



Hungarian Helsinki Committee

**Suggestions for questions  
to be included in the List of Issues  
for consideration of  
the 5<sup>th</sup> Periodic Report of Hungary**

**Task Force of the Human Rights Committee  
98<sup>th</sup> session, 8-26 March 2010**

**When compiling the List of Issues for the consideration of the Fifth Periodic Report of Hungary, the Hungarian Helsinki Committee (HHC) respectfully suggests that the Human Rights Committee consider posing the following questions to the Government of Hungary.**

In the present document, the fifth period report of the Government of the Republic of Hungary (CCPR/C/HUN/5) is referred to as "the Government Report" and its individual paragraphs are referred to as "Paragraph" or "§".

## **Article 2**

### **Social employment of people with disabilities**

According to the data of the National Federation of Disabled Persons' Associations<sup>1</sup> only 9 % of disabled persons are employed, whereas the same rate is 38 % in the EU. A recent report of the Parliamentary Commissioner of Civil Rights<sup>2</sup> calls the attention of the President and the government to the discrepancies of the employment of disabled people. The Ombudsman criticizes the legal environment<sup>3</sup> regulating the employment of disabled people, as current regulation violates the right to employment of disabled persons.

- *How will the Government promote the employment of disabled persons?*

### **Accessibility of public institutions and public transport**

As far as NGOs are aware, there are no overall data on the accessibility of public institutions.

Pursuant to the Act XXVI/1998 on the rights and equal chances of disabled people the deadline of the accessibility of public services is 31 December 2010<sup>4</sup>. According to the Parliamentary Commissioner of Civil Rights<sup>5</sup> the right of disabled to have access to services and facilities is not fully respected; the rate of access to public transport ranges from 3 to 82 %. The support of the European Union's fund and the transport companies' own contribution is not sufficient to cover the costs of the necessary investments.

- *Please provide updated information on the number and proportion of accessible public institutions.*
- *What concrete steps have been taken, and with what results, to overcome problems with regard to the accessibility of public institutions?*

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<sup>1</sup> Mozgássérültek Egyesületeinek Országos Szövetsége [www.meosz.hu](http://www.meosz.hu)

<sup>2</sup> AJB 6540/2009

<sup>3</sup> Instead of normative support, social employment is supported by the government on a grant basis.

<sup>4</sup> The deadline has been postponed the original deadline was the end of 2009

<sup>5</sup> see: AJB 1792/2009, AJB 1799/2009, AJB 5477/2009, AJB 5629/2009

## **Representation of Lesbian, Gay, Bisexual and Transsexual (LGBT) people**

The Equal Treatment Authority<sup>6</sup> does not carry out any activities forming public policy (planning, contribution to the decision making and law-making process), but there are some units within the competent Ministries vested with similar tasks<sup>7</sup>. The LGBT group does not have representation at the ministerial level, the group is not even mentioned in the regulations related to the Equal Opportunities Department of the Ministry of Social and Labour Affairs<sup>8</sup>. LGBT groups do not even have an institutionalized forum like councils. Cooperation and discussion between state organs and LGBT lobby groups and NGOs is also sporadic and only takes place in an informal way, typically in case of preparing draft laws (that means that the State poses questions and NGOs answer), but no questions can be posed by civilians. There was an attempt in 2003 to establish a regular framework for meetings between the two parties, but after some events the whole initiation died away. Representatives of LGBT organizations stressed that the Parliamentary Commissioner for Civil Rights was extremely inactive in cases related to women and the LGBT minority. In 2007 the Ombudsman did not even accept the invitation for a "PROGRESS" conference organized by the Ministry of Social and Labour Affairs, saying that he does not deal with LGBT matters.

- *Please provide information regarding measures to increase the representation of LGBT people in legislation and decision making.*

## **Article 2 and Article 26**

### **Segregation of Roma pupils 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.<sup>9</sup> 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 judicial decisions ruling that segregation regarding certain schools has to be terminated, the situation has remained unchanged.

- *Please provide numbers of Roma children taught in segregated classes in the respective years.*
- *Please provide information on court decisions in prominent school segregation cases and compliance with court decisions on behalf of schools and local governments.*

### **Police bias against the Roma**

According to empirical researches, police officers are highly biased against the Roma, which may seriously influence the way the police treat victims of Roma origin and conduct investigations into racially motivated crimes.

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<sup>6</sup> Egyenlő Bánásmód Hatóság, <http://www.egyenlobanasmod.hu/>

<sup>7</sup> Department for Equal Opportunities [Esélyegyenlőségi Főosztály], Department for Equal Opportunities of Men and Women [Nők és Férfiak Társadalmi Egyenlősége Osztály], Department for the Affairs of Elderly People [Idősügyi Osztály], Department for Youth and Children [Gyermek- és Ifjúsági Osztály], Department for Disability and Rehabilitation Affairs [Fogyatékoságügyi és Rehabilitációs Főosztály], Department for Integration of Roma [Roma Integrációs Főosztály].

