping to the bathroom, the guard sent him back, saying he would bathe another day, as bathing time was over. In the third penitentiary (for approximately 14 months between 2022 and 2023), he was placed in the cell furthest from the toilet, bathroom and smoking room, so he had to walk 1.5-2 kilometres daily. He repeatedly asked to be transferred to another institution because of his condition. He sent a transfer request to NPA with a released detainee. From there, his guardian was contacted, and an hour later, he was transferred to an upstairs inpatient room – however, the inpatient room was non-smoking while he was smoking. He was transferred to a cell full of bedbugs when he complained about this. The shop was on the ground floor, to which he had to go up and down on all fours once a week, dragging his walking frame behind him. Currently, he is suing the prisons with the legal representation provided by the HHC.

As the above examples show, despite numerous national and international legal provisions, the appropriate accommodation taking their condition into account is not guaranteed in practice for prisoners with disabilities. There may be a rising number of special cells. However, the information provided and the current operational capacity for accommodating detainees with disabilities is still insufficient. Additionally, according to FOI data,<sup>96</sup> the special cells already established have not been set up in consultation with the professional and civil society organisations representing persons with disabilities. Such consultations did not occur, even though in the case of the HHC’s blind client, the CFR called the Lieutenant General of the NPA to contact organisations dealing with disability rights to map the necessary interventions in prison settings.

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<sup>96</sup> Source: Response no 30500/6273/2023 issued by the NPA to the HHC’s FOI request on 17/01/2024; Response no. 30500/5905/2024 issued by the NPA to the HHC’s FOI request on 31/12/2024.

Because of all the problems mentioned above, in December 2024 the HHC requested the HHC requested a comprehensive inquiry and intervention by the CFR concerning the treatment and accommodation of disabled inmates.

### **3.2.2. Disabled persons still subjected to 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 problems identified in our previous Rule 9 (2) observations<sup>97</sup> submitted on 17 December 2023 regarding the detention of disabled people and the legislative and practical shortcomings that give rise to them remain unchanged.

### **3.2.3. Treatment of detainees with psychosocial disabilities**

In a previous communication to the Committee of Ministers submitted in November 2022, the HHC has provided comprehensive information on problems related to the treatment of inmates with severe psychosocial disabilities in the Forensic Observation and Mental Institution (IMEI).<sup>98</sup> It is to be noted that the Government has still not provided any information regarding this matter in its Action Report. The CPT Report has revealed numerous problems concerning detention conditions at IMEI.<sup>99</sup>

As to the material detention conditions, the CPT remains of the view that it is desirable to relocate IMEI to new premises (outside the walls of any prison building), which would help to ensure that persons placed in the establishment are offered a suitable therapeutic and caring environment, in which a medical, rather than a penal, ethos prevails.<sup>100</sup> The CPT considers that IMEI is particularly unsuitable for holding child patients. Therefore, it recommends that the Hungarian authorities take urgent steps to end their policy of placing children in IMEI.<sup>101</sup> Moreover, the existence of large-capacity dormitories with 10-16 beds is not in line with modern standards in psychiatry.<sup>102</sup> The showers in Buildings I and III did not have a curtain and therefore lacked privacy<sup>103</sup>. The CPT recommended that the Hungarian authorities end the blanket use of CCTV cameras within patients' rooms at IMEI. If continuous supervision of a patient is considered necessary based on an individual risk assessment, the patient concerned should preferably be placed in a dedicated observation room.<sup>104</sup> The CPT also formulated several recommendations concerning the use of means of mechanical restraint and the use and material conditions of physical seclusion.<sup>105</sup>

A further recommendation of the CPT Report is for the management of IMEI to reiterate to all staff that any form of ill-treatment of patients, including verbal abuse, is unlawful, unprofessional and unacceptable and will be dealt with accordingly.<sup>106</sup>

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<sup>97</sup> See the HHC's following Rule 9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: [DH-DD\(2024\)16E](#), pp. 32-33.

