



Hungarian Helsinki Committee

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**Mr Nils Muižnieks
Commissioner for Human Rights
of the Council of Europe**

re: briefing paper for July 2014 visit to Hungary

Budapest, 18 June 2014

Dear Commissioner Muižnieks,

Thank you for this opportunity to provide you with relevant background information and a summary list of suggested key issues to cover during your visit to Hungary in early July 2014.

The Hungarian Helsinki Committee (HHC) is a leading non-governmental human rights organisation in Central Europe. The HHC has been an implementing partner of the UN High Commissioner for Refugees since 1998 and is the only organisation providing free-of-charge legal assistance to asylum-seekers all around Hungary (having assisted over 1,000 asylum seekers in 2013). The HHC is an active member of the European Council on Refugees and Exiles (ECRE) and – as a founding member – chairs the Steering Committee of the European Network on Statelessness (ENS). The HHC regularly monitors penitentiary institutions, police jails and immigration detention centres since the mid-1990's. Reputable international bodies (such as the Council of Europe Venice Commission, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the UNHCR, UN special rapporteurs, etc.), courts and government human rights reports (such as the annual human rights reports of the US State Department) regularly refer to and quote the HHC as a key source of information.

We trust that the following information will be of use when preparing and conducting your visit to Hungary.

1. Problems concerning pre-trial detention¹

- Pre-trial detention is used excessively: almost one-third of the total prison population consists of pre-trial detainees, contributing to severe overcrowding in the penitentiary system (the average overcrowding rate is 143 %). Existing alternatives to pre-trial detention (house arrest, etc.) are heavily underused.
- In a very high percentage of cases, courts accept the prosecution's motion for pre-trial detention almost as an automatic routine; decisions ordering or extending pre-trial detention often fail to take into account individual circumstances of the defendants.
- The length of pre-trial detention tends to be excessive.

¹ See: Briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights, 8 October 2013, http://helsinki.hu/wp-content/uploads/HHC_briefing-paper_UNWGAD_8_Oct_2013.pdf, pp 7-8.

- The length of pre-trial detention became unlimited in case the procedure against the defendant is conducted because of a crime punishable by a prison term of up to 15 years or life-long imprisonment, which raises serious concerns in light of the case-law of the European Court of Human Rights.²
- Defence is granted very limited access to the case files in the investigative phase, as a result of which defendants are not able to effectively challenge their pre-trial detention (violation of Article 5 of the European Convention on Human Rights;³ violation of the EU Directive on the right to information in criminal proceedings).
- The pre-trial detention of juveniles between the age of 14 and 18 may also be executed in a penitentiary institution instead of a reformatory (having a less strict regime) upon the decision of the court if the interests of the criminal procedure require so, even if the defendant's personality and the nature of the offence he/she is charged with would not require this.

2. Life-long and actual life-long imprisonment⁴

- The Constitution and the Criminal Code provides for the possibility of actual life-long imprisonment, i.e. life imprisonment without the possibility of parole (violating Article 3 of the European Convention on Human Rights⁵ and contradicting the respective recommendation of the CPT⁶).
- If certain conditions are met, imposing an actual life-long imprisonment is mandatory for courts; the same applies to imposing life-long imprisonment. While this infringes the principle that criminal sanctions shall be individualised, the conditions for mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face the same sanction.
- The court shall determine the earliest time of considering conditional release in 25 years and its latest time in 40 years, the latter exceeding the period recommended by the European Court of Human Rights.

3. Confinement for petty offences⁷

- The possibility of confinement has been extended to petty offences/misdemeanours against the property. Confinement shall be applied for the third petty offence within a six-month period even if the petty offence committed would not be punishable by confinement.
- Juveniles may also be taken into confinement for petty offences up to 45 days and their detention is not applied only as a measure of last resort (violation of Article 37 of the 1989 Convention on the Rights of the Child).

² See: Update to the briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights, 25 November 2013, http://helsinki.hu/wp-content/uploads/UNWGAD_HUN_HHC_Addendum_25November2013.pdf.

³ See the following judgments of the European Court of Human Rights: X.Y. v. Hungary (Application no. 43888/08, Judgment of 19 March 2013), A.B. v. Hungary (Application no. 33292/09, Judgment of 16 April 2013), Baksza v. Hungary (Application no. 59196/08, Judgment of 23 April 2013), Hagyó v. Hungary (Application no. 52624/10, Judgment of 23 April 2013).

⁴ See in detail: Briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights, 8 October 2013, http://helsinki.hu/wp-content/uploads/HHC_briefing-paper_UNWGAD_8_Oct_2013.pdf, pp 7-8.