<sup>8</sup> Szociális és Munkaügyi Minisztérium, Esélyegyenlőségi Főosztály]

<sup>9</sup> [http://econ.core.hu/file/download/zk/zoldkonyv\\_oktatas\\_05.pdf](http://econ.core.hu/file/download/zk/zoldkonyv_oktatas_05.pdf), p. 123.

Researches carried out in the field – TÁRKI research in 2005,<sup>10</sup> STEPSS Project carried out by the Hungarian Helsinki Committee in 2007-2008,<sup>11</sup> investigation of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities in 2008<sup>12</sup> – show that ethnic profiling exists in Hungary among police forces and particularly with regard to the practice of ID checks. Furthermore, research shows that there is an assumption among police officers that correlation between ethnic identity and potential criminal behavior exists.

In May 2009 one of the police trade unions (Tettrekész Magyar Rendőrség Szakszervezet) – having around 5,000 members in a Police force of 45,000 – signed an agreement of cooperation<sup>13</sup> with the radical right-wing party JOBBIK – the Movement for a Better Hungary (Jobbik), whose representatives frequently express racist thoughts, putting e.g. "Gypsy criminality" in the focus of their political campaigns.

- *Please provide information on the measures taken in order to reduce bias against the Roma among Police forces.*
- *Please provide information on the relationship of the Tettrekész Magyar Rendőrség Szakszervezet and the JOBBIK political party.*

Public statements about "Gypsy criminality" and "Gypsy crime" have become increasingly frequent. The extent of this type of speech and the fact that even left-wing parties are prone to using such language was illustrated by the following case. On 30 January 2009, Mr. Albert Pásztor, head of the Miskolc Police Headquarters made a number of seriously racist statements at a press conference and an interview. Upon the instruction of the Minister of Justice and Law Enforcement, the National Police Headquarters initiated an inquiry into the case, and Mr. Pásztor was suspended from his position due to his racist statements. At the same time, the local and regional branches of all political parties expressed their support for the police chief. Finally, his suspension was terminated by the Head of the National Police only two days after the press conference, and he could continue his work as head of the Miskolc police. The Minister of Justice and Law Enforcement approved of the termination of the suspension, although he had previously said that Mr. Pásztor's conduct had been unacceptable. According to analysts, this turn was due to the fact that neither him, nor the Prime Minister wished to risk a confrontation with the local and regional party units of the governing Hungarian Socialist Party.

- *Please provide information on the statements made by the Head of the Miskolc Police Headquarters concerning "Gypsy criminality" on 30 January 2009, provide information on the measures taken against him due to his statements, and the outcome of the case.*

### **Attacks against Roma and the related conduct of the law enforcement agencies**

In 2008 and 2009 a chain of serious violent attacks were committed against members of the Roma minority. However, there is no publicly available information on whether the police have devised a plan to address the problem in general (although there were some steps taken in the actual cases). Finally, in August 2009, the Hungarian Bureau of Investigation arrested the suspects of the series of crimes against Roma people, resulting altogether in the death of 6 victims, injuring 5 other victims and threatening the lives of 55 other people. Furthermore, in September 2009, the Minister for National Security Services announced that the internal investigation carried out into the role of the National Security Services in the investigation of the above outlined series of racist killings had established that several serious mistakes had been committed by the Service: some of the

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<sup>10</sup> See: Pap, A. L., Miller, J., Gounev, P., Wagman, D., Balogi, A., Bezlov, T., Simonovits, B. and Vargha, L.: Racism and Police Stops – Adapting US and British Debates to Continental Europe, In: European Journal of Criminology, 2008/5, pp. 161–191.; and Pap, A. L.: Police ethnic profiling in Hungary – Lessons from an international research, In: Regio, A review of Studies on Minorities, Politics, Society, 2007, Vol. 10., pp. 117–140.

<sup>11</sup> [http://helsinki.webdialog.hu/dokumentum/MHB\\_STEPSS\\_US.pdf](http://helsinki.webdialog.hu/dokumentum/MHB_STEPSS_US.pdf)

<sup>12</sup> The report of the Minority Rights Ombudsman is available at: <http://www.kisebbségiombudsman.hu/data/files/126395090.pdf>

<sup>13</sup> The agreement of cooperation is available at: <http://www.tmsz.hu/hirek-aktualis/466-egyuttmukodes-jobbik-090518.html>

perpetrators were well-known extreme right-wing activists who had also been subjected to secret surveillance which had been ended only some weeks before the first offences in question had been committed.

