



**SUBMISSION BY THE HUNGARIAN HELSINKI COMMITTEE**

for the third cycle of the

**Universal Periodic Review**

of

**HUNGARY**

**on criminal justice and law enforcement**

25 March 2021

The **Hungarian Helsinki Committee (HHC)** is an independent human rights watchdog organisation founded in 1989 in Budapest, Hungary. As a leading Hungarian human rights organisation with a globally recognised reputation, the HHC works towards a world in which everyone's human rights are protected. The HHC focuses on defending the rule of law and a strong civil society in a shrinking democratic space; the right to seek asylum and access protection; the rights to be free from torture and inhuman treatment and the right to fairness in the criminal justice system. The HHC contributes to monitoring Hungary's compliance with relevant UN, EU, Council of Europe, and OSCE human rights standards and cooperates with international human rights fora and mechanisms.

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*Please note that the present individual submission pertaining to Hungary covers only the human rights concerns arising in relation to the criminal justice system and the performance of law enforcement agencies. For issues of concern and the HHC's recommendations in relation to the rule of law, shrinking civic space, the rights of migrants, and statelessness, please see the joint NGO submissions the HHC is a party to.*

## MONITORING PLACES OF DETENTION

1. The Commissioner for Fundamental Rights (the Ombudsperson) was designated as Hungary's **national preventive mechanism** (NPM) under the OPCAT as of January 2015. As regards the NPM's structure and independence, the SPT raised in 2017 that it is "particularly concerned at the lack of functional independence of the [NPM] within the Office of the Commissioner for Fundamental Rights".<sup>1</sup> The SPT also observed the lack of adequate resources and funding of the NPM.<sup>2</sup>
2. The NPM visited 94 institutions in the past more than five years, out of which 27 visits were conducted in 2020. However, the length and deepness of the visits should be improved: for example, only two staff members visited even large institutions with several hundreds of detainees, and the maximum duration of the visits was one day. The SPT in its 2017 report observed that the NPM "mainly focuses on detention monitoring activities", and recommended that the NPM "focus[es] also on other preventive activities".<sup>3</sup> Furthermore, the NPM has recently shown a degree of reluctance to investigate detention related issues brought to his attention by NGOs.<sup>4</sup>
3. NGOs are not involved in the NPM's monitoring visits, and have no access to places of detention. The Hungarian Helsinki Committee (HHC) operated the only **lay prison monitoring** scheme in Hungary, but in 2017, after nearly two decades, its cooperation agreements were terminated unilaterally by the National Prison Administration and the Police. Abolishing lay monitoring has weakened the protection of detainees' rights and the chances of revealing systematic problems.
4. Recommendations:
  - *Provide adequate resources and funding for the NPM.*
  - *Ensure that the NPM substantively involves NGOs in its work, and that NGOs and experts are involved in NPM visits to multiply capacities.*
  - *Ensure access to penitentiary institutions for NGOs and independent stakeholders with sufficient monitoring knowledge and capacity.*
  - *Ensure that the NPM adequately monitors the application of procedural torture prevention safeguards.*

## DETENTION CONDITIONS IN PENITENTIARIES

5. Hungary's prison **overcrowding** rate has been decreasing since 2015, when the European Court of Human Rights (ECtHR) established in a pilot judgment that overcrowding in penitentiaries is a systemic problem.<sup>5</sup> However, this achievement seems fragile, as the number of inmates has only slightly decreased from 2016 to 2019, and started increasing again in 2020. According to the pilot judgment, the desired solution would have been the reduction of the number of prisoners by the more frequent use of non-custodial<sup>6</sup> punitive measures and minimising the recourse to pre-trial detention. Nonetheless, resorting to alternative measures is still not sufficiently wide-spread.

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<sup>1</sup> Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Hungary undertaken from 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism – Report of the Subcommittee*, CAT/OP/HUN/2, § 14.

<sup>2</sup> See also: 2<sup>nd</sup> UPR cycle, Recommendation 128.31 (Croatia).

<sup>3</sup> Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Hungary undertaken from 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism – Report of the Subcommittee*, CAT/OP/HUN/2, §§ 33–34.

<sup>4</sup> See in more detail: Hungarian Helsinki Committee, *Assessment of the Activities and Independence of the Commissioner for Fundamental Rights of Hungary in Light of the Requirements Set for National Human Rights Institutions*, September 2019, [https://www.helsinki.hu/wp-content/uploads/Assessment\\_NHRI\\_Hungary\\_2014-2019\\_HHC.pdf](https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_2014-2019_HHC.pdf), pp. 19–22.