⁵ European Court of Human Rights: László Magyar v. Hungary (Application no. 73593/10, Judgment of 20 May 2014)

⁶ 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 30 January to 1 February 2007,

CPT/Inf (2007) 24, § 33.

⁷ See in detail: Briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights, 8 October 2013, http://helsinki.hu/wp-content/uploads/HHC_briefing-paper_UNWGAD_8_Oct_2013.pdf, pp 11-13.

- The confinement of juveniles shall be executed in penitentiary institutions (being in contradiction with Article 19 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice – “The Beijing Rules”).
- Those who commit a petty offence punishable with confinement, if caught in the act, may be taken into short-term detention (up to 72-hours) by the police automatically.
- Homelessness as such (rough sleeping) is a petty offence and is punishable by community work or fine, and, if “committed” for the third time within six months, shall be punished by confinement (contradicting a decision issued by the Constitutional Court of Hungary and despite criticism expressed by the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on adequate housing).⁸

4. Roma and the law enforcement⁹

- According to researches, police officers are highly biased against the Roma. Ethnic profiling is an existing practice. For example, one research study demonstrated that Roma persons are three times more likely to be stopped and checked,¹⁰ and an individual case showed that ethnic profiling also exists with respect to launching petty offence procedures.¹¹
- Deficiencies concerning the law and practice regarding hate crimes:
 - The Criminal Code’s hate crime provision makes the scope of protected groups unclear. Bias motivation is not considered as a qualifying circumstance in cases of criminal offences committed against property.
 - No strategy or policy documents have been issued by the state with regard to countering hate crimes, and there are no protocols established for the police or the prosecution in terms of investigation or indictment, which was pointed out by the European Monitoring Centre on Racism and Xenophobia already in 2005.¹²
 - Despite the related recommendation of ECRI¹³ and the remarks of OSCE ODIHR,¹⁴ no system has been set up for the comprehensive monitoring of incidents that may constitute a hate crime.
 - As also noted by the European Monitoring Centre on Racism and Xenophobia,¹⁵ authorities are reluctant to take into consideration the bias motivation of crimes in the course of the criminal proceedings.

⁸ A document summarising the situation regarding homelessness and the English translation of the law which introduced the petty offence in question is available here: <http://helsinki.hu/en/criminalization-of-homelessness-in-hungary>.

⁹ See in detail: Updated Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 and in 2013 in Hungary, http://romadecade.org/cms/upload/file/9270_file30_hu_updated-civil-society-monitoring-report.pdf, Chapters 5.4 and 5.5.

¹⁰ The report on the respective Strategies for Effective Stop and Search (STEPSS) Project is available here: http://helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf. See also: EU-MIDIS Data in Focus Report 4: Police Stops and Minorities, 2010, http://fra.europa.eu/sites/default/files/fra_uploads/1132-EU-MIDIS-police.pdf, p. 8.

¹¹ For a summary on the case, see: <http://www.opensocietyfoundations.org/voices/fined-being-roma-white-cycling> and http://www.non-discrimination.net/content/media/HU-40-HU_flash_r_racial_profiling.pdf.

¹² See: Policing racist crime and violence: a comparative analysis, September 2005, fra.europa.eu/sites/default/files/fra_uploads/542-PRCV_en.pdf, pp. 17, 28 and 40.

¹³ ECRI report on Hungary (fourth monitoring cycle), adopted on 20 June 2008, CRI(2009)3., www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-IV-2009-003-ENG.pdf, § 67.

¹⁴ Field Assessment of Violent Incidents against Roma in Hungary: Key Developments, Findings and Recommendations, Warsaw, 15 June 2010, www.osce.org/odihr/68545, pp. 41-42.

¹⁵ See: Policing racist crime and violence: a comparative analysis, September 2005, fra.europa.eu/sites/default/files/fra_uploads/542-PRCV_en.pdf, p. 16.

- The practice of the authorities has narrowed the scope of possibilities to counter hate speech through the means of criminal law.