The actual assistance provided by the authorities in certain cases to Roma victims leaves much to be desired. An example for this is the Tatárszentgyörgy case that took place in February 2009. An NGO joint report<sup>14</sup> on the circumstances of the case and the conduct of authorities found numerous examples of official misconduct on the part of police, fire fighters and emergency medical personnel. Internal disciplinary proceedings had been initiated against certain officers, who allegedly admitted that they had made mistakes and were sanctioned, but the police refused to inform the public about the nature of the sanction. (The Independent Law Enforcement Complaints Board dealt with the case as well, revealing certain infringements of the victims' rights.)

- *Please provide information on the series of violent attacks committed against members of the Roma minority in 2008-2009.*
- *Please provide information on the outcome of the investigations carried out in the cases referred to above.*
- *Please provide information on internal (disciplinary) investigations carried out among Police forces and National Security Services in connection with the cases referred to above.*
- *Please submit whether the police or the prosecutor's office have adopted guidelines for investigating and indicting racially motivated crimes.*

### **Application of Section 174/B of the Criminal Code (violence against member of a community)**

Section 174/B of the Act IV of 1978 on the Criminal Code on "violence against member of a community" penalizes violence based on the real or perceived national or ethnic affiliation, religion or membership in a certain group of the victim. However, in practice this provision is applied inappropriately. Firstly, the number of criminal offences potentially motivated by e.g. racism is by all probability much higher than the number of crimes identified as such. The cause for this is that proving perpetrators' motivation in these cases is difficult, so applying a qualification that is easier to substantiate (e.g. a simple "bodily harm" instead of "violence against a member of a community") is safer from the point of view of success rates. This is true for the police and the prosecutorial practice as well. Secondly, there are some examples for using the provision above for initiating investigations against Roma when they are confronting e.g. right-wing activists.

- *Please provide information on the number of reports, indictments and court decisions concerning Article 174/B of Act IV of 1978 on the Criminal Code in the respective years.*
- *Please provide information on the protected characteristics serving as a basis for acts qualified as criminal offences under Article 174/B of the Criminal Code.*

### **Problems concerning the Equal Treatment Authority**

Despite its clearly growing workload, the Equal Treatment Authority (which is vested with the task of handling complaints related to 19 protected grounds in all fields of life in the whole country) is heavily under-resourced. Its budget is constantly underestimated and staffing level is low as well: on 31 December 2007 for example, there were 15 persons working at the Authority, including only 5 lawyers working on the actual cases (current staff consists of 18 persons).<sup>15</sup> The Authority's low financial and staffing level prevent it from carrying out *ex officio* investigations or *actio popularis* lawsuits and it cannot intervene on behalf of victims or represent victims before other authorities (all being statutory

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<sup>14</sup> Joint report of the European Roma Rights Center, Hungarian Civil Liberties Union, Legal Defence Bureau for National and Ethnic Minorities (NEKI) available in English at: <http://www.errc.org/db/03/DA/m000003DA.pdf>

<sup>15</sup> For data on budget and staffing, see: <http://www.egyenlobanasmod.hu/index.php?g=kozadat.htm>

tasks of the Authority). Moreover, due to its shortfalls, the Authority does not test alleged perpetrators when investigating actual cases, and does not carry out independent surveys or monitoring activities.

While all public actors fall under the personal scope of Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities ("Equal Treatment Act"), the law covers only four groups of private actors. (An example where this may cause problems is harassment in relation to which it is impossible to act under the Equal Treatment Act against co-workers for instance, as only the employer falls under the Act's scope, and can therefore be held liable.)

According to the Equal Treatment Act, only decisions of the Authority brought in pending procedures cannot be altered or annulled by the Minister supervising the Authority since 1 October 2009. This basically means that the Minister may alter or annul the final decisions of the Authority, raising serious concerns regarding the independence of the Authority. (However, the relevant Government Decree<sup>16</sup> states, that the Authority's decisions may not be altered or annulled by its supervisory organ, thus the act of Parliament and the Government decree are in contradiction.)

A further concern about the Authority's independence from the Government relates to the status of the Authority's President. The Authority is headed by a President – with the rank of a deputy state secretary – who is appointed by the Prime Minister based on a joint proposal of the Minister of Justice and Law Enforcement and the Minister of Labor and Social Affairs. The Minister of Labor and Social Affairs exercises employer's rights over the President, with the exception of the right of appointment and dismissal, which is exercised by the Prime Minister. The status of its President is of crucial importance with regard to the Authority's effective independence. Under Section 2 (1) of the Government Decree regulating the Authority's status and proceedings,<sup>17</sup> the President is appointed for an indefinite period of time in accordance with the provisions of the Civil Servants Act. This means that under the specific rules of the Civil Servants Act concerning "appointment to a leading position", the President's appointment may be withdrawn by the Prime Minister at any time without any justification.

