



Hungarian Helsinki Committee

EXECUTIVE SUMMARY TO THE WRITTEN COMMENTS

BY

THE HUNGARIAN HELSINKI COMMITTEE

***REGARDING THE FIFTH PERIODIC REPORT OF
HUNGARY***

Constitutional and legal framework within which the Covenant is implemented

Concerns related to § 1 of the List of Issues

Removal of checks and balances from the constitutional framework: At the general elections in April 2010, the new Government coalition gained more than two-thirds of the seats in the Parliament, meaning that they have the possibility to amend the Constitution and other important laws without the consent of the opposition. Making use of this possibility, the new majority has removed some important elements of the system of checks and balances, and guarantees of a state based on the rule of law. Such steps include the amendment of the rules on proposing Constitutional Court judges (making it possible to nominate and elect judges without having to give any thought to the opinion of the opposition) and the adoption of legislation giving way to dismiss certain groups of civil servants without justification, thus undermining making them fully dependent on political considerations.

Principle of non-discrimination, rights of minorities, and freedom from torture and cruel, inhuman or degrading treatment

Concerns related to § 2 of the List of Issues

The Equal Treatment Authority's independence: The Authority's independence is questioned by the legislation based on which the appointment of the Authority' president's may be withdrawn by the Prime Minister at any time without any justification.

Concerns related to § 3 of the List of Issues

Lack of monitoring of racist crimes: Several international organizations have pointed out the lack of a system to monitor incidents that may constitute racist violence, however, even after the series of fatal attacks against the Roma in Hungary, no publicly available information indicates that the authorities are planning the set up of such a system.

Handling of violent attacks against the Roma: While the Hungarian authorities finally managed to identify the suspects of the series of fatal attacks against the Roma, severe omissions and negligence on the part of state authorities in handling the incidents have been revealed. The assistance provided by the authorities in certain cases to Roma victims of the attacks left much to be desired. Furthermore, it was revealed that National Security Service ended the surveillance of one of the perpetrators only some weeks before the first offences in question had been committed, although there was information that he wanted to acquire weapons. Despite these problems, there is still no information on whether the competent authorities have devised a plan to address the problem of investigating and prosecuting hate crimes in general

The continuation of the Hungarian Guard's operation: The association Hungarian Guard ("Magyar Gárda"), an extremist right-wing paramilitary group was dissolved by a legally binding court ruling in the summer of 2009, however, members of the Gárda have continued to carry out their activities. While both the legislators and the authorities (which were for a long time reluctant to take firm action) have taken some steps recently against the members of the movement, the phenomenon that the extreme right-wing party Jobbik, which has a fraction in the Hungarian Parliament, openly supports the Gárda and identifies with it, is left unanswered by the authorities.

Equality between men and women, and violence against women

Concerns related to § 9 of the List of Issues

Emergency sterilizations of Roma women: While it may not be claimed that information about "emergency" sterilizations of Roma women surface very frequently, cases in which the suspicion can be raised occur from time to time.

Freedom from torture and cruel, inhuman or degrading treatment, treatment of prisoners, liberty and security of a person, the right to a fair trial, and rights of minorities

Concerns related to § 11 of the List of Issues

Video-recording of interrogations: The video-recording of interrogations is still not obligatory in Hungary. Upon the request of the defendant or the defense counsel the recording is mandatory, but only if the defense advances the costs of such recording. Furthermore, most defendants are unaware of this possibility.

The independent medical examination of ill-treatment victims: The independent medical examination of persons who claim to have been ill-treated is still not guaranteed. Physicians employed by the police or the penitentiary institution examine detainees before their placement in the respective detention facilities and record their health status, including potential injuries. Thus, a detainee making allegations of ill-treatment does not have the right to be examined by a medical expert who is fully independent from the detaining authority.

In terms of a recently issued order of the National Chief of Police, absence of law enforcement personnel at medical examinations is the exception and not the rule, and the detainee's request to this end is decided on by the commander of the guards, so even if the physician agrees, the examination may still be conducted in the presence of the police.

Concerns related to § 12 of the List of Issues

Judicial practice in ill-treatment cases: According to available statistics up to the year 2006, judges are more lenient vis a vis police officers ill-treating civilians than the other way round. Recent statistics in this regard have not been provided to the HHC, so we are not in the position to evaluate newer trends, but wish to draw the Human Rights Committee's attention to the utmost importance of acquiring these data from the Hungarian Government.

With regard to compensation granted to victims of ill-treatment, it can be regarded as a positive measure that a Parliamentary Resolution calls on the Government to take the steps necessary to provide victims of police abuses that took place between 17 September and 25 October 2006 in relation to anti-Government demonstration with compensation. It needs to be pointed out however that the Resolution only concerns ill-treatment cases related to a series of demonstrations and riots targeted against the previous Government, so the measure has a definite political connotation. No similar initiative has been taken in relation to "everyday" police abuses.