<sup>5</sup> *Varga and Others v. Hungary* (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, Judgment of 10 March 2015)

<sup>6</sup> See also: Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 42.

Overcrowding levels can vary greatly between different prison blocks,<sup>7</sup> and detention conditions remain inadequate in many penitentiaries.<sup>8</sup> In 2020, new lightweight-built prison facilities were constructed, expanding prison capacity. Thus, the Government wants to solve the situation solely by building prisons, while maintaining a restrictive and punitive criminal policy.

6. In 2017, as part of executing the pilot judgment, a new compensation scheme was introduced, in order to provide preventive and compensatory remedy against substandard detention conditions. This resulted in a vast number of compensation claims. The rules exclude compensation for inadequate material conditions as long as the requisite living space is provided. Throughout 2020, the regulation was amended several times, which was accompanied by a derogatory media campaign by government representatives against detainees and attorneys handling compensation cases.<sup>9</sup>
7. The National Prison Administration introduced a highly **restrictive policy regarding visits** in 2017–2018, and by 2019 all physical contact between inmates and visitors became prohibited, irrespective of the risk posed by the individual inmates.<sup>10</sup> Plexiglas partitions separating the inmates from the visitors have been installed in all penitentiaries, including the hospital-type institutions, resulting in total physical separation. Visits have been banned completely since the beginning of the pandemic in March 2020, even for juveniles. Phone rates are 5-10 times higher than any of the public tariffs available outside, which imposes a huge financial burden on inmates and their families.<sup>11</sup>
8. The length of **compulsory medical treatment** is indefinite by law, possibly lifelong.<sup>12</sup> The time of the eventual release from the Judicial and Observational Psychiatric Institution, where compulsory medical treatment is administered, is subject to periodical judicial review. In case the offender is found eligible for release, he/she is either placed in a social institution or with his/her family. If neither of those options are available, the court will not order the release of the patient. Due to the shortage of available places in social care homes, the number of mentally disordered offenders detained has been rising since 2018. Consequently, offenders may remain institutionalized here longer than the prison term they would have served.
9. Recommendations:
  - *Invest in the sufficient use of the existing non-custodial alternatives to detention.*
  - *Improve physical and sanitary conditions in penitentiary institutions.*
  - *Provide adequate options for maintaining social connections between prisoners and their family members, e.g. by significantly lowering the costs of phone services.*
  - *Abolish the general ban on physical contact during visits, and apply it only in the case of those inmates whose risk classification justifies such a restriction.*
  - *Apply restrictions on family visitation proportionately during the pandemic; reinstate visitation by applying appropriate safety measures.*
  - *Provide alternatives to indefinite compulsory medical treatment of mentally disordered offenders by changing the law and the practice.*

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<sup>7</sup> Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec>, see especially p. 48.

<sup>8</sup> See also: Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 41.

<sup>9</sup> For more details, see the communications submitted by the HHC to the Committee of Ministers of the Council of Europe in relation to the execution of the pilot judgment: <http://hudoc.exec.coe.int/eng?i=004-10809>.

<sup>10</sup> Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec>, see especially § 122.

<sup>11</sup> Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec>, see especially § 123.

<sup>12</sup> Act C of 2012 on the Criminal Code, Article 78(2)

## PRE-TRIAL MEASURES

10. After years of decrease in the number of pre-trial detainees, the trend has recently turned: from December 2019 to December 2020, the proportion of pre-trial detainees within the total prison population increased from 16.6% to 20.1%.<sup>13</sup> Prosecutorial motions aimed at pre-trial detention during the investigative phase still have a high success rate; and alternative, non-custodial pre-trial measures continue to be underused. In 2018, a new Code of Criminal Procedure brought positive conceptual changes, but it is yet to be seen whether this will contribute to eliminating substantial deficiencies regarding judicial decision-making. These deficiencies include that court decisions on pre-trial detention are often abstract, and fail to assess the defendant's individual circumstances and/or the possibility of alternative measures. The prosecution's arguments are more frequently accepted than those of the defence, which is coupled with the frequent lack of adequate reasoning in general. Furthermore, courts often fail to consider ECtHR case-law.<sup>14</sup>
11. *Recommendations:*
  - *Decrease the number and proportion of pre-trial detainees, and encourage the use of alternative pre-trial measures.*
  - *Conduct an independent investigation into the practice of pre-trial measures and related judicial decision-making since 2018.*

