Hungarian Helsinki Committee

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

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The Hungarian Helsinki Committee (HHC) wishes to respectfully call the attention of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the following problems which the HHC identified in the course of its activities regarding penitentiary institutions and police cells.

Content

Pre-trial detention

The number of pre-trial detentions ordered in Hungary is on the decrease since 2014, but **18% of the total prison population** still consisted of pre-trial detainees as of 30 June 2018, contributing to the overcrowding of prisons. At the same time, **alternatives such as house arrest are heavily underused**. According to the latest statistical data provided by the Prosecution, out of 4846 cases in which the prosecutor requested pre-trial detention, courts ordered pre-trial detention in 4199 cases and house arrest was only used in 198 cases in 2016.[1] Thus, courts accepted the prosecution's motion for ordering pre-trial detention in 86.6% of the cases in 2016. Researches show that the courts deciding on pre-trial detention often **fail to assess** or to give due weight to the defendant's **individual circumstances** and the concrete circumstances of the case,

[1] Legfőbb Ügyészség (2017): Ügyészségi statisztikai tájékoztató. Budapest, 48.p.

as also pointed out by related judgments of the ECtHR;[2] and that decisions are often **abstract**, **custom-made, repetitive** as compared to each other, or basically repeat the submission of the prosecution. The **prosecution's arguments are more frequently accepted** than those of the defence, courts often fail to address the defence's arguments in their decisions, and often **fail to consider the possibility of applying alternative coercive measures**. Also, frequently adequate reasoning in general is lacking.[3] In addition, courts tend to attribute great relevance to circumstances that, according to the jurisprudence of the ECtHR, may not serve as decisive factors when ordering pre-trial detention, however, courts often fail to consider applicable ECtHR case-law. Before the new Code of Criminal Procedure entered into force on July 1st 2018, second instance courts deciding on appeals against pre-trial detention orders never met the defendant in person. The new Code of Criminal Procedure **establish the possibility of a personal hearing** in case of an appeal against the judicial decision of denying the motion for ordering pre-trial detention.[4] A court hearing shall be held (1) in case of a motion for the prolongation of pre-trial detention if the motion refers to a new circumstance as a ground of the necessity of prolongation; and (2) in case the prolongation would lead to pre-trial detention exceeding 6 months from the date of ordering.[5]

In 2013 **the length of pre-trial detention became unlimited in certain cases**, which raises serious concerns in light of the case law of the ECtHR.[6] The new Code of Criminal Procedure did not abolish the unlimited length of pre-trial detention.[7] However, the provisions on ordering pre-trial detention in the **new Code of Criminal Procedure** are in compliance with the international norms; they prescribe **pre-trial detention as the measure of last resort.**[8] The decision of ordering pre-trial detention shall be based on detailed judicial reasoning. The HHC is currently in the process of collecting experiences of the implementation of the fresh provisions but not yet able to assess whether the practice follows the positive new provisions of the law.

Life imprisonment without the possibility of parole

The ECtHR concluded in the *László Magyar v. Hungary*[9] case that by sentencing an applicant to life imprisonment without the possibility of parole, Hungary violated the prohibition of torture and inhuman or degrading treatment or punishment. Hungary introduced a "mandatory clemency procedure" after the above judgment, but **the law maintains the President's discretionary power to decide on pardons and still does not comply with the standards set out by the ECtHR.**[10] This was **confirmed by the ECtHR** in its judgment issued in the case *T.P. and A.T. v. Hungary*[11] in 2016, concluding that "in view of the lengthy period [40 years] the applicants are required to wait before the commencement of the mandatory clemency

[2] The ECtHR established recently e.g. in the following cases that Hungary violated Article 5 of the European Convention on Human Rights: *X.Y. v. Hungary* (Application no. 43888/08, Judgment 19 March 2013), *A.B. v. Hungary* (Application no. 33292/09, Judgment of 16 April 2013), *Baksza v. Hungary* (Application no. 59196/08, 23 April 2013); *Hagyó v. Hungary*, (Application no. 52624/10, Judgment of 23 April 2013), *Gábor Nagy v. Hungary*, (Application no. 33529/11, 11 February 2014; *Gál v. Hungary*, (Application no. 62631/11, Judgment of 11 June 2014), *Süveges v. Hungary* (Application no. 50255/12, Judgment of 5 January 2016).

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

[4] Act XC of 2017 on the Code of Criminal Procedure, Article 480 (3)

[5] Act XC of 2017 on the Code of Criminal Procedure, Article 466 (1) b-c)

[6] Under Article 132 (3a) of the previous Code of Criminal Procedure (Act XIX of 1998), no upper time limit applies to pre-trial detention if the criminal procedure is conducted against the defendant for a criminal offence punishable with up to 15 years of imprisonment or life-long imprisonment, pending a first instance judgment. For an English summary of the issue, see: http://helsinki.hu/wp-content/uploads/UNWGAD_HUN_HHC_Addendum_25November2013.pdf.
In 2015 the Ombudsperson initiated before the CC to abolish the respective provisions of the previous Code of Criminal Procedure.