As to compensations, it can be said that the sums granted by civilian courts to victims of police ill-treatment vary to a great degree. The HHC is aware of sums ranging from EUR 2,800 to HUF EUR 28,000. It needs to be pointed out though that compensations granted in relation to the 2006 September-October events, are not representative of the ordinary court practice.

The Independent Law Enforcement Complaints Body: The Shadow Report describes in detail the procedure and mandate of the Independent Law Enforcement Complaints Body, and points out the main deficiencies of the Body's mandate, including the fact that (i) the Body is not vested with the right to hear police officers: the officers are free to decide whether or not they give a statement upon the Body's inquiry; (ii) the Body is not vested with the right to interfere with the judicial review of the National Police Chief's decisions; (iii) it is understaffed compared to its growing workload.

Concerns related to § 14 of the List of Issues

The situation of short-term arrestees: Short-term arrest for up to 12 hours is still legal under the Police Act, and the legal framework regulating the status of persons under short-term arrest is still unclear, with only a handful of very basic provisions pertaining to the rights of arrestees, which forced the National Police Headquarters to issue a circular about the minimum standards to be applied to this group of detainees. This however may not be regarded as a satisfactory long-term solution.

Alternatives of pre-trial detention: Statistics on the practice of pretrial detention show that the existing alternatives to pre-trial detention are heavily underused, and that in a very high percentage of cases the courts accept the prosecution's motion for pre-trial detention.

Concerns related to § 15 of the List of Issues

Notification of relatives about detention: In a number of cases it was established that the requirement obliging the Police to allow detainees to notify their relatives or perform the notification if the detainee is not in the position to do so, was not met. Another related problem is that if the person is directly taken into a 72-hour detention under the Code of Criminal Procedure, the authority has as long as 24 hours to notify the relatives about the fact and place of detention.

Ex officio appointed defense counsels: Even the police's own surveys show that the system of the ex officio appointment of defense counsels (who provide criminal legal aid to indigent defendant) suffers from severe deficiencies. Such counsels often fail to participate in proceedings in the investigative stage, and the quality of their performance is believed by all actors of the procedure to be worse than that of retained counsels.

In the HHC's view this is to a great extent due to the fact that the investigating authority is completely free to choose the lawyer to be appointed, which poses a severe threat to effective defense, as the investigating authority is disinterested in efficient defense work. The HHC's research results also show that some attorneys base their law practice principally on ex officio appointments, so they may become financially dependent on the member of the police who takes decisions on appointments. Therefore, the selection of defense counsels must be randomized, so that the investigating authority is not able to influence the result of the appointment.

Practitioners claim that the defendant's right to inform a lawyer at the beginning of their detention is also not implemented properly in practice. Even when they know whom they would like to have notified, the notice given is often very short, or sent in a way that the chances of the lawyer receiving notification are practically non-existent.

Concerns related to § 16 of the List of Issues

Detention of aliens: The Hungarian policy on detention of aliens apprehended for unlawful entry or stay has significantly changed recently in a restrictive direction. In April-May 2010 altogether 11 new „temporary“ alien policing jails („temporary guarded shelters“) were opened throughout the country. Nine of these are police jails originally designed to detain criminal suspects for 72 hours (but not longer than 15 days), which were closed in 2004-2005 due to inappropriate detention conditions. The reopening was not preceded by refurbishment therefore physical conditions are still not appropriate for longer detention.

Aliens apprehended by the Police for unlawful entry or stay are now immediately detained even if they apply for asylum (previously, those who immediately applied for asylum had the chance to get into an open processing centre). According to the HHC's information the only exception from the above described new detention policy is the group of families with minor children and unaccompanied minors while pregnant women and married couples are also detained in the new detention regime (separately within the same jails).

According to HHC's recent experience, in most of the temporary alien policing jails the detention regime is extremely strict. Detainees are locked up in their cells all day and all night long, except for a

few hours that allow them to have a shower and spend some time in community areas. Hygienic conditions are extremely poor in some of the jails. Access to open air space/courtyard is not provided, only a room with windows lacking glasses is available for outdoor activities. Detainees in the „temporary“ detention facilities have no access to psychosocial assistance or counselling, community activities etc.

The new (temporary) jails were opened without allowing any time for preparation for the staff, in some jails police officers have no experience in working with foreigners, most of them have never worked as guards before. Communication between detainees and guards is hardly manageable.

Detention of asylum seekers beyond the legally prescribed length: The detention of asylum-seekers beyond the 15 days limit prescribed by law continues despite the fact that the Chief Public Prosecutor's Office called on the Office for Immigration and Naturalization to put end to the unlawful practice.

Judicial review of detention exists but remains a merely formal procedure.

