HUNGARIAN HELSINKI COMMITTEE

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Budapest, 26 January 2021

Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments
of the European Court of Human Rights

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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 1237 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, CPT, SPT, UPR, etc.) in related subject matters. The HHC lawyers have litigated cases related to the conditions of and treatment in detention in Hungarian prisons before domestic forums and the European Court of Human Rights (see e.g. the cases *Engel v. Hungary*, Application no.: 46857/06, and *Csüllög v. Hungary*, Application no.: 30042/08), and three out of the six applicants in the Varga and Others v. Hungary case were also represented by HHC's lawyers.

With reference to the judgments of the European Court of Human Rights (ECtHR) **in the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary**, and the action plan 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".

1. Issues related to resolving prison-overcrowding: the transfer of detainees

Point 5 of Decision CM/Del/Dec(2020)1377bis/H46-16: *[The Deputies] noted with interest the positive impact of the substantial measures already taken to resolve the structural problem of prison overcrowding and the progress achieved so far.*

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On 13 July 2020, the Hungarian Government announced that in order to end prison-overcrowding, places for altogether 2,750 detainees had been constructed using light-weight technology. New annexes to existing penitentiary institutions were built. The enlargement affected a total of ten institutions. The Governments' communication was about 2750 new spots. However, according to the data provided by the National Prison Administration (NPA) in October 2020 in response to the HHC's freedom of information request[1] only 2,573 new places had been constructed and were in use. 500 in Miskolc, 300 in Veszprém, 100 in Állampuszta, 400 in Kiskunhalas, 300 in Baracska, 100 in Pálhalma, 173 in Sopronkőhida, 100 in Szeged, 400 in Tiszalök and 200 in Tököl.

Many prisoners have been transferred to these new annexes and many of them are being moved around in order to prevent overcrowding. It is important to mention that the transfer results in several of them being hundreds of kilometres away from their families. Our legal aid program has received several complaints from relatives regarding this matter. For example, there was an instance when a person was only able to visit his detained relative once in a 9-month-period due to the family's financial problems.

The HHC is continuously monitoring the impact of the transfers, but at the moment, the complete lack of family visits due to the current COVID-19 pandemic situation prevents us from being able to assess the long-term effects with full accuracy. However, many relatives have already reported that the strength of the phone signal in the newly constructed units is weak, thus it frequently becomes a barrier to maintaining contacts.

Between 1 January 2017 and 1 January 2021[2] (when the new regulation of compensations for overcrowding came into force) if the transfer of a detainee to another institution was ordered so, as to address his/her complaint regarding the conditions of his/her placement, the detainee had the right to request a judicial review. This was a very important safeguard protecting the ability to maintain meaningful family contacts.

The new regulation[3] has upheld the requirement that if the elimination of the circumstances violating fundamental rights cannot be resolved within the given penitentiary institution the commander of the institution initiates the transfer of the detainee to another institution with the National Penitentiary Administration (NPA). When deciding on the transfer the convicted person's right to contact has to be taken into consideration. However, the detainee no more has no right to request judicial review against this decision, which deprives detained from an important safeguard.

2. Alternative sanctions

Point 6 of Decision CM/Del/Dec(2020)1377bis/H46-16: *[The Deputies] with regard to the potential of alternative measures still not being fully exploited and in view of the extant prison capacity deficit of more than 3,000 missing places in 2018, renewed their urgent call on the authorities further to pursue their efforts in promoting alternative sanctions and minimising the use of pre-trial detention, and invited them to submit comprehensive updated statistical figures of yearly average in this respect.*

[1] Source: Response no. 30500/10435-10/2020 issued by the NPA to the HHC's FOI request, 22 October 2020.
[2] Articles 10/A-10/B, 70/A-70/B, and 75/A of Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (Penitentiary Code), in effect between 1 January 2017 and 31 December 2021.
[3] Articles 75/B-75/S of the Penitentiary Code in effect from 1 January 2021.

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The extent of applying alternative measures has not improved in the past year. As recent data shows, reintegration custody is still significantly underused. As shown below, there has even been **a slight decrease in its application** between two comparable periods in 2019 and 2020.

Table no. 1 – No. of inmates granted reintegration custody from 15/03/2019 to 15/10/2019 and from 15/03/2020 to 15/10/2020; av. no. of prison population; ratio of inmates granted reintegration custody within av. no. of prison population[4]

Time period	No. of inmates granted reintegration custody	Average no. of prison population	Ratio of inmates granted reintegration custody within av. no. of prison population (%)
from 15/03/2019 to 15/10/2019	328	16,664	1.97%
from 15/03/2020 to 15/10/2020	272	16,560	1.64%

Within a 7-month-period in 2019 from March to October, the ratio of inmates granted reintegration custody was slightly under 2% within the average overall number of prison population, which is evidently not a significant proportion. In the same 7-month-period from March to October in 2020, this ratio further decreased by 0.37 percentage points. This decrease is especially alarming for two reasons: 1) long-term reduction of prison population is only possible by the sufficient use of non-custodial sanctions; 2) the outbreak of the Covid-19 pandemic left prison populations even more vulnerable than before, many European countries decided to enhance the number of alternatives to detention which resulted in a positive effect on prison overcrowding.[5] The HHC finds it quite worrying that not even a pandemic as threatening to the health and well-being of vulnerable institutionalised populations as the COVID-19 outbreak is sufficient to result in an increase of administering non-custodial alternatives to detention.