[7] The new Code of Criminal Procedure - similarly to the earlier regulation - provides for unlimited pre-trial detention, even though its application was restricted to the cases where the criminal procedure is conducted for a criminal offence punishable with life-long imprisonment.
Act XC of 2017 on the Code of Criminal Procedure, Article 298 (2) a)

[8] Act XC of 2017 on the Code of Criminal Procedure, Article 276 (1) b)

[9] Application no. 73593/10

[10] For further information, see the HHC's communication submitted to the Council of Europe in 2016: http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E.

[11] Application nos. 37871/14 and 73986/14

procedure, coupled with the lack of sufficient procedural safeguards" with regard to the procedure of the President, the violation of Article 3 of the ECHR remains.

The *T.P. and A.T.* judgment became final in March 2017. However, **the Government has not taken any general measures to date to address the respective rights violations** and has not amended the law. **Adequate individual measures are also missing**: T.P. and A.T. remain in life imprisonment without parole, in direct contrast with the ECtHR's decision, while László Magyar will be first eligible for parole only after 40 years of imprisonment served, which is a much longer period than what is deemed acceptable by the ECtHR (i.e., 25 years).[12]

The execution of the above judgments was first examined by the Committee of Ministers **in June 2018**. In its respective decision, **the Committee of Ministers called on the Hungarian authorities to align their legislation with the ECtHR's case-law** and address the concerns raised by the ECtHR "without further delay".[13] According to latest official data, 54 persons are serving life imprisonment without the possibility of parole on December 31th 2017. This is 10% increase compared to 2016.[14].

HHC recommendations:

- **Abolish the institution of life imprisonment without the possibility of parole** from both the respective laws and the Fundamental Law of Hungary.
- **Establish a review system for those already sentenced to whole life imprisonment** which complies with the standards set by the ECtHR with respect to the decision-making process and its timing, and which provides a real prospect of release.
- **Ensure that a review** complying with the standards set by the ECtHR **takes place no later than 25 years** after the imposition of every life sentence, with further periodic reviews thereafter.
- **Ensure that the rights violations suffered by the applicants** in the *László Magyar v. Hungary* group of cases **are fully remedied** and that they are eligible for parole no later than 25 years after the imposition of their sentence.

Prison overcrowding

Since the pilot judgment delivered in the *Varga and Others v. Hungary*[15] case by the ECtHR in 2015, concluding that prison overcrowding constitutes a structural problem in Hungary, the **average occupancy rate has been on the decrease**: as compared to 141% in 2014, it was 135% in 2015, 131% in 2016 and 129% in 2017. Data received from the National Penitentiary Headquarters (NPH) state that the overcrowding rate was 124% as of 30 June 2018. The data furnished by the NPH on the same day reveal that the overcrowding in the individual penitentiary institutions changed in a significant way (e.g. by close to 30% in the Jász-Nagykun-Szolnok County Penitentiary or the Tököl Juvenile Penitentiary Institution).

The average number of detainees increased from 17,792 in 2015 to 18,023 in 2016. In 2017 a slight decrease of 79 inmates was detected.[16] In June 2018 the number of inmates was 17,516. A **new methodology was introduced for calculating the capacity** of penitentiaries: as of January 2017, capacity is determined based on the overall floor area (save for toilets), whereas earlier the area of the furniture was deducted from the overall floor area.[17] At the same time the minimum space provided for the inmates increased from 3 to 4

[12] A briefing paper prepared by the HHC in May 2018 on the lack of execution of these judgments is available here: https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/5b3de3fc562fa782f9fd2de3/1530782717331/HHC_briefing+paper_Laszlo+Magyar+v+Hungary_20180528.pdf.
[13] See in detail: http://hudoc.exec.coe.int/eng?i=004-10897.
[14] BVOP (2018): Börtönstatisztikai Szemle , p.9. http://bv.gov.hu/download/3/13/32000/Bortonstatisztikai%20Szemle%202018%201.pdf
[15] Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13
[16] Review of Hungarian Prison Statistics, 2017/1, http://bv.gov.hu/download/0/fc/f1000/REVIEW_OF_HUNGARIAN_PRISON_STATISTICS_2017_1.pdf, pp. 3 and 6
[17] Decree 16/2014. (XII. 19.) of the Ministry of Justice, Article 121

m2. Surprisingly the NHP states that the legal modifications have not affected the overcrowding rates which remained unchanged according their data.

The HHC has received a response to its data request dated on 13 April 2018. The National Penitentiary Headquarters in its reply explicitly stated that on 5 April 2018 **the smallest moving space per inmate was 2.15 m2**: in the High and Medium Security Penitentiary Institute in Sátoraljaújhely 2 detainees were placed in a cell of 4.3 m2.

The government proposed a program to build 10 new detention facilities, but the program has not been launched yet as of September 2018 and **not even one new penitentiary was constructed**.