<sup>98</sup> See the HHC's following Rule 9(2) communication with regard to the execution of the judgments of the ECtHR in the cases of *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary*: § 4.1.2., [DH-DD\(2022\)1384](#), pp. 13-15.

<sup>99</sup> §§ 168-196 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>100</sup> §§ 169 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>101</sup> § 170 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>102</sup> § 175 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>103</sup> § 178 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>104</sup> § 177 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>105</sup> § 188-189 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>106</sup> § 172 of the CPT Report, [CPT/Inf \(2024\) 36](#).

As a general problem, it became apparent during the CPT's visit that there were several patients who no longer required psychiatric treatment but could not be discharged from IMEI as they were unable to cater for their own needs, and there was no place for them in social welfare establishments. After the visit, the Hungarian authorities informed the CPT that there was a list of 27 patients awaiting admission to a social welfare establishment.<sup>107</sup>

### 3.3. Outstanding issues regarding special security regimes

Special security regulations issued by prison commanders impose significant additional restrictions on rights, further aggravating the situation of the detainees concerned. Related shortcomings include the lack of adequate individual assessment, in particular due to its lack of transparency, and poorly defined discretionary powers, which leave ample room for arbitrary decisions by the NPA and prison commanders. Under the special security regime, the Penitentiary Code allows for the introduction of restrictions on various aspects of detention (e.g. out-of-cell activities, movement within the prison, receiving visitors, etc.) without sufficiently specifying them.<sup>108</sup> In this sense, special security regulations further nuance the circumstances and entitlements arising from the category system with a complementary detention regime independent of the categories. While it would be crucial that the authorities apply such restrictions only when they are 'in accordance with the law' and justified as 'necessary in a democratic society', this is hardly enforceable in the current circumstances.

A particular obstacle to monitoring the application of special security regimes is the unavailability of relevant data. This deficiency (coupled with the lack of access to information on the results of individual assessments) not only significantly hampers the ability to demonstrate the arbitrary nature of decision-making, but also makes it impossible to keep records of the actual number of detainees who are restricted to closed visits. Coupled with the shortcomings of individual risk assessments, the current regulations allow those on special security regimes to be denied family visits<sup>109</sup> and also authorises the prison commander to order that a prisoner may only speak to their visitor from a security booth.<sup>110</sup> When interpreted in the light of the case law of the ECtHR, it is clear that these provisions do not provide a legal basis for a general prohibition on certain categories of prisoners having physical contact with their family members. The application of the special security regime is also illustrated by the case of *Takó and Viztné Zámbo v. Hungary*, where the only tangible element of the reasons for placing a prisoner under the special security regime and thus prohibited from physical contact with his wife during visits was that the detainee had previously attempted suicide. According to the HHC, a prisoner's suicidal intent does not appear to justify the prevention of direct family contact; on the contrary, prolonged separation from family members is likely to increase the risk of suicide.

Therefore, ensuring the conditions for evidence-based individual risk assessment and access to the results remains a key prerequisite for reducing the arbitrary use of special security regulations. Furthermore, the HHC considers that placement in special security regimes should only be imposed in exceptional circumstances and for the shortest possible period of time in each individual case. In addition, the Hungarian authorities should regularly collect and make available the data necessary to assess the implementation of the special security regime in practice.

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<sup>107</sup> § 193 of the CPT Report, [CPT/Inf \(2024\) 36](#).

<sup>108</sup> Section 98(4) of the Penitentiary Code

<sup>109</sup> Section 12 of the Order 12/2020 (IV. 24.) of the National Penitentiary Administration on the procedural rules for the implementation of visits

<sup>110</sup> Section 177(3) of the Penitentiary Code

## 4. Recommendations

### 4.1. Procedural recommendations

For the reasons above, the HHC respectfully recommends to the Committee of Ministers to continue examining the execution of the judgments in the *István Gábor Kovács v. Hungary* and the *Varga and Others* group of cases **under the enhanced procedure**, and given the length of time this group has been pending implementation, the seriousness and widespread effect of the related issues **to consider issuing an interim resolution regarding the group of cases, especially considering** the following long-term shortcomings related to the implementation of the judgments:

- **The lack of tangible progress regarding a coherent and overarching penal policy** that would provide a long-term and sustainable resolution of the problem of prison overcrowding and inhumane detention conditions.
- In addition to **the lack of comprehensive assessment of the concrete impact of measures taken** and underway.
- As well as the **lack of efforts to increase the use of alternatives of detention**.
- In addition to the **absence of tangible progress regarding the compensatory and preventive remedy schemes**.