3. Contacts with the outside world

Point 10 of Decision CM/Del/Dec(2020)1377bis/H46-16: *[The Deputies] firmly reiterated their invitation to the authorities to submit the outstanding information as regards the other violations found in this group including restrictions on visits […], taking into account the latest relevant developments as well as the revised European Prison Rules and to clarify those issues on a bilateral basis with the Secretariat;*
Point 11 of Decision CM/Del/Dec(2020)1377bis/H46-16: *[The Deputies] noted the measures taken to protect the prison population in response to the COVID-19 pandemic and encouraged the authorities to continue in this vein, taking duly into account the Statement of principles issued by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in this respect.*

3.1 Previously raised issues regarding restrictive contact-policies remain

The NPA has not softened its very restrictive, no-physical-contact visitation policy since the HHC's communication on 20 April 2020.[6] All penitentiary institution's visitation rooms – including the hospital

[4] Source: Response no. 30500/11510/2020 issued by the NPA to the HHC's FOI request, 29 October 2020.
[5] See for example: https://www.europris.org/wp-content/uploads/2020/07/Factsheet-overcrowding-July-2020.pdf
[6] The HHC prepared a Rule 9 communication with regards to the execution of the judgements of the European Court of Human Rights in the cases of Varga and Others v. Hungary and István Gábor Kovács v. Hungary (Application no. 14097/12 and 15707/10), which was submitted on 20 April 2020 and is available here: https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2020_04_20.pdf

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type institutions like the Forensic Observation and Mental Institution and the Central Hospital – are equipped with high transparent plastic screens thus eliminating the possibility of any physical contact between inmates and family irrespective of the actual risk level of the individual inmates. The only remaining visitation form that exceptionally allows inmates to sit together with and touch their family members during visits is called "family friendly visits". However, the rules of granting "family friendly visits" to prisoners are not publicly available, therefore it remains unclear to detainees and their family members how the decision is made upon their request to be granted this form of visitation.

The serious problems concerning phone calls have not been resolved either. **Deposit and minute tariffs** for penitentiary administered mobile phones continue to **constitute a serious financial difficulty to several inmates. Phone rates are fixed and are around 5-10 times higher than the tariffs available at any outside service provider**, making the maintaining of contacts with the outside world increasingly difficult constituting a huge financial burden on inmates and their family members. Moreover, the HHC's legal aid service has received numerous complaints from detainees and their family members that despite the high prices, the quality of the mobile network is often so bad that they cannot hear each other at all for minutes while their assigned time is running out and they nonetheless get charged on their pre-paid mobile device.

3.2 Measures introduced to prevent the Covid-19 outbreak within the penitentiary system

In March 2020, some penitentiary institutions suspended visitation referring to the general curfew restriction Hungary introduced on 27 March 2020. In April 2020, this became the general practice in all the penitentiaries based on Government Decree no. 90/2020 (IV. 5.), according to which the right to receive visitors may be restricted in one or more penitentiary institutions, if compliance with epidemiological measures may not be guaranteed otherwise.[7]

In June 2020, when the first wave of the epidemic was over, Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness (hereinafter: Transitional Act)[8] was passed by the Parliament. The Act authorises the Commander of the NPA to restrict visitation in one or more penitentiaries based on epidemiological reasons.[9] Based on this provision, visitation has not been reinstated in any of the penitentiaries in the past nine months, regardless of the fact that high transparent plastic screens have long been installed[10] in every penitentiary institution, and that the no-physical contact visitation policy that has been in effect for quite a while now in order to separate the inmates from their visitors. Meanwhile out-of-prison employment was continual until October 2020, i.e. inmates could leave the prison to work in the outside world, where they met civilians. It is also to be noted, that limitations of visitation were lifted in all other state institutions with an epidemiological threat, including hospitals and elderly care homes.

[7] Section 3(7)
[8] See HHC's detailed analysis of special government powers under the Transitional Act here: https://www.helsinki.hu/wp-content/uploads/Transitional_Act_AIHU-EKINT-HCLU-HHC_30072020.pdf
[9] Section 237(4) of the Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness
[10] An internal NPA regulation making the instalment of high transparent plastic screens mandatory for every institution came into effect on 29 April 2019. Source: Response no. 30500/490/2020 issued by the NPA to the HHC's FOI request, 17 January 2020.