## DEFENDANTS' PROCEDURAL RIGHTS

12. Conditions of "cost reduction", which entails that the defence counsel's fee and costs are borne by the state instead of the defendant, are too rigid, and cost reduction is granted rarely, making it questionable whether it is available in practice for all indigent defendants. As a positive development, since 2018, **ex officio / legal aid defence counsels** are, as a main rule, appointed by the bar association instead of the police. However, the system has some loopholes, and there is no quality assurance system.<sup>15</sup>
13. Defendants are entitled to **use their mother tongue**, but if it is not possible to find an interpreter meeting statutory criteria, any person having "sufficient knowledge of a certain language" can be appointed as interpreter. This may cause quality problems, as there are no measurable guarantees as to what "sufficient" means. There is no quality assurance system either. The law only requires the translation of documents that are to be served, and defendants have no right to request the translation of further documents, contrary to EU law.<sup>16</sup>
14. Letters of Rights provided to defendants are not formulated in an easy-to-understand manner. Warnings about their rights are read out to suspects at the beginning of the interrogation, and written information is provided only after the interrogation is over, and/or after they are taken into detention.<sup>17</sup> None of the documents provided cover in full the rights prescribed by Directive 2012/13/EU.<sup>18</sup> The violation of the **right to information** is not taken into account when assessing a confession even if it was given by the suspect after not being properly informed of their rights.

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<sup>13</sup> Sources: statistical review produced by the National Prison

Administration: [https://bv.gov.hu/sites/default/files/Bortonstatisztikai\\_Szemle\\_2020.pdf](https://bv.gov.hu/sites/default/files/Bortonstatisztikai_Szemle_2020.pdf), p. 17.; and the National Prison Administration's response to the HHC's FOI request (30500/14282- /2020.ált., 2 February 2021).

<sup>14</sup> Tamás Fazekas – András Kristóf Kádár – Nóra Novoszádek: *The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making. Country report – Hungary*, October 2015, [http://www.helsinki.hu/wp-content/uploads/PTD\\_country\\_report\\_Hungary\\_HHC\\_2015.pdf](http://www.helsinki.hu/wp-content/uploads/PTD_country_report_Hungary_HHC_2015.pdf); Report of the Curia's Judicial Analysis Group (2017)

<sup>15</sup> For more details, see: András Kristóf Kádár – Nóra Novoszádek – Dóra Szegő, *Inside Police Custody 2 – An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries. Country Report for Hungary*, December 2018, [https://www.helsinki.hu/wp-content/uploads/IPC\\_Country\\_Report\\_Hungary\\_Eng\\_fin.pdf](https://www.helsinki.hu/wp-content/uploads/IPC_Country_Report_Hungary_Eng_fin.pdf), pp. 75–93.

<sup>16</sup> For more details, see: András Kristóf Kádár – Nóra Novoszádek – Dóra Szegő, *Inside Police Custody 2 – An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries. Country Report for Hungary*, December 2018, [https://www.helsinki.hu/wp-content/uploads/IPC\\_Country\\_Report\\_Hungary\\_Eng\\_fin.pdf](https://www.helsinki.hu/wp-content/uploads/IPC_Country_Report_Hungary_Eng_fin.pdf), pp. 33–45.

<sup>17</sup> For more details, see: Hungarian Helsinki Committee, *Accessible Letters of Rights in Europe – Comparative study*, 2017, [https://www.helsinki.hu/wp-content/uploads/Comparative-Report\\_FINAL\\_ENG.pdf](https://www.helsinki.hu/wp-content/uploads/Comparative-Report_FINAL_ENG.pdf), pp. 19–20 and 32.