### 4.2. Substantive recommendations

The HHC's new and outstanding recommendations are formulated below.

- 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**, such as focusing its efforts on long-term strategies for crime prevention and reduction, in addition to including but not limited to the issue of limiting or moderating the number of persons sent to prison. Such policy-making effort should **seek solutions that benefit the whole society and prevent harms of over-criminalisation**. 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.
- To achieve a comprehensive reform of criminal policy, it is of utmost importance that the Government starts a **multi-stakeholder dialogue** on tackling inhuman detention conditions and to enhance the utilisation of alternatives. The dialogue should include people with lived experience of incarceration – ex-inmates and their family members –, criminal justice stakeholders, social service practitioners, local authorities, charities, churches, academics and NGOs representing people affected by inhuman detention conditions.<sup>111</sup>
- 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** 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

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<sup>111</sup> The HHC widely disseminated its detailed recommendations among policy-makers and practitioners regarding the better implementation of non-custodial sanctions, see for details (in Hungarian): [Policy brief of the HHC for Enhancing the Implementation of Non-custodial Alternatives to Imprisonment](#); and a document drafted by a non-profit organisation (Budapest Esély) planning the better implementation of community service in cooperation with social services. Budapest Esély Nonprofit Kft.'s concept paper (in Hungarian) "[Non-discriminative application of alternatives – concept for the better implementation of community service](#)".

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 be encouraged to 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
  1. [Recommendation No. R \(99\) 22](#) concerning prison overcrowding and prison population inflation,
  2. [Recommendation Rec\(2006\)2-rev](#) of the Committee of Ministers to member States on the European Prison Rules,
  3. Recommendation [CM/Rec\(2010\)1](#) of the Committee of Ministers to member states on the Council of Europe Probation Rules,
  4. Recommendation [CM/Rec\(2017\)3](#) of the Committee of Ministers to member States on the European Rules on community sanctions and measures,
  5. Recommendation [CM/Rec\(2018\)8](#) of the Committee of Ministers to member States concerning restorative justice in criminal matters,
  6. Recommendation [CM/Rec\(2018\)5](#) of the Committee of Ministers to member States concerning children with imprisoned parents.
- The HHC respectfully recommends the Committee of Ministers to urge the authorities to **increase their effort in collecting and publishing data** that supports monitoring the implementation of the ECtHR judgments at hand and for the interested public to access these. As such, regularly publish:
  1. **Data crucial for assessing the degree of implementation** (such as the number of inmates with insufficient moving space, length of compensation proceedings, and data allowing for the assessment of the consistency of the jurisprudence).
  2. **Data on the application of non-custodial sanctions and measures**, including **regularly participating in the Council of Europe's SPACE II study** and responding to its annual questionnaire.

Additionally, the authorities should instruct the NPA to **recommence its previous practice** of releasing basic public data on detention conditions and the socio-demographic characteristics of detainees.

- **The unjustified and discriminatory limitation that prisoners can 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, resulting from the ban on this practice.
- A sufficient amount of independent monitors shall have access to the penitentiary system. Therefore, the NPA should **allow relevant NGOs, including the HHC to recommence its prison monitoring activity** to support the protection and enforcement of detainees' rights.
- Physical conditions other than living space or moving space shall be considered 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.**
- **Unnecessary restrictions on 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.

Sincerely yours,



András Kristóf Kádár  
Co-chair, Hungarian Helsinki Committee