5. Wide-spread detention of asylum-seekers

Until the end of 2012, many asylum-seekers were held in immigration detention in Hungary. The HHC, the UNHCR, the European Court of Human Rights and the European Commission strongly criticised this practice, questioning the legal ground of holding even first-time asylum-seekers in pre-deportation detention while the asylum proceedings were ongoing. In response, in 2013 the much-criticised detention practice was stopped and – following a six-month interim period – a new detention regime specific to asylum-seekers was introduced.¹⁶ The legal grounds of this so-called “asylum detention” are different from those of immigration detention; yet the systemic shortcomings of the two detention regimes are very similar. An information note¹⁷ published on 30 May 2014 presents the HHC’s main concerns in this respect, namely:

- First-time asylum applicants are frequently detained in asylum detention. In practice, asylum detention is not an exceptional measure: in the beginning of April 2014, over 40% of adult male first-time asylum-seekers were detained.
- Decisions ordering and upholding asylum detention are schematic, lack individualised reasoning with regard to the lawfulness and proportionality of detention, and fail to consider the individual circumstances (including vulnerabilities) of the person concerned.
- Alternatives to asylum detention that exist in Hungarian law are only applied on an exceptional basis. Even when they are used, the application of alternative measures is neither transparent, nor efficient.
- The automatic, periodical judicial review of asylum detention (performed at lengthy, 60-day intervals) is clearly ineffective, with no individualised decision-making.
- Despite the ban in Hungarian law, due to the lack of proper state-funded age assessment mechanisms, and the difficulties of accessing it, apparently and allegedly minor unaccompanied asylum-seekers are being kept in lengthy detention together with adult detainees.
- Detention centres are ill-equipped to accommodate vulnerable detainees; vulnerabilities are not properly assessed.

6. Problems concerning family reunification of refugees

While in principle Hungarian law allows for family reunification, certain rules and the practice of authorities often create insurmountable difficulties in this respect, especially in case of beneficiaries of international protection. As a result, certain categories of foreigners – such as Somali nationals, stateless Palestinian refugees from Syria and beneficiaries of subsidiary protection in general – are *de facto* excluded from family reunification in Hungary, while the process is made extremely burdensome for other refugees as well.

- Hungary does not accept certain travel documents, such as those issued by Somalia, or by Syrian authorities for stateless Palestinians. Nevertheless, unlike other EU Member States, Hungary refuses to apply any alternative measure that would enable for a one-way travel with the purpose of family reunification in such cases.¹⁸ Consequently, these two – particularly vulnerable – groups

¹⁶ The HHC’s 2013 information note provides background information on the legal framework of this detention regime, available at <http://helsinki.hu/wp-content/uploads/HHC-update-hungary-asylum-1-July-2013.pdf>.

¹⁷ See details about all these issues in Hungarian Helsinki Committee, Information Note on Asylum-Seekers in Detention and in Dublin Procedures in Hungary, May 2014, available at http://helsinki.hu/wp-content/uploads/HHC-Information-Note_May2014.pdf.

¹⁸ Alternative measures applied by other Member States include the issuance of a specific temporary *laissez-passer* for foreigners (e.g. Sweden, Netherlands, France, Austria, Italy), the acceptance of specific travel documents issued by the Red Cross for the purpose of family reunification (e.g. Austria, UK) and the use of the so-called EU Uniform Format Form, based on Council Regulation (EC) No 333/2002 of 18 February 2002 on a

are excluded from any possibility of family reunification based on their nationality (or the lack thereof).

- Applicants for family reunification, under Hungarian law, shall *lawfully* reside in the country where they submit the claim. This unreasonable condition often proves to be an insurmountable obstacle, as forced migrant family members frequently lack the financial means or even the legal possibility to lawfully enter one of the states where a Hungarian consulate can be found.
- Hungarian consulates are scarcely present in certain regions of the world (such as Sub-Saharan Africa), and accessing the closest consulate thus often involves lengthy, dangerous and extremely costly journeys for vulnerable persons (e.g. women with children). Yet, Hungarian authorities refuse to resort to practical solutions to facilitate access, such as the involvement of honorary consuls or cooperation with other states' diplomatic representations.
- Refugees' family members, based on the parallel provision in EU law, can apply for family reunification under favourable conditions within six months following the recognition of the sponsor's status (they are exempted from fulfilling the usual material conditions: livelihood, accommodation, health insurance). No preferential treatment is applied though for beneficiaries of subsidiary protection, *de facto* excluding this group (many of whom had to flee horrific circumstances in Syria or Afghanistan, leaving their family behind in danger) from family reunification, since persons holding this status can hardly ever fulfil the strict material conditions set by law.
- Neither non-married, long-term partners, nor spouses who have only got married in a religious ceremony can apply for family reunification, in contradiction of the relevant principles with regard to family life established by the European Court of Human Rights, and disregarding the fact that in certain countries of origin official state-registered marriage does not exist or is substituted by religious ceremonies.
- Upon the recognition of their status, beneficiaries of international protection are not informed about their right for family reunification and the preferential rules that are applicable in case of refugees.