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On 27 October 2020, the penitentiary-related provisions of the Transitional Act (including the possibility of completely banning visits) were prolonged until 30 June 2021.[11] The overall ban did not prevent the outbreak of Covid-19 in Hungarian prisons. The virus still got into the institutions despite the fact that all detainees had been deprived of personal contact with their families for more than nine months. As of 29 December 2020, 507 inmates had been infected with Covid-19 in Hungarian penitentiary institutions, out of which four people died.[12]

It must be emphasised that at present, the infection numbers and trends can justify a full lockdown, however, the complete ban of visitation was not proportionate during the period between late June and mid-August, and there is a concern that the ban will not be lifted for a long time even after the second wave is over and the numbers would allow for some easing of the restrictions on visitation.

The HHC welcomes the effort of trying to compensate the lack of visits by introducing online visits and some other measures trying to extend inmates' rights to maintain contact with their families. Detainees have the right to receive and send additional packages; they get additional 15 minutes per week for telephone calls; those without a phone or the economic means to pay for calls get 3 times 5 minutes of free calls per month (upon the inmate's request within the margin of appreciation of the institution); free-of-charge Skype calls (a maximum number of two calls per week for a maximum of 60 minutes per occasion based on the discretion of the penitentiary institution)[13] is provided for those who have authorised contact persons.

However, some problems can be raised with regard to these measures as well, and in practice, they do not sufficiently offset the complete ban on visitation. The frequency and duration of such calls are regulated in three various sources of law [Ministry of Justice Decree 16/2014, Transitional Act, and Instruction 37/2020 (VII.24.) of the NPA] with often changing provisions, which makes it difficult to follow for inmates and their families.

The HHC has received numerous complaints from detainees and their family members of dire technical conditions in which Skype calls are conducted in many penitentiary institutions (e.g. bad internet quality; no headsets are provided to detainees; Skype calls are conducted in overcrowded facilities where many detainees speak all at once, it is difficult to hear one another; the complete lack of privacy due to guards constantly listening into the conversation). Moreover, many inmates cannot maintain their family relationships over Skype and/or do not have the necessary economic means to put down the deposit for the penitentiary mobile phone and/or to pay the extremely high rates. There is an urgent need to closely monitor those inmates who cannot maintain contact with their family members.

As Table no. 2 below shows, the NPA's response to the HHC's FOI request suggests that the rate of using Skype within the average number of inmates is quite low. On a randomly chosen week in October 2020, the overall rate of Skype call participation was 32% within the average number of inmates, while there were 17 penitentiaries where less than a third of inmates participated in a Skype call and only one where a little more than half of them did.

[11] Act CIV of 2020.
[12] https://hvg.hu/itthon/20201229_Eddig_negy_rab_halt_meg_koronavirusban_a_magyar_bortonokben#rss
[13] Section 13 of Instruction 37/2020. (VII. 24.) of the NPA.

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Table no. 2 – No. of Skype calls, participating inmates, av. no. of inmates and the rate of inmates using Skype within the av. no. of inmates 5-11 October 2020[14]

Institution	No. of Skype calls	No. of inmates using Skype	Average number of inmates	Rate of inmates using Skype within av. no. of inmates
Állampusztai Országos Bv. Intézet	304	299	1126	27%
Balassagyarmati Fegyház és Börtön	124	115	301	38%
Budapesti Fegyház és Börtön	215	213	988	22%
Hajdú-Bihar Megyei Bv. Intézet	52	52	168	31%
Heves Megyei Bv. Intézet	58	58	139	42%
Fiatalkorúak Bv. Intézete	29	29	80	36%
Fővárosi Bv. Intézet	284	270	1234	22%
Győr-Moson-Sopron Megyei Bv. Intézet	35	35	147	24%
Békés Megyei Bv. Intézet	35	35	98	36%
Igazságügyi Megfigyelő és Elmegyógyító Intézet	33	24	257	9%
Kalocsai Fegyház és Börtön	**134**	**134**	**264**	**51%**
Somogy Megyei Bv. Intézet	28	28	123	23%
Közép-dunántúli Országos Bv. Intézet	350	340	1097	31%
Bács-Kiskun Megyei Bv. Intézet	52	49	197	25%
Kiskunhalasi Országos Bv. Intézet	328	323	739	44%
Márianosztrai Fegyház és Börtön	174	171	501	34%
Borsod Abaúj-Zemplén Megyei Bv. Intézet	350	344	771	45%
Szabolcs Szatmár-Bereg Megyei Bv. Intézet	34	34	148	23%
Pálhalmai Országos Bv. Intézet	409	405	1223	33%
Baranya Megyei Bv. Intézet	28	28	165	17%
Sátoraljaújhelyi Fegyház és Börtön	83	81	293	28%
Sopronkőhidai Fegyház és Börtön	75	75	559	13%
Szegedi Fegyház és Börtön	685	587	1353	43%
Tolna Megyei Bv. Intézet	40	38	88	43%
Jász Nagykun-Szolnok Megyei Bv. Intézet	34	30	119	25%
Szombathelyi Országos Bv. Intézet	600	580	1478	39%
Tiszalöki Országos Bv. Intézet	147	138	1078	13%
Tököli Országos Bv. Intézet	403	369	880	42%
Váci Fegyház és Börtön	236	233	638	37%
Veszprém Megyei Bv. Intézet	166	163	466	35%
Zala Megyei Bv. Intézet	28	28	84	33%
TOTAL:	**5553**	**5308**	**16802**	**32%**

There might be numerous reasons for this low rate; for example, the families of the economically most vulnerable inmates might not have the means to maintain an internet subscription. We are of the view that under such extraordinary circumstances it is imperative for the state to provide aid to detainees

[14] Source: Response no. 30500/11510/2020 issued by the NPA to the HHC's FOI request, 29 October 2020.