According to the official prison statistics, institutions that hold pre-trial detainees tend to be more overcrowded than institutions holding convicted prisoners.[18] The rate of overcrowding in almost half of remand houses exceeded 130% and in certain institutions it is higher than 150%. Furthermore overcrowding is still often accompanied by **unsatisfactory detention conditions**, such as toilets separated from the rest of the cell only by a textile curtain, inadequate number of toilets and sinks, and bedbugs.

The pilot judgment prompted the Hungarian Parliament to introduce a domestic remedy (complaint) and compensation procedure for persons detained in overcrowded cells, which meant a significant progress. While taking note of the *Domján v. Hungary* judgment,[19] saying that the domestic remedy (complaint) and compensation procedure introduced for those detained in overcrowded cells "meets in principle the criteria set out in the pilot judgment given in the case of *Varga and Others v. Hungary*", the HHC wishes to reiterate its standpoint that the solution chosen by the Hungarian Government is not ideal and that the **system of complaints is ineffective** due to the lack of sufficient prison capacity. The **system of complaints** on detention conditions to be submitted to the prison governor, which should primarily result in the transfer of the detainee to a not overcrowded cell or institution, **is ineffective** due to the lack of sufficient prison capacity. This assessment is supported by the National Penitentiary Headquarters' 5 May 2017 response to the HHC's freedom of information request on complaints and compensation claims related to the overcrowding of prisons. Between 1 January and 21 April 2017, altogether 984 complaints were submitted due to substandard detention conditions. **Only in** 136 cases **(13.8%) could governors take measures to remedy the situation within the concerned prison**, in the rest of the cases the complaint was forwarded to the national headquarters. Out of the 734 cases in which the national headquarters had taken a decision until 21 April 2017, **only in 72 (9.8%) could the complaining detainee be transferred into another prison**, in the remaining over 90% of the cases, there was no less crowded prison into which the complainant could have been transferred, so the case had to be referred back to the prison governor.

Concerns regarding the **compensation procedure** include that (1) it is a **precondition to submit a complaint to the prison governor** for claiming compensation, (2) the **amount of daily compensation is low** as compared to the just satisfaction granted by ECtHR, (3) the compensation procedure is **not adversarial**, and (4) compensation claims are **overburdening the penitentiary and the judicial system**. Repercussions against detainees submitting complaints have been also reported.[20] In addition, **authorities are frequently slow in providing data**. According to the law, penitentiary institutions shall collect all data related to the specific term of detention relevant to a complaint, and submit them to the competent court within 30 days. However, frequently they conduct this duty not even within 150 or 210 days. In case they do it on time, they tend not to submit a full report, and the court needs to request them to fill in the gaps with the missing data. In certain cases, the repeated requests of the judge are not reacted upon by the penitentiary institutions.

In its letter sent as a reply for a freedom of information request the National Penitentiary Headquarters declared that **863 staff positions have been unfilled** as of 1 February 2018. Furthermore between 1

[18] For official statistics see:
http://bv.gov.hu/bortonstatisztikai-szemle
[19] Application no. 5433/17
[20] For more information, see the HHC's communication submitted to the Council of Europe: http://www.helsinki.hu/wp-content/uploads/HHC_communication_Varga_and_Others_v_Hungary_082017.pdf.

January 2017 and 1 January 2018, 1099 staff members left the prison system, meaning that approximately **12% of all staff has quit** out of whom 358 left the system during the probation period. In 2015 341 contracted staff members resigned. The present shortage of staff may cause serious problems and may entail that inmates have less possibility to leave the cells or take part in meaningful activities since these arrangements would require more staff than simply being kept in the cells.

HHC recommendations:

- The possibility of "unlimited" **pre-trial detention** pending a first instance judgment in certain cases should be abolished; and the deficiencies of the practice of pre-trial detention decision-making as highlighted by European Court of Human Rights judgments should be addressed.
- **Life imprisonment** without the possibility of parole should be abolished.
- The number of **detainees in penitentiaries** should be decreased by the wider application of alternative, non-custodial sentences and coercive measures and less harsh criminal policy.
- The State should ensure that **detention conditions** (e.g. moving space, sanitary conditions) comply with international standards.

Communication with the relatives and lawyers by phone

Phone calls are allowed as follows. In case of medium security sub-regime, 40 minutes per week is allowed (in the low security sub-regime 50 minutes, and in the high security sub-regime only 20 minutes is allowed each month). Each detainee is given an own mobile phone device by the prison service if the required deposit is paid. The cost of all phone calls is paid by the inmate, therefore calls are only possible if the inmate has enough money available on her virtual account.

The **tariff of phone calls is excessive** compared to the average tariff outside the penitentiary institutions. Within the penitentiary, the tariff with taxes is HUF 81 (approx. EUR 0,25) in case of calls to landline phones, while HUF 93 (EUR 0,29) to cells. In case of calls to abroad, the tariff ranges from HUF 124 to 683 (EUR 0,39 to 2,13) depending on the country. These prices seem excessive especially in light of the fact that outside the detention facilities mobile companies are striving for gaining more customers by decreasing their tariffs which in general is around HUF 20 (EUR 0,06) and do not exceed HUF 35 (EUR 0,11). The **unused balance is cancelled without reimbursement** when the detainee is released, passes away or is removed to reintegration detention.