<sup>18</sup> Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings

Criminal justice professionals are not provided with any training on using plain language or to ascertain whether suspects understood the information provided.<sup>19</sup>

15. Recommendations:

- *Ensure the necessary funding for legal aid lawyers' activities.*
- *Introduce a quality assurance system for legal aid lawyers and interpreters.*
- *Abolish the possibility of appointing interpreters who do not fulfil statutory criteria.*
- *Introduce a written, easy-to-understand Letter of Rights that covers all rights required by Directive 2012/13/EU.*
- *Include plain language skills into the training of criminal justice professionals.*

## PENAL POLICY

16. The law allows for imposing **life imprisonment without the possibility of parole** (whole life sentence). In 2014, the ECtHR ruled<sup>20</sup> that by sentencing an applicant to whole life imprisonment, Hungary violated the prohibition of torture and inhuman or degrading treatment or punishment. After the judgment, a "mandatory clemency procedure" was introduced, but this still does not comply with ECtHR standards.<sup>21</sup> This was confirmed by the ECtHR in a 2016 judgment, condemning Hungary again for violating Article 3 of the ECHR.<sup>22</sup>

17. Prompted by a single case and without any preliminary research or consultation, conditions of **conditional release** were made stricter in 2020, and its possibility was excluded by default in the case of certain serious crimes.<sup>23</sup> As a consequence of the amendment and the government propaganda, judges deciding on conditional release tend to get more rigorous in general, and it can be predicted that a lower ratio of detainees will be conditionally released. These changes will contribute to prison overcrowding, and eliminate a previously available reintegration scheme for serious perpetrators.<sup>24</sup>

18. The UPR<sup>25</sup> and UN Human Rights Committee (HRC)<sup>26</sup> recommendations aimed at bringing the **juvenile justice system** in line with the relevant international standards<sup>27</sup> have not been implemented, and prison for juveniles is not used as a measure of last resort. The social support system is inadequate, many juveniles are punished and incarcerated instead of being assisted. There is no specialized juvenile justice system; judges, prosecutors and ex officio lawyers proceeding in cases of juveniles are not specially trained.

19. Recommendations:

- *Abolish life imprisonment without the possibility of parole.*
- *Withdraw the tightening of conditions for conditional release, and explore alternatives to incarceration and methods of successful reintegration of detainees into the society instead.*
- *Establish a specialized juvenile justice system.*

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<sup>19</sup> For more details, see: Hungarian Helsinki Committee, *Accessible Letters of Rights in Europe – Comparative study*, 2017, [https://www.helsinki.hu/wp-content/uploads/Comparative-Report\\_FINAL\\_ENG.pdf](https://www.helsinki.hu/wp-content/uploads/Comparative-Report_FINAL_ENG.pdf), p. 44.

<sup>20</sup> *László Magyar v. Hungary* (Application no. 73593/10, Judgment of 20 May 2014)

<sup>21</sup> For further information, see the HHC's communication submitted to the Committee of Ministers of the Council of Europe in 2016 in relation to the *László Magyar v. Hungary* case: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)646E](http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E).

<sup>22</sup> *T.P. and A.T. v. Hungary* (Application nos. 37871/14 and 73986/14, Judgment of 4 October 2016)

<sup>23</sup> See e.g.: <https://hungarytoday.hu/gyor-murder-justice-minister-rules/>.

<sup>24</sup> Analysis and recommendations on the amendments of the law by the HHC are available here in Hungarian: [https://www.helsinki.hu/wp-content/uploads/Magyar\\_Helsinki\\_Bizottsag\\_eszrevetelek\\_felteteles\\_eloterjesztes\\_200127.pdf](https://www.helsinki.hu/wp-content/uploads/Magyar_Helsinki_Bizottsag_eszrevetelek_felteteles_eloterjesztes_200127.pdf).

<sup>25</sup> See 2<sup>nd</sup> UPR cycle Recommendations 128.153 (Republic of Moldova) and 128.154 (Republic of Moldova).

<sup>26</sup> Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 30.