According to the HHC's experience, these factors and further bureaucratic obstacles result in family reunification being close to impossible for beneficiaries of international protection in Hungary, causing a grave violation of the right to family life and the rights of the child as set forth by relevant international norms, including Article 8 of the European Convention on Human Rights.

7. Nationality and statelessness

- Hungary operates a dedicated statelessness determination procedure and a specific protection status for stateless persons, as well as it promotes the cause of the stateless at the international level. Nevertheless, under Hungarian law, only *lawfully* staying non-nationals can apply for stateless status.¹⁹ This unreasonable limitation excludes from protection most of those in need and is in breach of Hungary's international obligations under the 1954 Convention relating to the Status of Stateless Persons.²⁰ The UNHCR, the HHC, the European Network on Statelessness (ENS) and the Special Rapporteur on contemporary forms of racism, racial discrimination,

uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (e.g. UK, Germany).

¹⁹ See this issue analysed in detail in Gábor Gyulai, *Statelessness in Hungary: The Protection of Stateless Persons and the Prevention and Reduction of Statelessness*, Hungarian Helsinki Committee, December 2010, Chapter I.4.2, available at: <http://www.refworld.org/docid/4d6d26972.html>

²⁰ See the UNHCR' clear position (unanimously echoed by all international experts) on this issue at UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, Para. 17, available at: <http://www.refworld.org/docid/4f7dafb52.html>

xenophobia and related intolerance²¹ have repeatedly called on Hungary to delete this unlawful requirement, yet without effect.

- While certain safeguards are in place, Hungary still fails to ensure the proper prevention of statelessness at birth. Children born in Hungary to stateless persons with no domicile, children born to parents who are unable to pass on their nationality to their children and certain children born to beneficiaries of international protection are born stateless in Hungary resulting in the breach of Article 6 (2) (b) of the 1997 European Convention on Nationality, Article 1 (2) (a)-(b) of the 1961 Convention on the Reduction of Statelessness, and Articles 3 and 7 of the 1989 Convention on the Rights of the Child.²² Several children of beneficiaries of international protection remain of "unknown nationality" for many years or even decades, in contradiction with clear UNHCR and Council of Europe guidance on this matter.²³
- As a general rule, non-EU-nationals living in Hungary can apply for Hungarian citizenship after a minimum of 11 years of residence in the country.²⁴ This regulation is in breach of Article 6 (3) of the 1997 European Convention on Nationality, which stipulates 10 years as a maximum in this respect.
- 13 years after ratification, Hungary still maintains its reservations with respect to Article 11 and 12 of the 1997 European Convention on Nationality. Consequently, decisions on naturalisation are not motivated, and there is no appeal possibility whatsoever against negative decisions on naturalisation claims in Hungary.²⁵ The HHC's long-standing experience shows that due to the total lack of transparency or any (e.g. judicial) scrutiny, decisions on naturalisation are often taken in a questionable manner (rejecting candidates who apparently fulfil all conditions), with a specifically negative impact on refugees and other beneficiaries of international protection.²⁶

We will be delighted to share more information with you during your visit regarding these issues or any other topic related to the HHC's activities and experience.

Yours sincerely,



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²¹ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Mission to Hungary, A/HRC/20/33/Add.1, 23 April 2012, Para. 72, available at: http://www.ohchr.org/Documents/Issues/Racism/A.HRC.20.33.Add.1_en.pdf

²² See this issue analysed in detail in the HHC's recent report: Gábor Gyulai, *Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary*, Hungarian Helsinki Committee, January 2014, available at: <http://www.refworld.org/docid/5310640b4.html>

²³ Council of Europe Committee of Ministers Recommendation CM/Rec(2009)13 on the nationality of children, Article 8; UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, 21 December 2012, Para. 22

²⁴ Section 4 (1) (a) of Act LV of 1993 on Hungarian Citizenship stipulates 8 years of residence in Hungary *with a domicile*. However, most non-EU-nationals can only establish a domicile (*lakóhely*) when they obtain a permanent residence permit, for which the minimum waiting time is 3 years. See this issue explained in brief in Gábor Gyulai, *Statelessness in Hungary: The Protection of Stateless Persons and the Prevention and Reduction of Statelessness*, Hungarian Helsinki Committee, December 2010, p. 50, available at: <http://www.refworld.org/docid/4d6d26972.html>

²⁵ See more details in Gábor Gyulai, *Statelessness in Hungary: The Protection of Stateless Persons and the Prevention and Reduction of Statelessness*, Hungarian Helsinki Committee, December 2010, pp. 48-49

²⁶ See relevant statistics and a demonstrative case study in Gábor Gyulai, *Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary*, Hungarian Helsinki Committee, January 2014, pp. 16-17