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

These **mobile phones** (which cost in fact HUF 20,627 including taxes, approx. EUR 64) **can be purchased for a deposit of HUF 35,000** (EUR 109) to be paid by the detainee. The deposit will be reimbursed once the detainee is released but only if the phone is intact. (This deposit has to be paid also by the detainees sentenced to life imprisonment.) In certain exceptional cases, detainees are allowed to pay the deposit in more instalments, however if the relatives send money to the virtual account of the detainee for the purchase of food, the money will be taken by the institution for the coverage of the deposit.

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

privilege. In case the detainee in question is illiterate annihilating the possibility of written communication, the right of the detainee to access the lawyer is severely restricted.

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

HHC recommendations:

- Considering the fact that **regular contact with the family is a precondition of succesfull reintegration**, the penitentiary system should strive for facilitating it so that the distance between the detainees and their relatives does not grow further due to financial difficulties.
- The most important step to be taken should be the **reduction of tariffs** (they should be changed in light of the average tariffs given outside the penitentiary institutions considering the fact that this particular group of "customers" is composed of approximately 18.000 people). It has an utmost importance especially in the case of juvenile detainees in whose life regular contact with the relatives plays an even more important role.
- The penitentiary institutions should provide **at least 10 minutes of phone call per week for free** to detainees who do not possess the financial asset needed for the purchase a mobile phone or cannot pay the calls due to the high tariffs.
- The detainees (especially those detained in low security sub-regime) can contact their family members via **Skype**. The technical facilities are given in the majority of penitentiary institutions for Skype calls which do not endanger the order of the institution or the success of the criminal proceedings. The use of Skype does not create any additional financial burden. Therefore, Skype calls should be permitted on a more frequent, regular basis.
- The potential solution should be considered to make the mobile phones used in the penitentiary institutions able to **receive calls from the outside**. Consequently, the persons permitted by the authorities to contact a detainee could call those who cannot afford the phone calls due to the high tariff.
- The detainees (especially those in pre-trial detention) should be provided the possibility of **calling their relatives and lawyers not in the presence of the cellmates** for the sake of privacy and the protection of lawyer-client privilege.

Personal contact with the relatives and lawyers

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

Physical circumstances given in the **consultation rooms** and the plexiglass wall placed in them frequently **restrict the right for the access to a lawyer**. For instance, in the Building 'B' of the Strict and Medium Security Prison of Budapest the narrow vent below the plexiglass wall which is used to enable lawyers to slip documents to the client does not exist anymore. In case the lawyer intends to hand over to the detainee a retainer, case files or just notes on the case strategy, the guards need to be requested to assist in handing the documents over to the client. Consequently, **penitentiary personnel can get access to the documents protected by client-lawyer privilege**. Due to the plexiglass wall, the lawyer does not hear the words of the detainee clearly either. An extreme example is provided by the National Penitentiary Institution of Szombathely, where **video-recording facilities are installed in the consultation rooms**.

An additional problem with regard to personal contact with relatives is that in many cases detainees are held in a **penitentiary institution far from the place of their regular residence**. An obvious advantage is that after release it is less probable that the former detainee meets the penitentiary personnel in the streets of his/her town. However, it results in **an extreme financial burden on the relatives** who have to travel hundreds of kilometre for visiting the detainee. The worse financial situation the family is in, the more probably personal contact is annihilated.

HHC recommendations:

- The general use of plexiglass walls should be abolished and a **system of differentiation** should be introduced. In the case of detainees held **in low security prison regime**, the possibility of physical contact with family members should be restored.
- The necessity of the **routine practice of strip and search** before and after the visits should be reviewed.
- In theory, detainees can receive visitors outside the prison. For an inmate detained in medium security regime such privilege (receiving visitors outside the prison maximum twice per year from 2 to 6 hours, or going on a short leave for 4 days per year) can be granted if at least 6 months and one-third of the duration of the sentence has elapsed. In practice, this privilege is very rarely granted. In order to facilitate personal contact with relatives, the possibility of more frequent permission of **visits outside the penitentiary and short leave** should be considered.
- The normative and physical preconditions of the introduction of the so-called **"intimate room"** (for private meetings of couples) should be considered.

Access to a lawyer

A number of penitentiary institutions take measures resulting in the restriction of the right of access to a lawyer. Certain institutions **limits consultation preceding the signing of the retainer to a few minutes**, and it happens that the **member of the penitentiary personnel is within sight and hearing distance**, he/she can hear the consultation. There are institutions which set the condition to the entry of the lawyer that the **retainer is registered in the internal registration system of the penitentiary**, although such condition is not provided by the law. Additional measures are frequently taken by penitentiary institutions resulting in the restriction of the right of access to a lawyer (e.g. long time spent on security and administrative measures before the entry of the lawyer resulting in the **limited duration of the consultation**, installation of **video-recording device in the consultation room**, physical circumstances given in the consultation room leading to the **restriction of the confidentiality of consultation**). In case of appointed defence counsels, limited communication opportunities in pre-trial detention are multiplied by the shortcomings of the appointed defence counsel system. According to HHC's research, short notice and inappropriate (via postal letter, outside office hours) notification of the defence counsels about investigative

acts is a frequent problem. If the defence counsel does not appear at the first interrogation, the detainee cannot consult him/her via phone in the penitentiary institution.[21]