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and their family members to preserve their contact as according to ECtHR's Moiseyev judgement[15] "it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family" (§ 246).

4. Issues concerning the compensatory remedy for inhuman or degrading detention conditions

Point 8 of Decision CM/Del/Dec(2020)1377bis/H46-16: *[The Deputies] noted with concern that the continued suspension of payments of compensation awarded under the existing compensatory scheme is likely to impair its effectiveness and strongly urged the authorities to ensure that a fully operational and effective compensatory remedy is in place as soon as possible and in any event no later than 31 October 2020 as envisaged in their calendar; further urged them to ensure their close cooperation with the Department for the Execution of Judgments, and to discuss with the Department any envisaged amendment to the existing remedy scheme prior to its adoption, thus ensuring that a potentially revised remedy is Convention-compliant and avoiding an influx of new manifestly well-founded applications to the Court, and to keep the Committee informed about any developments in this matter*.

4.1 The new compensatory remedy for inhuman or degrading detention conditions

On 24 November, the Government submitted Bill T/13954 on the Amendment of Certain Acts of Parliament Necessary to Abolish the Abuse of Compensation Procedures Relating to Prison Overcrowding. This bill was passed on 16 December 2020 and entered into force on 19 December 2020 and 1 January 2021 as Act CL of 2020, amending Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (hereafter: Penitentiary Code).

It has to be highlighted that there was no public consultation about the bill before its submission to Parliament.

4.1.1 Outline of the new system

The amendment transforms the system of preventive and compensatory remedies introduced after the Varga vs. Hungary pilot judgment. As one of the most important changes, the amendment **abolished the requirement that detainees held in inhuman or degrading conditions must file a preventive complaint with the prison governor before they can submit a claim for financial compensation.** From 1 January 2021, if inmates want to be compensated for substandard detention conditions, they can submit the compensation claim to the penitentiary institution without any prior obligation. After the complaint has been submitted, the penitentiary institution may reject the complaint as inadmissible, start a simplified compensation procedure (newly introduced procedure) or refer the case to the penitentiary judge ('ordinary' compensation procedure).

The 'simplified compensation procedure' was introduced by Act CL of 2020 as a new procedure, while the 'ordinary', already existing compensation procedure has also been kept as part of the compensation scheme. In contrast to the ordinary compensation procedure, claims submitted in the simplified compensation procedure are adjudicated by the penitentiary institution itself. It must be noted that in these procedures, only the minimum daily sum of compensation -- included in the Penitentiary Code -- can be awarded to the detainees, and only the lack of adequate moving/living space will be taken into account (irrespective of what other physical conditions the

[15] Application no. 62936/00, Judgment of 09/10/2008

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detainee asks compensation for). According to our understanding, under Article 75/G Paragraph (6) of the Penitentiary Code, detainees have the possibility to request a judicial review of the penitentiary's decision if they are of the view that the physical placement conditions, beyond overcrowding, were so substandard that those should have been taken into account as well when establishing the amount of compensation.

After the final decision on the compensation claim, paying the amount awarded to detainees remains the competence of the Ministry of Justice. However, the amendment introduced substantial modifications in this respect. According to the new regulation, **before the actual payment of compensation, the Ministry of Justice approaches the Hungarian Chamber of Bailiffs to clarify whether there are any debts that the compensated inmate has vis-a-vis private parties.** If there are, and the bailiffs enforcing those debts take the necessary action, such debts will be deducted from the compensation, and only the reduced amount will be transferred to the inmate's bank or penitentiary depository account.

In principle, no such attachment may be made for the benefit of the state. However, under the new Article 75/R of the Penitentiary Code, **the Ministry of Justice informs the National Office for Tax and Customs about the identity of the compensated inmate,** his/her bank or penitentiary depository account number, the sum of the compensation and the scheduled date of the payment. This measure enables the state to collect the inmate's debt right after the compensation is transferred to his/her account. Therefore, in practice, the impact of the legislation is the same as allowing direct attachments for the benefit of the state.

Moreover, Act CL of 2020[16] maintains the rule introduced in March 2020 by Act IV of 2020,[17] which states that **compensations shall be transferred to the detainee's penitentiary depository account, or if they have already been released to their bank account** (hence, detainees are not allowed to request payment in cash).