- *Please provide information on whether there are any plans to extend the personal scope of Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities to private actors other than the ones listed in the Act at present.*
- *Please provide statistics on the case-load as well as the budget and staffing level of the Equal Treatment Authority, and provide information on whether there are any plans to increase the Authority's budget and number of personnel..*
- *Please provide information on the number of ex officio investigations and actio popularis lawsuits initiated by the Equal Treatment Authority, on the number of cases in which aggrieved parties were represented by the Authority, or when the Authority intervened on behalf of the aggrieved party.*
- *Please provide information on the monitoring activities and surveys carried out by the Equal Treatment Authority.*
- *Please provide information on whether the in-merit decisions of the Equal Treatment Authority may be altered or annulled by the Ministry acting as its supervisory organ, and whether there are plans to resolve the conflict between the different laws in this respect.*
- *Please provide information on whether there are any plans to amend existing legislation concerning the status of the Authority's president to sufficiently guarantee the Authority's institutional independence.*

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<sup>16</sup> Government Decree no. 362/2004 (XII. 26.) on the Equal Treatment Authority and the Detailed Rules of its Procedure

<sup>17</sup> Ibid.

## Problems concerning the Independent Law Enforcement Complaints Board

Independent Law Enforcement Complaints Board Low also faces the problem of low staffing levels. Furthermore, the Board has restricted means to investigate cases (for instance, it is not expressly authorized by the law to hear police officers involved in the case, so at present it is up to the concerned officer whether he/she chooses to answer the Board's queries).

- *Please provide information on the case-load, as well as the budget and staffing level of the Independent Law Enforcement Complaints Board.*
- *Please provide information on the investigative rights of the Independent Law Enforcement Complaints Board concerning complaints, and whether there are any plans to extend the Board's authorizations to make its investigations more effective.*

## Article 3\*

### Gender mainstreaming

In spite of several legislative and institutional measures implemented in recent years, these actions could not bring real change in women's lives in Hungary, as they were not introduced in the framework of a systematic policy on gender issues. The lack of commitment is often evidenced by the very limited financial resources women's rights fields receive. Areas outside the realm of the world of work are either not addressed at all, or are addressed in an *ad hoc* manner not guided by a comprehensive policy.

Between 2000 and 2004, the employment rate of women aged 15–64 years steadily increased in the EU, with a growth rate of 2.1 percentage points. Over the same period, the female employment rate in Hungary remained significantly below the EU average lagging behind the Lisbon goals, and its growth rate stood at only 1 percentage point. The employment level of Roma women, in particular, has not increased since 1993, staying at a remarkably low rate of 15 %<sup>18</sup>. The capacity of nurseries is below 10 %, and from among the children aged between 3 and 6 only 79 % receive child care services.

Women remain in low-management (and consequently less well-paid) positions, and are less likely to enter management: in 2004, the proportion of women in managing positions stood at 35 % compared to 65 % for men<sup>19</sup>. With regard to high-level management of top companies, the proportion of women was around 13 % in 2004 and they earned up to 40 % less in the same position than men did. 50 leading companies in Hungary employ three times more men than women.<sup>20</sup>

- *Please provide further information regarding measures to ensure equal rights of men and women (equal pay for work of equal value, measures to promote part time employment, increase the capacity of daily child care institutions).*

In the area of gender-based violence there is a strong resistance against any progressive, human rights based legislative attempt. The Parliament has not regulated domestic violence as a *sui generis* crime, neither defined the term of violence against women in any legally binding document.

Sources estimate that between one-fifth and one-third of Hungarian women have faced physical violence at least once in their lifetime<sup>21</sup>. According to the Prosecutor's Office, the police launched investigations into 11,205 cases of domestic violence in 2008, which represents a 26.7% increase

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\* The Patent NGO (<http://patent.org.hu/>) contributed information to the discussion of Article 3.

<sup>18</sup> <http://www.eurofound.europa.eu/ewco/2007/02/HU0702039I.htm>

<sup>19</sup> Eurostat Labour Force Survey, <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>

<sup>20</sup> [http://www.oecd.org/document/48/0,3343,en\\_2649\\_34819\\_39698928\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/48/0,3343,en_2649_34819_39698928_1_1_1_1,00.html)

<sup>21</sup> <http://www.unhcr.org/refworld/country,,,HUN,4562d8b62,4b20f03ec,0.html>

compared to the previous year.<sup>22</sup> 31 % of all the cases were battery.<sup>23</sup> In its 2008 Country Report on Human Right Practices<sup>24</sup>, the U.S. Bureau of Democracy, Human Rights and Labor reported that "According to the HNP, 2,137 women were reported to be victims of domestic violence during the first ten months of [2008], compared to 2,593 in all of 2007; however, most incidents of domestic violence went unreported due to fear and shame on the part of victims. Expert research in the field of family violence indicated that approximately 20 percent of women in the country had been physically assaulted or victimized by domestic violence. However, prosecution for domestic violence was rare."