As to the access to a lawyer in penitentiaries, the HHC communicated with the Chief Prosecutor's Office who shared the majority of HHC's concerns.[22] The reaction of the National Penitentiary Headquarters - upon HHC's information note - included no detailed reaction, only a brief statement namely that no systematic problems exist in the penitentiary system related to the access of detainees to lawyers.[23] Yet the problems, that have significant detrimental effect to the right to access to a lawyer, still persist.

Petty offence confinement

1. Normative framework on petty offences

In the past years the **legal framework on petty offences became more severe**: Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereafter: Petty Offence Act) upheld an extended list of offences punishable with confinement (to be executed in penitentiaries), and made confinement possible for the third petty offence within 6 month even if none of the offences would be otherwise punishable by confinement.[24] The law allows for converting a fine or community service into confinement without hearing the offender in case he/she fails to pay the fine or carry out the work,[25] which violates the European Convention on Human Rights (ECHR). Although in some cases non-custodial sanctions are provided by law, community service and mediation are heavily underused as independent sanctions.[26] Extremely strict deadlines and lack of plain language in official papers hinder the conversion of fines into community service instead of confinement.

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

Overruling Decision 38/2012. (XI. 14.) of **the Constitutional Court**, which stated that criminalizing the status of homelessness is unconstitutional since it violates human dignity, and despite criticism by the UN Special Rapporteurs on extreme poverty and human rights and on adequate housing,[27] the **Fourth Amendment to the Fundamental Law enabled the Parliament or local governments to criminalize homelessness**. Accordingly, in 2013 the Parliament **introduced petty offences criminalizing homelessness**, such as rough sleeping. According to the Seventh Amendment of the Fundamental Law, which was passed on 20 June 2018, rough sleeping became an unconstitutional act. As a result of a recent modification of the Petty Offence Act (coming into force on 15 October 2018), a fine cannot be imposed for rough sleeping, only warning, and after multiplied perpetration, community service. In case the offender fails or is unable to carry out the service, the sentence is converted to confinement. Due to the bad physical and mental condition of homeless people, community service is often not an alternative for them. This means that in many cases the most likely scenario will be confinement.[28]

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[21] For more information, see HHC's report on 'The Right of Access to a Lawyer and Legal Aid in Criminal Proceedings in Hungary', 2018: https:// www.helsinki.hu/wp-content/uploads/HHC_Access_to_a_Lawyer_and_Legal_Aid_201803.pdf
[22] https://www.helsinki.hu/wp-content/uploads/MHB_vedelemhez_jog_serulese.pdf
https://www.helsinki.hu/wp-content/uploads/Legfu_valasza_vedelemhez_valo_jog.pdf
[23] https://www.helsinki.hu/wp-content/uploads/BvOP_valasza_vedelemhez_valo_jog.pdf
[24] Petty Offence Act, Article 23
[25] Petty Offence Act, Articles 12 and 15
[26] According to the National Penal Statistics, in 2017 from 703,521 cases only 1,406 ended with community service as an independent sanction.
[27] *Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing*, 15 February 2012, http://www.europe.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9994&LangID=E
[28] For further information, see: https://www.helsinki.hu/en/criminalization-of-homelessness-in-hungary/

2. Detention conditions in petty offence confinement

In **petty offence confinement**, frequently there is **no television**, even though the affected detainees cannot take part in many activities (e.g. education, work) due to the short duration of detention. These detainees typically do not have the financial assets to bring an own television into the penitentiary institution. **Television should be installed in all cells.**

Contact with detainees in petty offence confinement is particularly problematic due to the fact that like other detainees they have to seek for a visit on **the regular form for request**. The form is sent by regular mail to the relative who then has to send the signed version back to the penitentiary institution. Due to objective barriers given by regular post services, it might occur that the form is received by the institution one week later. This practically **deprives the detainee of the right to have contact with the relatives in cases of a short-term petty offence confinement**. The same exists in case of phone calls – the bureaucratic and costly procedure of getting phones and the high tariffs hinder phone communication in case of petty offender detainees, who usually have low social statuses. A **more expeditious procedure of permission should be introduced** in these cases.

Long-term petty offence confinement is usually enforced in the **National Penitentiary Institution of Állampuszta**. **Approaching this location by public transport is very difficult**, it is far from the regular residence of most of the relatives of detainees, and going there by car involves a relatively high cost. In practice, the above circumstances result in the restriction of the right of detainees in petty offence confinement to receive visitors. It also violates the closest-to-home prison placements principle.