<sup>27</sup> Convention on the Rights of the Child, Article 37

## PETTY OFFENCES

20. If not paid or carried out, a fine or community service imposed for a petty offence may be converted into **confinement** without hearing the offender.<sup>28</sup> Lack of plain language in official documents hinders offenders from converting fines into community service instead, or exercise their rights. Since 2018, there has been a 150% increase in the conversion of fines to confinement.<sup>29</sup> Those who are unable to pay high fines serve confinement for minor offences,<sup>30</sup> and the practice disproportionately penalises the socially deprived (the Roma and the poor).
21. Disability is often not established during the procedure. As a result, **persons with disabilities** are often incarcerated unlawfully, in spite of the law excluding their confinement.
22. Contrary to the CRC's recommendation<sup>31</sup> and in violation of UN standards,<sup>32</sup> **juveniles** may be taken into petty offence confinement, which is not applied only as a measure of last resort, and shall be executed in penitentiaries instead of juvenile reformatories (the latter having a less strict regime).
23. Since 2018, rough sleeping is criminalized also on a constitutional level.<sup>33</sup> Despite criticism by the respective UN Special Rapporteur<sup>34</sup> and the HRC,<sup>35</sup> and domestic judges arguing for the annulment of the legislation that violates human dignity, in 2019 the Constitutional Court upheld the law criminalizing **homelessness**.<sup>36</sup>
24. *Recommendations:*
- *Apply proportionate sanctions in petty offence cases.*
  - *Provide alternatives to fines; use existing alternative sanctions such as community service.*
  - *Restrict the practice of converting fines into confinement without a hearing.*
  - *Abolish the possibility of petty offence confinement of juveniles.*
  - *Repeal the laws criminalizing homelessness.*

## POLICE ILL-TREATMENT

25. Contrary to recommendations by the HRC<sup>37</sup> and the CPT,<sup>38</sup> Hungary has been failing to address systemic deficiencies with regard to preventing, investigating and sanctioning police ill-treatment, and so fails to execute respective ECtHR judgments as well.<sup>39</sup> The success rate of reports and indictments concerning ill-treatment remains low, and there are substantive shortcomings in investigations. Judges are lenient towards law enforcement officers when it comes to sentencing, and convicted officers may be declared eligible for service. There are legal and practical deficiencies

<sup>28</sup> Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System, Articles 12 and 15

<sup>29</sup> Source of data: National Penal Statistics, [www.bsr.bm.hu](http://www.bsr.bm.hu).

<sup>30</sup> See also: *Report of the Working Group on Arbitrary Detention Mission to Hungary from 23 September to 2 October 2013*, A/HRC/27/48/Add.4 (2014), §§ 112–113.

<sup>31</sup> Committee on the Rights of the Child, *Concluding observations on the sixth periodic report of Hungary*, CRC/C/HUN/CO/6, 3 March 2020, § 40(c)

<sup>32</sup> Cf. Article 37 of the Convention on the Rights of the Child and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

<sup>33</sup> The Seventh Amendment to the Fundamental Law, adopted on 20 June 2018; followed by an amendment of Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System, which came into force on 15 October 2018.

<sup>34</sup> *Hungary: UN expert expresses outrage at attempt to criminalise homelessness*, 20 June 2018,

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23229&LangID=E>

<sup>35</sup> Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 34.

<sup>36</sup> Decision 19/2019. (VI. 18.) AB

<sup>37</sup> Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, § 36.

<sup>38</sup> *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, CPT/Inf (2020) 8, <https://rm.coe.int/16809ce9ec>, see especially p. 5. and §§ 36–37.

<sup>39</sup> See the latest decision of the Committee of Ministers of the Council of Europe of 1 October 2020 in relation to the *Gubacsi v. Hungary* group of cases: CM/Del/Dec(2020)1383/H46-9, <http://hudoc.exec.coe.int/eng?i=004-10515>.

in relation to the video recording of police work, and the video/audio recording of interrogations is still not obligatory in all cases. The independent and adequate medical examination of detainees claiming ill-treatment is not ensured, and police officers are present at medical examinations as a main rule. Various pressures on the police incentivize ill-treatment.<sup>40</sup>

26. *Recommendations:*

- *Enhance the efficiency of investigations into ill-treatment cases.*
- *Revise the rules on eligibility for service of convicted police officers.*
- *Ensure the independent and adequate medical examination of persons who claim to have been ill-treated; ensure that police officers are as a main rule not present at medical examinations.*
- *Make the video recording of interrogations obligatory and free of charge.*
- *Enhance the use of body cameras and cameras in police vehicles and detention facilities.*
- *Lighten the statistical approach of the police's performance assessment system.*
- *Provide police officers with training on investigative interviewing techniques.*

## POLICE AND MILITARY MEASURES

27. The law grants heads of police units broad powers to order “**enhanced checks**” of public areas, resulting that the police have an unfettered right to check and search anybody in that area. In practice, enhanced checks are ordered extensively. In 2020, the ECtHR ruled<sup>41</sup> that the absence of any real restriction or review of the authorisation of enhanced checks and the police measures carried out during an enhanced check violated the right of respect for private life. However, the law remains unchanged.