Also noting the deficiency in the area of domestic violence, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concerns in the concluding comments in 2007: "While noting the development of the national strategy to prevent and effectively manage family violence and other measures that have been taken, [...] the Committee continues to be concerned about the prevalence of violence against women in Hungary, including domestic violence. [...] The Committee continues to be concerned about the lack of a specific law on domestic violence against women which provides for effective protection of victims, including restraining orders, and their access to legal aid." Regarding the first optional protocol case, (A.T. v. Hungary)<sup>25</sup>, neither the Committee's general recommendations, nor the specific recommendations regarding the situation of the victim have been implemented.

Even though court statistics have limitations, according to a survey by the National Council of Justice of Hungary, 362 motions for restraining orders were received by courts between 1 July 2006 and 30 June 2008. Out of the 362 motions, restraining orders were issued in 141 cases, another kind of coercive measure was ordered in 12 cases (including one pre-trial detention) while in the remaining cases, the motion was turned down or another type of decision was brought. As a comparison, in Austria (with slightly less inhabitants than in Hungary) during the first two years 3200 restraining orders were issued. A law on the so-called preventive protection order entered into force as of 1 October 2009. The new act stands in opposition to the professional opinions of non-governmental organizations active in the field and to international best practice as well. It illustrates the approach of the legislative body well that it regulates in several places the assumed abuses of the law on the part of the victim, but at the same time it fails to take a definitive ethical stance against the abuser's behavior.

A preventive restraining order may be issued to a maximum of 30 days, while restraining order can be granted for up to 60 days. Following that period, it is not possible to prolong the periods of either type of the restraining order, but another application may be submitted.

- *Please provide data on domestic violence and information regarding the effectiveness of measures (such as restraining orders) to combat domestic and gender-based violence.*

## Article 7

In its previous Concluding Observations on Hungary, the Human Rights Committee expressed its concern<sup>26</sup> at the limited number of investigations carried out by the State party into ill-treatment committed by law enforcement officials, and the very limited number of convictions in those cases which are investigated.

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<sup>22</sup> [http://www.police.hu/megelozes/bunmegelozes/csaladi\\_eroszak/csbekapcsolat.html?pagenum=2](http://www.police.hu/megelozes/bunmegelozes/csaladi_eroszak/csbekapcsolat.html?pagenum=2)

<sup>23</sup> [http://www.police.hu/megelozes/bunmegelozes/csaladi\\_eroszak/csbekapcsolat.html?pagenum=2](http://www.police.hu/megelozes/bunmegelozes/csaladi_eroszak/csbekapcsolat.html?pagenum=2)

<sup>24</sup> <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119083.htm>

<sup>25</sup> <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>

<sup>26</sup> See § 12 of Concluding Observations no. CCPR/CO/74/HUN

## Lack of reliable statistics on ill-treatment by officials

The statistics presented in the Government Report in relation to Article 7 (§§ 81-82) are incomplete and misleading. They only encompass offences committed against detainees (whereas ill-treatment may not only be committed against persons in detention) plus the numbers also include offences committed against detainees by fellow detainees and crimes against property of detainees, which obviously do not fall under the scope of Article 7.

A further, more complicated problem is that these statistics are misleading because indictment numbers are compared to the number of so called "identified offenses" ("ismertté vált bűncselekmények") and not to all the reports filed in relation to such incidents.

To illustrate the problem, statistics for the period of January-June 2007 are presented below.

	Ill-treatment		Forced interrogation		Unlawful detention	
	Number	%	Number	%	Number	%
<b>Procedures started (reports filed)</b>	<b>309</b>	<b>100</b>	<b>71</b>	<b>100.0</b>	<b>23</b>	<b>100.0</b>
<b>Refusal to investigate</b>	<b>35</b>	<b>11</b>	<b>15</b>	<b>21</b>	<b>6</b>	<b>26</b>
Not a criminal offense	13		7		5	
Lack of the well-founded suspicion of an offense is missing	20		6		1	
Statute of limitation	2		1		–	
Warning by the prosecution	–		1		–	
<b>Termination of investigation</b>	<b>251</b>	<b>81</b>	<b>54</b>	<b>76</b>	<b>16</b>	<b>70</b>
Not a criminal offense	64		9		11	
The committing of an offense may not be established	169		44		3	
It may not be established that the offense was committed by the suspect	9		1		–	
Statute of limitation	6		–		–	
Warning by the prosecution	–		–		2	
<b>Indictment</b>	<b>20</b>	<b>6</b>	<b>2</b>	<b>3</b>	<b>–</b>	<b>–</b>
Other	3		–		1	
<b>Number of "identified offenses"</b>	<b>40</b>		<b>5</b>		<b>3</b>	

*Source: Chief Prosecutor's Office*

If, for instance, someone complains of ill-treatment, and the investigation is discontinued with the reasoning that the "commission of an offense may not be established", the treatment complained of will not qualify as an identified offense, since in the investigating authority's view, in the given case it cannot be established that a criminal offense has been committed (so no offense is identified).