HHC recommendations:

- The use of non-custodial sentences, such as **community service and mediation as independent sanctions should be enhanced**.
- The variety of non-custodial sanctions should be widened, especially in case of juvenile petty offenders.
- Petty offence confinement should be abolished in case of juveniles. In the context of the currently applicable regulation, **petty offence confinement in case of juveniles** should be enforced in correctional facilities.
- In case of **multiple petty offences** committed by one person, custodial sentences imposed for each petty offence should not be cumulated. In order to avoid the exceeding length of detention, the calculation of custodial sentences imposed for a series of petty offences should be based on the principle of proportionality.

Police establishments

1. Pre-trial detention in police cells

Pre-trial detention as a main rule shall be implemented in a penitentiary institution.[29] However, based on prosecutorial decisions - in case investigative measures demand so - pre-trial detention is executed in police cells. The duration of pre-trial detention executed in police custody cannot exceed 60 days.[30]

[29] Act CCXL of 2013 on the Implementation of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement, Article 388

[30] Act XC of 2017 on the Code of Criminal Procedure, Article 299 (2)

The HHC conducted a monitoring visit (following up a previous NPM visit conducted in 2015) in the Central Holding Facility of the Metropolitan Police Headquarters of Budapest in December 2016. Physical conditions (including the lack of toilets in the cells) raised serious concerns. According to the information shared by the National Police Headquarters, financial assets were allocated to the renovation of the cells in 2017.[31] The NPM conducted a monitoring visit in 2017 but has not reported about any significant progress.[32]

2. Normative framework on 72-hour detention and police custody

72-hour detention is the temporary deprivation of the suspect's liberty without a judicial decision. It can be ordered if there is a well-grounded suspicion that the concerned person has committed a criminal offence punishable with imprisonment, provided that his/her pre-trial detention is likely, or if the perpetrator was caught on act or his/her identity could not be identified (this latter case was introduced by the new regulation of the Act XC of 2017 on the Code of Criminal Procedure). This form of detention may last up to 72 hours, after which – unless the court orders another coercive measure requiring judicial order – the suspect shall be released.[33] 72-hour detention is implemented in police jails.[34] The authorities shall notify the major individual named by the suspect about the order and the place of detention within 8 hours. However, it can be denied if the efficiency of the criminal procedure or the protection of the life or physical integrity of an individual so requires.[35]

The 72-hour detention may be preceded by **police custody** under Act XXXIV of 1994 on the Police. The police officer *shall* arrest and present to the competent authority a person who is caught in the act of committing a criminal offence and *may* arrest a person who is suspected of having committed an offence. (Persons taken into police custody are not regarded as defendants –suspects –, since the suspicion has not been formally communicated to them.) The police may maintain the deprivation of liberty until it is absolutely necessary, but for not longer than eight hours. If the objective of the detention has not been realised, this term may be prolonged by four hours on one occasion.[36] The time spent in police custody shall be taken into account when the time spent in the 72-hour detention is calculated.[37]

[31] The report of the HHC on the Central Holding Facility of the Metropolitan Police Headquarters is available at https://www.helsinki.hu/wp-content/uploads/MHB_jelentes_Gyorskocsi_utcai_fogda_20161208_vegleges.pdf
[32] The report of the NPM on the Central Holding Facility of the Metropolitan Police Headquarters is available at http://www.ajbh.hu/documents/10180/2809026/OPCAT+jelent%C3%A9s+a+BRFK+K%C3%B6zponti+Fogda+l%C3%A1togat%C3%A1s%C3%A1r%C3%B3l+496_2018.pdf/da6b3adb-61c5-89a6-72ba-327124b4288b
[33] CCP, Article 274
[34] Act CCXL of 2013 on the Implementation of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement, Article 427(2)
[35] CCP, Article 275(1)-(2)
[36] Police Act, Article 33(3)
[37] CCP, Article 274(5)

Ill-treatment

1. General overview of prosecuting ill-treatment by officials

The **success rate of reporting ill-treatment and forced interrogation has been extremely low**, between 0% and 6.56% in the past seven years. In comparison, reports on "violence against an official person" resulted in an indictment in 60% to 72% of the procedures in the same period.[38]

Ill-treatment in official proceeding						
	Rejection of the report		Termination of the investigation		Indictment	
2011	173	20%	667	76%	33	4%
2012	197	22%	649	72%	36	4%
2013	219	23%	709	74%	21	2%
2014	289	29%	690	68%	29	3%
2015	208	25%	600	72%	21	3%
2016	186	25%	520	70%	30	4%
2017	104	17%	487	80%	18	3%

Forced interrogation						
	Rejection of the report		Termination of the investigation		Indictment	
2011	44	26%	126	74%	0	0%
2012	68	34%	128	63%	5	2%
2013	77	36%	133	62%	2	1%
2014	83	37%	139	62%	3	1.33%
2015	88	39%	136	60%	1	0.44%
2016	68	42%	95	58%	0	0%
2017	31	25%	83	68%	8	6.56%

Furthermore, even when an indictment takes place, the **success rate of the prosecution** (which on average exceeds 95%) **remains low**: it was e.g. only 69.53% in the first six months of 2014 in cases of abuses committed by official persons. Beyond the difficulties of proving such cases, this may be attributed to a certain degree of lenience on the part of the authorities, shown also by the **mild sentences**.