The amount of compensation paid to the detainee's depository penitentiary account (a depository account handled by the penitentiary, used by detainees e.g. to purchase extra food in the penitentiary) **shall be "reserved" for the time the detainee will be released.** The prison governor may allow the detainee to forward the sum of the compensation or a part of it to their relatives or contact persons, upon the detainee's request and under exceptional circumstances.[18]

The new regulation has extended the possibility for victims of criminal offences to claim damages from the compensation the perpetrator is granted for inhumane prison conditions. However, there is also an amendment that concerns inmates convicted for offences that do not have victims (such as tax fraud). The amended Article 188 Paragraph (1a) of the Penitentiary Code prescribes that **when deciding on a convict's conditional release, the penitentiary judge shall also take into account whether the inmate convicted for an offence without a victim has made a contribution to the state fund for the compensation of victims of crimes, which is handled by the Ministry of Justice.**

[16] Act CL of 2020 Article 17 amended the Penitentiary Code by inserting Article 75/S into it.
[17] Article 4.
[18] Act CL of 2020 Article 18 amending the Penitentiary Code by inserting Paragraph (4a) into its Article 133.

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4.1.2 Positive elements regarding Act CL of 2020

The abolishment of the requirement of exhausting the preventive remedy before claiming compensation can be considered a positive step for the time being because as was detailed in the HHC's Rule 9 communication submitted on 20 April 2020, the complaint system had been ineffective due to the lack of sufficient prison-capacity, and led to thousands of inmates submitting – mostly futile – complaints about their placement. The explanatory memorandum attached to Bill T/13954 shows that the Government has realized this problem and understood that in its present format the complaint system places an unnecessary administrative burden on the penitentiary system.

Simplified compensation procedure - Given that the data necessary to adjudicate compensation claims (e.g. the size of the cells, the lack of a separated toilet, etc.) are at the disposal of the penitentiaries, there is some justification in leaving the compensation decision itself to them in simple, clear-cut cases. Creating this new, simplified procedure may also facilitate the detainees being able to enforce their rights and may also counterbalance the envisaged decrease in the willingness of attorneys to represent detainees in compensation cases (see more in Section 5.). However, it gives rise to concerns that the new system may push detainees in the direction of accepting lower compensation amounts and not enforcing their rightful claims when it comes to inhuman or degrading detention conditions beyond the substandard size of the cell.

4.1.3 New problems created by Act CL of 2020

Informing the National Office for Tax and Customs - The explanatory memorandum of the Bill T/13954 makes express reference to the practice of the Committee of Ministers according to which the compensation for violations by the state should be free from attachment regarding the injured party's debts to the state. However, the newly introduced system actually circumvents this principle. As was described above, before the Ministry of Justice transfers the payment to the detainees' account, it contacts the National Office for Tax and Customs. This will enable the National Office for Tax and Customs to initiate an encashment regarding the identified bank account, so while in principle there will be no attachment to the state's benefit in the sense that it will not be deducted from the compensation amount, it will be encashed immediately after it lands on the inmate's account, so in practice, an attachment will be made. We believe that the requirement that the compensation may only be paid to the inmate's penitentiary depository account or – after the release – bank account, also serves this purpose.

Payment of the compensation shall be transferred to the penitentiary account and be reserved for when the detainee is released - This rule essentially means that the state – which is the violator in such cases – determines what the detainees (whose possibilities are already limited in this regard) can do with the compensation they receive for a violation of their human rights by state authorities. The possibility of the prison governor granting an exception to this rule when it comes to payments to the detainees' family and other contact persons makes detainees even more vulnerable to the prison governor, who can decide in a range of questions profoundly affecting the detainees' daily life. We believe that the rule is discriminatory, as no other persons entitled to compensation for the violation of their fundamental rights are restricted in when and how they wish to use the compensatory amount. The detrimental impact of this limitation is even more clear with regard to inmates serving long sentences, as in their case the ability to access the compensation may be delayed for decades. Finally, it seems that inmates are not allowed before their release to use the compensation money for paying the fees of the attorneys who represented them in the compensation procedure (or, in the best case, they are allowed to do so if the warden permits this within his/her margin of appreciation). Based on

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the above, we are of the view that this new rule in reality most probably aims to decrease the number of compensation claims by pushing the inmates' effective access to any compensation into the distant future.

Related to conditional release, the penitentiary judge shall take into account whether or not the detainee has made a contribution to the state fund for the compensation of victims – On the one hand, it can be argued that it is an appropriate way for a convict to express remorse and own up to the criminal offence he/she committed by making a contribution to this state fund. However, if expressly linked to the compensations for overcrowding and inhuman or degrading detention conditions, it becomes quite controversial: it essentially means that the state, which violated a detainee's fundamental rights, might consider releasing him/her earlier if the detainee "pays back" to the state part of the compensation received for the fundamental rights violation by the state. Of course, the future practice of the penitentiary judges will have to be analysed to assess how such payments or the lack of them will influence decisions on conditional release.

4.2 Suspension of payments

As it was described in detail in the HHC's Rule 9 submissions throughout 2020, between 7 March 2020 and 31 December 2020 **the payment of compensations granted by judicial decisions was suspended, and foreseeably, these sums will be transferred to inmates' accounts no earlier than 30 April 2021.** At that date, the payment of some compensations will have been suspended for over a year.