28. The UNWGAD’s recommendation<sup>42</sup> regarding **short-term arrests** has not been implemented. Under the law,<sup>43</sup> in certain cases (e.g. if someone is caught committing a crime) police must take the individual into short-term arrest even if it is not necessary or proportionate in the given situation.

29. As of February 2020, the **Independent Police Complaints Board** was abolished and its responsibilities were taken over by the Ombudsperson, which can be considered as a step backwards. No time limit applies to the Ombudsperson’s procedure, and therefore, cases might last unreasonably long.

30. In 2020, under the pretext of the pandemic, a new legislative framework granted the Government unlimited authorisation to apply **military forces** in emergencies.<sup>44</sup> Simultaneously, military police became entitled not only to assist the police, but also to execute police measures autonomously. The new provisions do not provide safeguards against the misuse of military forces.

31. *Recommendations:*

- *Ensure that the regulation on enhanced checks complies with ECHR standards.*
- *Ensure that the rules of short-term arrests are in line with Article 9 of the ICCPR.*
- *Introduce a reasonable time limit for police complaints procedures by the Ombudsperson.*
- *Introduce safeguards against the Government misusing military forces in emergencies.*

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<sup>40</sup> For a detailed account, see: Hungarian Helsinki Committee, *Preventing and sanctioning police ill-treatment in Hungary: systemic deficiencies and the way forward – Policy brief*, 24 September 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_police\\_ill-treatment\\_policy\\_brief\\_24092020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_police_ill-treatment_policy_brief_24092020.pdf). For a short overview of the most crucial deficiencies and the HHC’s recommendations, see: Hungarian Helsinki Committee, *Preventing and sanctioning police ill-treatment in Hungary: systemic deficiencies and the way forward – Summary brief*, 24 September 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_police\\_ill-treatment\\_summary\\_24092020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_police_ill-treatment_summary_24092020.pdf).

<sup>41</sup> *Vig v. Hungary* (Application no. 59648/13, Judgment of 14 January 2021)

<sup>42</sup> *Report of the Working Group on Arbitrary Detention Mission to Hungary from 23 September to 2 October 2013*, A/HRC/27/48/Add.4 (2014), § 130(a)

<sup>43</sup> Act XXXIV of 1994 on the Police

<sup>44</sup> For more details, see: Amnesty International Hungary – Eötös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Detailed analysis of the Transitional Act’s provisions on special legal order and the state of medical crisis, and on other provisions concerning fundamental rights and the rule of law*, 30 July 2020, [https://www.helsinki.hu/wp-content/uploads/Transitional\\_Act\\_AIHU-EKINT-HCLU-HHC\\_30072020.pdf](https://www.helsinki.hu/wp-content/uploads/Transitional_Act_AIHU-EKINT-HCLU-HHC_30072020.pdf), pp. 9–10.

## DISCRIMINATION OF THE ROMA IN THE CRIMINAL JUSTICE SYSTEM

32. Contrary to the recommendation of CERD,<sup>45</sup> ethnic profiling and discriminatory practices by the police affecting the Roma with regard e.g. to ID checks and petty offences and biased attitude have remained a problem.<sup>46</sup> A systematic and official monitoring of criminal justice actors' operation in a multicultural environment is missing.<sup>47</sup> The lack of comprehensive information disaggregated by the national or ethnic origin of defendants and victims undermines thorough monitoring of anti-Roma discrimination in the criminal justice system.<sup>48</sup>

### 33. *Recommendations:*

- *Take measures to combat ethnic profiling by the police affecting the Roma.*
- *Ensure that all reports filed with the police are handled diligently, including reports by individuals perceived as Roma.*
- *Develop a monitoring and training system to terminate discriminatory practices and biased communication within the justice system.*
- *Consider introducing a perception-based data collection system on ethnicity after thorough preparation and consultation with those affected, and with safeguards against misuse.*

## RIGHT TO ASSEMBLY

34. The legislative framework on the right to peaceful assembly was radically transformed by the adoption of a new Assembly Act<sup>49</sup> in 2018. Although amending the previous law became inevitable after the Constitutional Court declared some deficiencies unconstitutional,<sup>50</sup> the re-regulation went far beyond the necessary. While the new law resolved some previously existing defects, certain structural deficiencies remained, and new problems emerged. The new legislation failed to provide guarantees against violations established by the ECtHR earlier;<sup>51</sup> widened the grounds for prior bans and the police's discretionary powers to establish restrictions;<sup>52</sup> and created severe administrative obstacles,<sup>53</sup> including mandatory legal representation before courts, hindering judicial remedy against bans.<sup>54</sup>

35. During the state of danger declared by the Government due to the pandemic in 2020, a blanket ban was introduced on all kinds of gatherings, *de facto* abolishing the right to peaceful assembly for several months.<sup>55</sup> To prevent civic stance, the Government introduced harsh penalties and authorised military forces to enforce restrictions.