The term "identified offenses" refers to the instances in which (i) an indictment is made; (ii) the indictment is postponed; or the (iii) investigation is rejected or terminated due to – among others – the following reasons:

- statute of limitations or any other reason excluding culpability of the perpetrator (e.g. mental disability);
- it may not be established that the offense was committed by the suspect;
- the offense was not committed by the suspect (in these two cases the authority acknowledges that there was an offense, but it was not the suspect who committed it, or it may not beyond doubt established that the suspect committed it);



- the suspect gets a warning (under § 71 of the Penal Code, a warning shall be communicated to the perpetrator if he/she may not be punished due to the low degree of threat that his/her behavior poses to the society);
- the investigation is suspended because it may not be established who committed the offense (such cases are included in the "other" category in the above table).

As regards for instance the cases of ill-treatment in the first half of 2007, it can be seen that there were altogether 40 identified offenses (2 refusals of investigation due to the statute of limitation, plus 9 cases in which it could not be established that the offense was committed by the suspect, plus 6 terminations of investigation due to the statute of limitation, plus 20 indictments, plus 3 instances falling under the "other" category). Out of 40 identified offenses, 20 indictments are a fairly good result (50 percent), however if we compare the number of indictments to the total number of recorded instances (309), the picture is completely different: only 6.4 percent of procedures initiated due to alleged ill-treatment led to indictment.

The misleading nature of this approach of calculating on the basis of identified offenses is illustrated by the case of Mr. S., a client of the Hungarian Helsinki Committee.

In July 2003 Mr. S. was caught red-handed and apprehended by police officers as he was trying to break into a newspaper stand. Before Mr. S. was made to get into the police car, one of the officers hit him in the mouth, and when he fell to the ground, the officer continued to hit and kick him. Finally, they made him get into the police car and transferred to the police station.

In the police station jail, two further officers ill-treated (slapped and kicked) Mr. S., who suffered injuries on his left thigh and the back of his left hand. Although according to the forensic medical expert's opinion, it could not be excluded that the injuries had been caused by ill-treatment, the Prosecutorial Investigation Office discontinued the investigation, on the basis of the police officers' testimonies and the expert opinion, the commission of an offense may not be established, since it may be supposed that Mr. S. caused the injuries to himself.

Mr. S.'s counsel filed a private bill of indictment against the officers with the Metropolitan Court in January 2004. The Court accepted the bill of indictment, and on 9 May 2005, it found the three officers guilty of "ill-treatment in an official procedure". The judgment is final and binding.

Based on the above described method of calculation, the case of Mr. S. (in which the court finally established the responsibility of the three police officers) would not have been included in the number against which the number of indictments is measured by the Government, as his complaint would not have been an "identified offense" according to the prosecutorial authority.

- *Please provide statistics on cases under Articles 226, 227 and 228 of the Penal Code, where the number of indictments is measured against all the reported offenses ("eljárás kezdeményezés összesen") and not against identified offenses ("ismertté vált bűncselekmény").*
- *Please explain why the recommendations made in § 12 of Concluding Observations no. CCPR/CO/74/HUN have not been followed up, and why no effective practical measures (such as the mandatory audio and video recording of all interrogations) have been introduced.*
- *Has there been any follow-up on the decisions of the European Court of Human Rights quoted under § 80 of the State Report and establishing insufficient investigation into ill-treatment claims?*

## Lenient judicial practice in cases when responsibility for ill-treatment and other official offenses is established

Statistics show that even in the few cases when their guilt is established, sanctions imposed on law enforcement officials breaching Sections 226, 227 and 228 of the Penal Code are rather lenient. The sanctions imposed in 2005 and 2006 are summarized in the tables below

### *Ill-treatment in official proceeding (Section 226) 2005-2006*

Year	Number of convicted defendants	Type of sanction						Type of auxiliary sanction or measure*
		Life sentence	Effective imprisonment	Suspended imprisonment	Public labor	Fine	Suspended fine	
		Number of defendants						
2005	66	–	5	19	–	33	–	9
2006	24	–	–	5	–	8	–	11

\* Auxiliary sanctions (e.g. ban from driving) are usually imposed parallel to sanctions, but some can be applied independently. Measures include warning by the court, setting of a probation period, etc.

### *Forced interrogation (Section 227) 2005-2006*

Year	Number of convicted defendants	Type of sanction						Type of auxiliary sanction or measure*
		Life sentence	Effective imprisonment	Suspended imprisonment	Public labor	Fine	Suspended fine	
		Number of defendants						
2005	21	–	2	10	2	7	–	–
2006	4	–	–	–	–	4	–	–

### *Unlawful detention (Section 228) 2005-2006*

Year	Number of convicted defendants	Type of sanction						Type of auxiliary sanction or measure*
		Life sentence	Effective imprisonment	Suspended imprisonment	Public labor	Fine	Suspended fine	
		Number of defendants						
2005	10	–	–	6	–	4	–	–
2006	4	–	–	3	–	–	–	1

In comparison, during the same period, sanctions imposed for violence against an official were distributed as follows.