The legal background of the suspension of payments is the following:

- On 21 January 2020, Resolution 1004/2020. (I. 21.) of the Government on the immediate action against abusing the compensation procedures launched due to prison overcrowding was promulgated. According to this resolution, **the Minister of Justice suspends the payment of compensations due to prison overcrowding in individual cases until the latest possible date under the [respective] laws.** This resolution is still in force.
- On 17 February 2020, the Government submitted a Bill to Parliament on immediate measures to be taken in order to abolish the "abuse of compensation procedures relating to prison overcrowding". This was passed on 25 February 2020 and entered into force on 7 March 2020 as Act IV of 2020. This Act stated that **the payment of compensation to inmates granted by judicial decisions delivered after the new law came into force would be suspended until 15 June** with a view to "putting an end to the abuses related to compensations paid for prison overcrowding" (Article 5).
- On 12 May 2020, the Government submitted to Parliament Draft Bill T/10528, in order to **prolong the deadline for paying already granted compensation until 31 December 2020.** On 8 June 2020, the Bill was passed and entered into force on 15 June 2020 as Act LV of 2020. Besides the prolongation of the suspension, under this Act the **general deadline for paying compensations was also prolonged from 60 to 90 days** after the handing down of the court's judgement.
- Thus, Resolution 1004/2020. (I. 21.) of the Government, read in conjunction with the above described provisions of the Act LV 2020, means that no payment can be made to any detainee before 1 April 2021 (31 December 2020 + 90 days).

Although, the new regulation introduced by the Act CL of 2020 upheld the 90 days as the 'general payment deadline', it added an important exception. In terms of Article 75/O Paragraph (1b) of the

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Penitentiary Code, if the Ministry of Justice contacts the National Office for Tax and Customs (see above), **the payment deadline increases from 90 to 120 days.** It has to be noted that in every case where payment has to be made (i.e. when the amounts to be deducted before the transfer do not exceed the full compensation amount), the Ministry shall inform the National Office for Tax and Customs about the prospective payment. Therefore, in practice those who receive any money have to wait 120 days after the handing down of the judgment or the end of the suspension period. (In those cases where there is no compensation sum left after the deductions and that is why there is no need to contact the National Office for Tax and Customs, the inmates shall be informed of this within 90 days.) **Consequently, in light of the above detailed legal framework, payments will be made on 30 April 2021 (31 December 2020 + 120 days).**

4.3 The number of pending cases

According to the National Office for the Judiciary's response to HHC's FOI requests, a vast number of compensation claims (more than 25,000) were filed with regional courts in 2020. This constitutes nearly twice the amount of the year before, which suggests that thousands of people may still be waiting for their compensation to be paid as a result of the previously described suspension of payments.

Table no. 4 – Total no. of incoming and closed cases and no. of rejected cases on grounds of inadmissibility, 2017-2020[19]

Year	No. of incoming cases	No. of closed cases	Cases rejected on grounds of inadmissibility (within closed cases)	Overall case backlog at the end of each year[20]
2017	7730	2316	171	5414
2018	11175	8786	1008	7803
2019	14484	15117	1693	7170
2020	25079	23674	1044	8575
TOTAL:	**58468**	**49893**	**3916**	**8575**

The total number of pending cases was just above 8,500, which constitutes a definite increase to the previous year (7,170). Just as the HHC's Rule 9 communication on 20 April 2020 showed,[21] there are still substantial regional differences in the number of cases pending on 30 December 2020.

[19] Source: Response no. 2019.OBH.XII.B.31/5 issued by the National Office for the Judiciary to the HHC's FOI request, 16 January 2020; Response no. 2020.OBH.XII.B.66/5. issued by the National Office for the Judiciary to the HHC's FOI request, 13 January 2021; and Response no. 2020.OBH.XII.B.66/11. issued by the National Office for the Judiciary to the HHC's FOI request, 21 January 2021.

[20] "Overall case backlog at the end of each year" is derived from the number of remaining cases (no. of incoming-no. of closed cases) from previous year added to incoming cases minus closed cases.

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

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Table no. 5. – Number of pending cases per regional court on 31 December 2020[22]

Name of Regional Court	No. of pending cases on 31 December 2020
Balassagyarmati Törvényszék	476
Budapest Környéki Törvényszék	**3849**
Debreceni Törvényszék	9
Egri Törvényszék	60
Fővárosi Törvényszék	**1225**
Győri Törvényszék	288
Gyulai Törvényszék	2
Kaposvári Törvényszék	2
Kecskeméti Törvényszék	446
Miskolci Törvényszék	118
Nyíregyházi Törvényszék	109
Pécsi Törvényszék	2
Szegedi Törvényszék	**670**
Székesfehérvári Törvényszék	**872**
Szekszárdi Törvényszék	1
Szolnoki Törvényszék	56
Szombathelyi Törvényszék	325
Tatabányai Törvényszék	0
Veszprémi Törvényszék	53
Zalaegerszegi Törvényszék	12
TOTAL:	**8575**

Out of 21 regional courts, there are four where more than 600 cases were pending on 31 December 2020. These regional differences raise serious concerns regarding the equal opportunity of the complainants for a fair and speedy trial.