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<sup>45</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, UN Doc. CERD/C/HUN/CO/18-25, 6 June 2019, §§ 20–21.

<sup>46</sup> For more details, see: Hungarian Helsinki Committee, *Discrimination against Roma people in the Hungarian criminal justice system*, 2020, [https://www.helsinki.hu/wp-content/uploads/Discrimination\\_against\\_Roma\\_people\\_in\\_the\\_Hungarian\\_criminal\\_justice\\_system.pdf](https://www.helsinki.hu/wp-content/uploads/Discrimination_against_Roma_people_in_the_Hungarian_criminal_justice_system.pdf), pp. 10–27.

<sup>47</sup> For more details, see the HHC's submission regarding the 18<sup>th</sup> to 25<sup>th</sup> periodic reports of Hungary to the CERD at <https://www.helsinki.hu/wp-content/uploads/HHC-submission-to-CERD-2019.pdf>, pp. 20–21.

<sup>48</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, UN Doc. CERD/C/HUN/CO/18-25, 6 June 2019, § 12.

<sup>49</sup> Act LV of 2018 on the Right to Peaceful Assembly

<sup>50</sup> Decisions 13/2016. (VII. 18.) AB and 14/2016. (VII. 18.) AB. See more here: [HUN-2016-2-003 \(coe.int\)](https://www.helsinki.hu/wp-content/uploads/HUN-2016-2-003_coe.int).

<sup>51</sup> See in detail the communication submitted by the HHC to the Committee of Ministers of the Council of Europe on 7 August 2020 in relation to the *Patyi and Others v. Hungary* group of cases: [https://www.helsinki.hu/wp-content/uploads/Rule\\_9\\_Patyi\\_case\\_group\\_07082020.pdf](https://www.helsinki.hu/wp-content/uploads/Rule_9_Patyi_case_group_07082020.pdf).

<sup>52</sup> See an overall rights-based assessment of the practice of the new Assembly Act here: [https://www.helsinki.hu/wp-content/uploads/The\\_New\\_Law\\_on\\_the\\_Right\\_to\\_Assembly\\_in\\_Hungary\\_as\\_Applied\\_in\\_Practice\\_2020.pdf](https://www.helsinki.hu/wp-content/uploads/The_New_Law_on_the_Right_to_Assembly_in_Hungary_as_Applied_in_Practice_2020.pdf).

<sup>53</sup> See in detail Section 3.2 of the communication submitted by the HHC to the Committee of Ministers of the Council of Europe on 7 August 2020 in relation to the *Patyi and Others v. Hungary* group of cases: [https://www.helsinki.hu/wp-content/uploads/Rule\\_9\\_Patyi\\_case\\_group\\_07082020.pdf](https://www.helsinki.hu/wp-content/uploads/Rule_9_Patyi_case_group_07082020.pdf).

<sup>54</sup> See in detail Section 2.2 of the HHC's report of 30 January 2021 to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, available here: [https://www.helsinki.hu/wp-content/uploads/OHCHR\\_SR\\_report\\_on\\_Hungary\\_HHC\\_20210130.pdf](https://www.helsinki.hu/wp-content/uploads/OHCHR_SR_report_on_Hungary_HHC_20210130.pdf).

<sup>55</sup> See in detail Section 2.3 of the HHC's report of 30 January 2021 to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, available here: [https://www.helsinki.hu/wp-content/uploads/OHCHR\\_SR\\_report\\_on\\_Hungary\\_HHC\\_20210130.pdf](https://www.helsinki.hu/wp-content/uploads/OHCHR_SR_report_on_Hungary_HHC_20210130.pdf).



36. Recommendations:

- *Abolish mandatory legal representation in assembly lawsuits.*
- *Lift the blanket ban on assemblies and enable assessing the individual risks of each protest during the pandemic.*