*Violence against an official (Section 229) 2005-2006*

Year	Number of convicted defendants	Type of sanction						Type of auxiliary sanction or measure*
		Life sentence	Effective imprisonment	Suspended imprisonment	Public labor	Fine	Suspended fine	
		Number of defendants						
2005	500	–	114	218	17	110	8	33
2006	470	–	108	201	28	90	8	37

*Source: Chief Prosecutor's Office*

As illustrated by the above tables, law enforcement officials are very rarely sentenced to effective imprisonment. In the majority of cases, a fine is imposed (or measures such as warning by the court or probation are applied). The disproportionality is clear when these data are compared to the sanctions imposed on perpetrators of violence against an official.

### **Preliminary exoneration from criminal sentences**

The Government Report (§§ 84-89) describes the issue of exoneration (*előzetes mentesítés*) at length, but it fails to give any explanation how this is related to the ban on torture.

Under Section 100 of the Criminal Code (Government Report § 86) in a case of suspended imprisonment, the court has the legal possibility to exonerate the convicted perpetrator from the detrimental consequences of an unclear criminal record. This in turn means that a convicted law enforcement officer may remain on the police force. Under Section 56 (6) of Act XLIII of 1996 on the Service Relationship of Law Enforcement Personnel, if no such exoneration is given, even a suspended imprisonment prevents the perpetrators from keeping their jobs with the police (unless the Minister of Justice and Law Enforcement gives an exemption). If however, the court grants exoneration parallel to imposing a suspended imprisonment sentence, the convicted police officer does not have to be dismissed.

The HHC's practice shows that even in very serious cases, courts use this possibility and the police do not dismiss officers convicted of criminal offenses. In one case, two police officers who had ill-treated a detained person so badly that the victim suffered three broken ribs were respectively sentenced to 1 year and 8 months of suspended imprisonment; however, they were exonerated by the court, and according to information from the police continue to work as policemen even today.

- *Please provide statistics on sanctions imposed in cases conducted under Sections 226, 227 and 228 of the Criminal Code as well as statistics on the use of exoneration in such cases and data on the number of police officers who remained in service despite convictions on such charges.*
- *What are the reasons underlying the lenient sentencing practice in criminal proceedings launched against law enforcement officials for conducts falling under the scope of Article 7?*

## Issues related to the events of September-October 2006

The Government Report (§§ 47-49 and § 83) mentions the criminal proceedings started in relation to the excessive use of force by the police when dissolving anti-government demonstrations in September and October 2006. The Government Report fails to mention issues of serious concern in relation to these events.

### *a) Order by the National Police Chief concerning identification badges*

In 2006, the UN Committee Against Torture expressed its concern<sup>27</sup> at reports that Hungarian law enforcement officers did not carry identification badges during the Budapest demonstrations in 2006, which made it impossible to identify them in case of a complaint of torture or ill-treatment. The lack of identification badges contributes to the situation described by the Government Report (§ 47) that out of the 202 criminal proceedings launched after the events, 167 had been terminated.

The Government Report however fails to mention that the order of the National Police Chief (retired by now) allowed officers to be in the streets without the badges, secondly, that neither the Police Chief nor other police leaders have been called to account for the fact that the majority of police personnel participating in the dissolution of the 23 October 2006 demonstration had not been wearing the badges, making any future identification (and accountability) nearly impossible.

Though the wearing of identification signs for police officers is (and was at the time) prescribed by Act XXXIV of 1994 on the Police, on 21 September (i.e. in the aftermath of the September 2006 police actions which were already characterized by excessive use of force), the National Police Chief issued an order (no. 16/2006) that came into force on 1 October. This order enabled the commanders of police units to order deployed police personnel not to use any identification during action. The order – pursuant to which about 60 % of acting police officers wore no identification badges on 23 October – was clearly in contradiction with the law (and was amended later on). The reactions and communication of the police leaders about the order were also quite confusing: first they denied the existence of such an order, later the national police chief described the order as completely legal, but otherwise provided no exact explanation for its rationale, even when asked by MP's at a special parliamentary committee session. No official investigation was ever made into why in such a tense situation (when it could be foreseen that further clashes would take place), the National Police Chief issued an order allowing for leaders to decide against the wearing of identification badges, and why certain commanders decided to make use of this opportunity.

### *b) Commanders responsible for dissolving the rally of the largest opposition party not called to account*

On 23 October 2006, before the celebration of the 50th anniversary of the 1956 Revolution the police forced the demonstrators to leave the square in front of the Parliament because of safety reasons, as high-level representatives of 56 states were expected to the same place for the official ceremonies. Later that day, an unannounced demonstration started to approach the Parliament building. The police tried to break up the crowd of 150-200 persons that became violent: they threw stones, bottles toward the police, allegedly also bottles with fuel (Molotov-cocktails) and set up barricades at several locations. The crowd moved or was forced by the police to move (this debate has not been decided ever since) toward the rally of the opposition FIDESZ – Civic Party, which was held in the afternoon hours at a downtown square and was attended by tens of thousands of people.