5. Lack of compensating inadequate material conditions and hostile atmosphere

Point 9 of Decision CM/Del/Dec(2020)1377bis/H46-16: *[The Deputies] firmly reiterated their previous request for detailed information (including statistical data) on the implementation and functioning of the preventive remedy; invited the authorities to clarify whether domestic legislation and jurisprudence*

[22] Source: Response no. 2019.OBH.XII.B.31/5 issued by the National Office for the Judiciary to the HHC's FOI request, 16 January 2020; Response no. 2020.OBH.XII.B.66/5. issued by the National Office for the Judiciary to the HHC's FOI request, 13 January 2021; and Response no. 2020.OBH.XII.B.66/11. issued by the National Office for the Judiciary to the HHC's FOI request, 21 January 2021.

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exclude compensation for inadequate material conditions as long as the requisite living space is provided and to submit information on possible measures to ensure confidential access of detainees to complaint mechanisms.

5.1 The legislation excludes compensation for inadequate material conditions as long as the requisite living space is provided

The new regulation upholds the rule that **if the required amount of moving/living space per person is provided, detainees are not entitled to compensation even if otherwise the physical detention conditions (access to air and natural light, partitioning of toilettes, bedbugs) are severely substandard,** and may amount to inhuman or degrading treatment in themselves. As we explained in our latest Rule 9 communication, this means that these "other" physical placement conditions violating Article 3 of the Convention are to be examined in the compensation procedure only if the prescribed moving/living space has not been provided for the inmate. This is in contrast with the approach of the judgment in Mursic v. Croatia, according to which the "assessment as to whether there has been a violation of Article 3 cannot be reduced to a numerical calculation of square metres allocated to a detainee. Such an approach would [...] disregard the fact that, in practical terms, only a comprehensive approach to the particular conditions of detention can provide an accurate picture of the reality for detainees" (§ 123).

Moreover, the new provisions do not address the problem that restrictive jurisprudence regarding the compensation procedure holds that **health care units and prison hospital wards are excluded from the scope of the compensation scheme.** This means that if someone is held under degrading conditions in a health care unit or prison hospital ward, they will not be entitled to compensation. This creates an unjustifiable distinction between detainees, to the detriment of the more vulnerable group.

5.2 Hostile political and legal atmosphere concerning compensation procedure

As pointed out in previous Rule 9 submissions of the HHC, prison overcrowding came under the focus of a political campaign by the Hungarian Government at the beginning of 2020. Although the Covid-19 pandemic temporarily diverted public attention from this issue, communication from politicians of the governing party remains exceptionally hostile. For instance, the Justice Ministry's Secretary of State Pál Völner announced the submission of the *Bill T/13954 on the Amendment of Certain Acts of Parliament Necessary to Abolish the Abuse of Compensation Procedures Relating to Prison Overcrowding* on his official Facebook profile with the following comment: "This will finally end the prison business of criminals, left-wing attorneys and fake civilians."[23] He also highlighted that the most important aim of the new regulation is to prevent compensation sums being transferred into the accounts of the lawyers and inmates.

Related to hostile attitude of the Government, it has to be noted, that Act CL of 2020 has not changed the rule introduced in March 2020 by Act IV of 2020 that **deprives attorneys of the possibility to collect the compensations granted to their clients on their depository accounts** – instead, compensations shall be transferred to the detainee's penitentiary depository account, or, if they have been already released, to their ordinary bank account. As we detailed in our latest Rule 9 communication, **this rule is discriminative, since compensation for inhuman and degrading detention conditions is the only type of money and compensation that lawyers will not be allowed to take into a deposit.** Furthermore, this rule severely restricts the inmates' capacity to sue for compensation, as fewer lawyers will take such cases, because this way they cannot surely collect

[23] https://www.facebook.com/volnerpal/posts/3344715708958936

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the compensations on their depository accounts and transfer the amount after deducting their pre-negotiated fees.

This already problematic legal environment has been made more discouraging with the amendment prescribing that detained recipients of compensation for overcrowding may only access the compensation amount at the time of their release, and may transfer some of this money to their relatives and other contacts in exceptional cases with the warden's permission. This makes it impossible for the detainees to pay their counsels from the compensation (or, at best, only if the warden allows so), which makes it even more difficult for inmates to secure legal counselling for their compensation claims, and a significant number of detainees are likely to remain without legal support.

6. Recommendations

6.1. Procedural recommendations

- The HHC respectfully recommends to the Committee of Ministers of the Council of Europe **to continue to examine this group of cases under the enhanced procedure.**
- The HHC respectfully calls on the Committee of Ministers of the Council of Europe to **review this group of cases, with special regard to the ongoing changes of the compensation system**, as soon as there is sufficient experience to assess the impact of the new legislation that took effect on 1 January 2021, preferably in the first half of 2022.