Concerns related to § 17 of the List of Issues

Conditions in alien policing detention facilities: The HHC is not aware of steps envisaged by the government in order to reduce overcrowding in alien policing detention facilities. The reopening of cramped police jails to detain foreigners has significantly deteriorated the physical conditions of alien policing detention in general.

The lack of proper medical and psychological care seemed to be a serious issue in all the 10 visited jails as well in others in Kiskunhalas and Nyírbátor in August 2010.

Other concerns related to freedom from torture, the treatment of prisoners, and the liberty and security of a person

Real life imprisonment: Hungary is one of the few European countries where life imprisonment without the possibility of parole exists. Despite the view of the CPT and numerous Hungarian experts and NGO's that this form of punishment is degrading and poses serious security problems for the penitentiary system, there is no intention to amend the provisions setting forth the possibility of imposing life imprisonment without parole.

Mandatory life sentence: The Penal Code's recently passed amendment excludes the individualization of the sanctions by making it mandatory for the courts to sentence suspects to life imprisonment if certain conditions are met. While this infringes the constitutional principle that criminal sanctions shall be individualized in accordance with the specific circumstances of the case and the perpetrator, the conditions for mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face this same sanction.

Grade 4 prisoners: Grade 4 prisoners are inmates who are regarded dangerous. They suffer severe disadvantages and restrictions even compared to fellow inmates (some of the are held in significant isolation). Such prisoners are as a rule not provided with a written decision including the reasons for their placement in the Grade 4 group. Consequently, the effectiveness of the defendant's general right to a remedy is severely restricted due to the lack of any justification which he/she could challenge.

The HSR regime is Szeged: Within the Szeged Maximum and Medium Security Penitentiary Institution, a special unit has been set up for persons serving their actual life sentence, and inmates serving other long imprisonment sentences (the "HSR Unit"). In 2007, the CPT paid an *ad hoc* visit to assess conditions in the unit. The CPT revealed numerous problems in relation to the unit. The observations included the lack of sufficient sports and cultural activities, the excessive use of means of restraint, the insufficient visiting and phone call entitlements, and so on.

Detention of juveniles: The relevant investigations of the Ombudsman revealed severe deficiencies in the detention of juveniles. He found the physical conditions not acceptable in two out of the four

juvenile penitentiary institutions. He voiced criticism with regard to the high number of violent acts among inmates in these institutions, which he contributed – among other factors – to the insufficient staff numbers. He also pointed out that some of the remand prisons where juvenile pre-trial detainees are held are unbearably overcrowded with no cultural and sports activities available for the inmates (including juveniles).

Confinement of juveniles in petty offence proceedings: The recent amendment of the Petty Offence Act has led to a situation in which juvenile offenders committing petty theft (in a value less than EUR 70) almost inevitably end up in confinement for up to 45 days. Alternative sanctions are not applicable in petty offence proceedings. The new legislation also does not take into account Hungary's international obligations as foreseen by the UN Convention on the Rights of the Child, Article 37 of which states that "the arrest, detention or imprisonment of a child [...] shall be used only as a measure of last resort and for the shortest appropriate period of time".

Hungary's failure to sign and ratify OPCAT: Hungary has still not signed and ratified the Optional Protocol to the UN Convention against Torture.

Prohibition of incitement to racial hatred

Concerns related to § 20 of the List of Issues

The legal framework concerning incitement to hatred: Incitement to hatred is punishable under the Criminal Code. However, partly due to the very restrictive interpretation of the existing legal norms that render hate speech sanctionable authorities are reluctant to order investigations, file indictments or impose sentences in such cases despite the wide-spread racist, homophobic, anti-Semitic and xenophobic public speech. The Constitutional Court has for almost two years now failed to deliver a decision on the constitutionality of an initiative that would make it possible to use civil law instruments more efficiently against hate speech. A positive development is that in 2009 the Equal Treatment Authority proceeded in racist speech cases not amounting to the level of a criminal offence by using the provisions on harassment in the Equal Treatment Act.

Principle of equality and non-discrimination, protection of the family and the child

Concerns related to § 22 of the List of Issues

De facto segregation of Roma children in education: Members of the Roma community are discriminated against in all fields of life. Segregation of Roma children in education is widespread: approximately one-third of them are educated in segregated classes. Segregation also means that Roma children's education is of lower quality, which decreases their chances to gain admission to higher education, and to reach a better financial and social situation. However, despite the long-known, clear evidences on segregation and a series of judicial decisions ruling that segregation in the schools sued shall to be terminated, the situation has remained unchanged.

Dissemination of information relating to the Covenant and the Optional Protocol

Concerns related to § 25 of the List of Issues

Lack of dissemination of information: The Hungarian Governmental institutions do not take steps to disseminate information about the ICCPR and the HRC's concluding observations.