In addition, since 2012, the Minister of Interior is entitled to decide upon the eligibility of police officers sentenced to suspended imprisonment, thus, to **allow police officers to continue their work even if they have been convicted for ill-treatment for suspended imprisonment**,[39] a power which has been used by the Minister several times. This sends a clear message to the potential perpetrators of torture and ill-treatment that their misuse of power may be tolerated by the organization.

[38] Source: Chief Prosecutor's Office. For further data, see: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HUN/INT_CCPR_ICS_HUN_21527_E.pdf, pp. 18–19.
[39] Act XLIII of 1996 on the Status of Members of the Armed Forces, Article 56 (6a)

Detainees making allegations of ill-treatment by police officers do not have the right to be examined by an independent physician. **The presence of police officers at medical examinations became the main rule**.

The decrease of the number of penitentiary staff is a problem also from the perspective of the prevention of **inter-detainee physical attacks**. These incidents meet frequently the passivity of the authorities. All necessary measures (including the maintenance of sufficient capacity) should be taken in order to prevent inter-detainee violence.

2. A specific case of mass ill-treatment of inmates

In the past few months the HHC has received **numerous accounts on ill-treatment by prison guards in the Szombathely National Penitentiary**. Inmates claim inter-detainee violence an everyday event. Detainees considered being at risk of self-harm or who allegedly behave violently are handcuffed by the guards and hooked high on the corridor's fence inside the penitentiary. They left hanging for long (12) hours. There have been cases when inmates "wet and shit" under themselves because of the suffering. In the vast majority of the cases these acts remain unreported and therefore unpunished. Guards discourage victims from launching an official procedure.

Apart from the reports by inmates, the HHC is informed about two cases in which the inmate victims made a report about the ill-treatment through their lawyers. Both procedures are on-going at the time of writing the present report. In one of the cases the lawyer requested the internal investigation of the penitentiary which established that the inmate was "locked to an object" as a consequence of his self-harming behaviour. This action of the guards did not cause any injuries, contrary, it was the inmate who was to injure himself while being handcuffed. The penitentiary did not initiate any criminal proceedings. Furthermore a guard from the penitentiary personally mentioned to an attorney of the HHC the practice of the abusive handcuffing.

Monitoring in penitentiary institutions

As regards independent monitoring of detention in penitentiaries by domestic human rights institutions, two issues play a significant role: (1) the access of NGOs to detainees and (2) the operation of the OPCAT National Preventive Mechanism.

The HHC concluded cooperation agreements with a number of national authorities (the National Penitentiary Headquarters, the National Police Headquarters, and the Immigration and Asylum Office) and documented the enforcement of human rights in detention facilities systematically for a long time. For instance, the agreement with the National Penitentiary Headquarters was first concluded in 1999 and then re-concluded on a number of occasions, latest in 2016. It granted the HHC access to penitentiary institutions and ensured direct contact with detainees also as potential clients. Based on the agreement, the HHC conducted 77 monitoring visits to penitentiary institutions and documented whether the treatment of detainees is in compliance with domestic legislation and international human rights framework. **In 2017 national authorities have terminated unilaterally the agreements. As a consequence, the HHC ceases to be entitled to conduct systematic monitoring visits** to police detention facilities, penitentiary institutions, immigration jails, asylum jails, reception centres for asylum seekers and the Border Guards' immigration detention facilities. Consequently, the **civilian, independent legal control and the possibility of wide ranging counselling were annihilated** in these detention facilities that has limited the possibilities of torture prevention initiatives and increased the risk of torture and ill-treatment. HHC continues to receive letters from detainees, consequently we know that detention conditions and the treatment of detainees continues not to comply in full with international standards.

After the ratification of the OPCAT, the Commissioner for Fundamental Rights (the Ombudsperson) was designated to be the National Preventive Mechanism (NPM) in Hungary. The NPM, which started its operation in 2015, has demonstrated a development in its methods of monitoring, recommendations included in recent

reports became more specific and pragmatic, and international standards are duly referred to in its findings. However, the **monitoring methods demand further development** when it comes to thorough evaluation of facts and follow-up: strict and direct follow-up is lacking even in cases when severe violations of the CAT are revealed by the monitoring visits. The publication of the reports is slow: it takes usually more than 6 months. The NPM has conducted **monitoring visits annually to 8–13 detention facilities, which is a low number,** considering that the NPM's mandate covers over 650 facilities, from penitentiaries to psychiatric institutions.