6.2. Substantive recommendations

Recommendations concerning the newly introduced legislation

- **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 suspension of compensation claims awarded by the courts should be terminated with immediate effect**. There is no justifiable reason to keep inmates waiting for an additional four months for compensation that has been awarded to them by a lawful court in a lawful proceeding for the violation of their fundamental right to not being subjected to degrading treatment.
- The HHC respectfully requests the Committee of Ministers of the Council of Europe to examine the issue whether the envisaged notification of **the National Office for Tax and Customs about the identity of the compensated inmate,** his/her bank or penitentiary depository account number, the sum of the compensation and the scheduled date of the payment in advance of the payment of the compensation (and the prolongation of the deadline for payments in such cases from 90 to 120 days) is compatible with the practice of the Committee of Ministers according to which attachments for the benefit of the state shall not be made regarding compensations to be paid by the state for the violation of fundamental rights.
- The HHC respectfully requests the Committee of Ministers of the Council of Europe to examine whether creating an express legislative link between the decision on a convicted inmate's conditional

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release and his/her willingness to pay into a state fund is compatible with the principle underlying the practice of the non-attachable nature of debts towards the state.

- The inmate's right to request the judicial review of a transfer decision triggered by a compensation claim should be reinstated into the system of remedies, so that the inmate would have the choice to remain in a penitentiary where he/she can maintain meaningful contacts with his/her family.

Outstanding recommendations from previous Rule 9 communications

- The Government should invest in the sufficient use of the existing alternative, non-custodial alternatives to detention.
- **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 pf the consistency of the jurisprudence) **shall be regularly collected and made accessible** for the interested public by the Hungarian authorities.
- A sufficient amount of independent monitors shall have access to the penitentiary system, therefore NPA should **allow the HHC to recommence its prison monitoring activity** to support the protection and enforcement of detainees' rights.
- Physical conditions other than moving space shall be taken into account in the course of implementing the ECtHR judgments in question. **The provisions on the compensatory mechanism shall be amended to make sure that if the overall physical conditions** (access to fresh air, proper natural lighting, the partitioning of toilettes, absence of parasites) **are substandard to the extent that they justify this, inmates should be entitled to claim compensation even if they are provided with the required moving space**.
- **The law should be amended to make it clear that penitentiary health care units and prison hospital wards fall under the scope of the compensation scheme**, i.e. if someone is held under degrading conditions in a penitentiary health care unit or prison hospital ward he/she should also be entitled to compensation.
- **The legal provisions concerning the compensation scheme should be amended in order to create a consistent jurisprudence across the country**. Issues to be reviewed in this regard should concern (i) the legal standing of persons who have submitted valid and admissible applications to the ECtHR; (ii) other admissibility criteria; (iii) the burden of proof if the penitentiary system fails to submit the documentation on the inmate's detention conditions.
- **In compensation claim proceedings the equality of arms should be respected**. With this aim, it should be prescribed for the penitentiary institution to **send to the claimant and his/her lawyer the documentation** it forwards to the penitentiary judge along with the claim. Furthermore, it should be mandatory for the prosecution to serve its opinion as well as its appeal to the inmate and his/her counsel so that they could submit their observations to the court adjudicating the claim.
- **Additional financial and human resources** should be provided to the penitentiary system and the judiciary to handle compensation claims, until the influx of claims is stabilised at a manageable level.
- The Government should guarantee that the **compensation procedure will be practically accessible to all inmates** regardless of their financial or social status and legal representation could be available by them. With a view to this, the limitation that counsels are banned from collecting their clients' compensations on their depository accounts should be removed from the law.

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- **The unnecessary restrictions concerning contacts with the outside world and especially family members should be removed**. As soon as the developments of the COVID-19 epidemic allow, inmates should as a main rule be allowed physical contact with their visitors, and only those should be prevented from this possibility whose risk assessment justifies such a restriction.

Recommendations related to the impact of the Covid-19 outbreak on the penitentiary system

- **Reducing prison population by early release of specific vulnerable groups of detainees,** especially of elderly and sick offenders who are particularly vulnerable to Covid-19, as well as the suspension of all petty offenders' detention sentence is to be considered.
- The Government should **enhance testing for Covid-19** of symptomatic and asymptomatic prison staff members and detainees.
- The Government should **include detainees and prison staff in the vaccination plan.**
- **The decision making on visitation restrictions should be transparent and foreseeable**. The NPA should indicate in advance at what numbers and trends they consider it possible to lift or at least ease the ban, e.g. by resuming personal visitation in epidemiologically low-risk/risk-free cases (such as vaccinated individuals).
- **Adequate alternative options for maintaining social connections** between prisoners and their family should be provided. Contact opportunities should be provided for detainees with insufficient financial means to pay for phone services. The NPA should **provide proper overall technical conditions, equipment of sufficient quality and less crowded facilities to conduct Skype calls to ensure detainees enjoy their rights to respect for their private and family life.**