Cooperation with the members of the Civil Consultative Body (CCB), including the HHC, has improved. At the same time, more substantive contribution of CCB members would improve the efficiency of the NPM. Also, the NPM **does not include legal experts of the CCB into its monitoring teams, although it could be a solution for problems deriving from the lack of capacity**, and could facilitate the acceleration of the publication of reports and the increase of the number of monitoring visits per year. When discussing the cooperation of the NPM with the CCB, the **Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** in her Report on the official SPT visit conducted in Hungary in March 2017 recommended that *„the NPM engage more directly and independently with civil society organizations, including, at a minimum, through their increased participation in NPM visits, internal trainings, outreach activities, in report writing and in dialogue with the authorities."*[40]

Additional concerns and recommendations related to penitentiaries

- The **number of penitentiary personnel** is not sufficient, regular psychological supervision and training are missing. The minimum number of penitentiary personnel and personnel fulfilling certain particular positions (e.g. psychologists, reintegration officers) in proportion with the number of detainees should be regulated and ensured in practice.

- **Internal Rules** of penitentiary institutions are generally available for the detainees but the language of the Rules is complicated. Rules should be amended so that they are **accessible** and new information notes should be created and disseminated about issues of high interest of detainees (e.g. detailed information on the balance and history of the virtual account of the detainees). According to international standards, **information on the procedural rights of defendants should be made available** to all detainees **in an accessible language**.

- The **salary of working detainees is extremely low**. Reintegration would be facilitated by the possibility of saving money or financially assisting family members instead of being a burden. Currently, it is not possible, costs of living in the penitentiary is barely covered by the income of a working detainee. The Labour Code continues not to apply to the employment of detainees, hence the period served in the penitentiary does not count to the pension scheme.

- **Medical treatment** is of very low quality and not all kinds of medical treatment are available in each institution, for instance, dental treatment is lacking in a number of penitentiaries. Detainees having financial problems are not able to pay for the medication needed for a proper treatment.

- **Access of detainees to free legal aid** is provided to a limited extent. The state does not provide for efficient free legal aid to the detainees whose majority is not aware of the means of legal remedy.

- According to recent reports the **staff turnover rate has significantly increased**. From 1 January 2017 to 31 January 2018, 1099 staff left the services out of which 358 staff left during the probation period.[41] This influences staff-inmates relations significantly.

[40] SPT Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism, p 6
http://www.ajbh.hu/documents/14315/2605713/CAT-OP-HUN-R2+ENG.pdf/b62f5918-432c-788b-0319-34b58d5686dd

[41] https://blog.atlatszo.hu/2018/03/kozel-900-ember-hianyzik-a-buntetes-vegrehajtas-allomanyabol-tobb-mint-ezren-leptek-ki-az-elmult-evben/

Annexes

1. Data available to the HHC on the occupancy rate of penitentiary institutions

See attached in a separate excel sheet.

2. Experiences gained by the latest HHC's monitoring visits in penitentiaries

The latest monitoring visit was conducted by the HHC in September 2017 at the Heves County Penitentiary Institution (place of institution: Eger). None of the cells of the institution provides the adequate moving space. The smallest moving space for an inmate was 1.92 m2. In the Borsod-Abaúj-Zemplén County Penitentiary Institution (place of institution: Miskolc, accommodating primarily male pre-trial detainees) where HHC conducted a monitoring visit in June 2017. The smallest moving space per detainee amounted to 1.5 m2.[42] It has to be noted that both are remand houses where overcrowding is even a more severe problem as indicated above in the present report.

The below photos were taken during the June 2017 monitoring visit conducted by the HHC at the Borsod-Abaúj-Zemplén County Penitentiary Institution's remand house.

In the Somogy County Penitentiary Institution (place of institution: Pécs, date of visit: March 2017) the average space per detainee in the most crowded cell was 2.83 m2. Such a small moving space was not an exceptional case: numerous inmates were held in the institution under similar conditions. Average occupancy rate in this penitentiary in 2016 was 123% which was below the national average.[43] In the Vác Strict and Medium Security Prison the average occupancy rate was 143% in 2016. During the HHC monitoring visit in August 2016 the 3 m2 personal space prescribed by law was guaranteed to 53 inmates, while in case of 773 inmates the prison could not comply with the relevant regulations. The smallest free moving space per detainee in a cell was 1.39 m2.[44]

The HHC paid a visit to the Márianosztra Penitentiary in April and a follow-up visit in May 2016. The general human right situation was extremely bad in the institution (e.g. masked, unidentifiable guards have been intimidating and violating the inmates, etc.). The overcrowding reached an unacceptable level: among the 101 cells of the institution the moving space was adequate only in 12 cells for 79 detainees. The remaining

[42] https://www.helsinki.hu/wp-content/uploads/MHB_jelentes_foto_BAZMBVI_fin_BVI_BVOPeszrevetelekkel.pdf
[43] http://www.helsinki.hu/wp-content/uploads/MHB_jelentes_Somogy_Megyei_Bv_Intezet_2017.pdf, p. 2
[44] http://www.helsinki.hu/wp-content/uploads/Jelentes_Vac_2016-honlapra.pdf, p.2

606 inmates were held in 89 cells. In the most crowded cell merely 0.91 square meters of moving space was available for the inmates.[45]

The below photos were taken in April 2016 during the HHC visit to the Márianosztra Penitentiary.

[45] http://www.helsinki.hu/wp-content/uploads/MHB_jelentes_Marianosztrai-fegyhaz_2016_vegleges.pdf, p3