According to the "Papp Report"<sup>28</sup> which was a result of an internal police inquiry into the events in question, the police committed severe professional mistakes in handling the crowd. Firstly, they did not prevent the violent groups from mixing with the peaceful FIDESZ demonstrators (no attempts were made to separate the two groups, although there would have been time to do so). Secondly, the police attack aimed at dissolving the violent crowd was ordered within only three minutes after the official ending of the FIDESZ demonstration. This time was obviously insufficient for the huge crowd

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<sup>27</sup> § 14 and 15 of the Concluding Observations of the Committee Against Torture, 2006, no. CAT/C/HUN/CO/4

<sup>28</sup> <http://www.euroastra.hu/node/3342>

to leave the premises, as a result of which several undoubtedly peaceful demonstrators suffered injuries from the coercive means used by the police (water guns, tear-gas and rubber bullets, sword used by mounted police officers, etc.).

In spite of the fact that an internal police inquiry came to the above conclusions, responsible police leaders were never called to account for the deficiencies. According to news sources, some of the commanders who had made professional mistakes during the events were actually promoted not long after the events.

*c) Lower-ranking superiors refusing to cooperate with authorities in investigating ill-treatment claims related to the September-October 2006 events*

It is clear from the Government Report that only in a very small percentage of cases (19 out of 202) did the prosecution finally press charges in relation to the events of September-October 2006. The main reason for this is that due to the resistance of the police, identifying the perpetrators was impossible even in cases when the fact of ill-treatment could be identified beyond doubt. Even though a lot of atrocities were recorded by the media, due to the lack of identification badges, and as a lot of police officers wore helmets and masques and the fact that in the proceedings the officers heard as witnesses (including the immediate superiors) claimed that they did not recognize the officers seen in the recordings beat and kick the victims, even in some of the cases where recordings proving the ill-treatment were available, the prosecution claimed to have been unable to press charges.

In connection with this, at a press conference the head of the Budapest Prosecutorial Investigation Office said with tangible frustration that while the top police echelon had properly assisted the prosecutors' investigations, lower ranking leaders were not helpful at all. In a certain case, all officers of a unit testified that they had been running in the second or third row of the units, and could not remember who the ones in the front row were. Officers often testified that they only witnessed the incidents, but they could not identify the perpetrators. In another case, in one of the few cases in which an indictment was finally made the judge acquitted one of the indicted police officers due to the lack of evidence but stated that it was certain that some of the police officers who had been heard as witnesses had simply lied to the court.

*d) The prosecution's failure to make full use of legal possibilities to press charges against police officers concerned*

The Hungarian Helsinki Committee is of the view that the prosecutor's office could have pressed more charges with more courageous interpretation of the criminal law provisions. Judicial case law is available according to which police officers witnessing ill-treatment committed by their fellow officers, and doing nothing to stop them, are themselves accomplices of the ill-treatment. However, this possibility was neglected by the prosecution with the exception of a single case, in which police officers beat Mr. Máriusz Révész (a member of parliament on behalf of the FIDESZ party), who himself tried to stop police brutality, so badly that Mr. Révész's shoulder blade was broken. In this case the prosecutor's office did press charges against two officers who allegedly witnessed the beating but did not intervene to stop it. In December 2009, the officers were acquitted as in the court's view not even the witnessing of the events could be proved beyond reasonable doubt. The prosecution appealed the decision.

(Some of the above is also relevant from the point of view of Article 10, as a number of ill-treatment cases happened when ill-treatment victims were already detained.)

- *Please explain why no investigation was made into the circumstances under which the National Police Chief's order allowing for not wearing identification badges was issued.*
- *Why police leaders who committed severe professional mistakes on 23 October 2006 according to the Police's own internal investigation were not called to account for the events?*

- *Has there been any examination into why lower ranking police leaders sabotaged the investigation into the ill-treatment cases of September-October 2006, and whether any steps are taken to change this climate within the police force?*
- *Please explain why the prosecutor's office failed in the majority of cases to press charges against officers who could be proved to have witnessed ill-treatment incidents without intervening.*

### **Conditions of detention in penitentiary institutions for juveniles**

In the Hungarian penal system, juveniles between the age of 14-18 years can (i) be held in pre-trial detention, (ii) they can be under reformatory education or (iii) they can serve their prison sentence. A prison sentence can only be served in juvenile penitentiary institutions. Pre-trial detention can be served in either a reformatory institution (*javitóintézet*), or a juvenile penitentiary, while reformatory education can only be implemented in a reformatory institution.

Therefore, two types of detention are implemented in juvenile reformatory institutions: reformatory education and pre-trial detention. According to the Criminal Code,<sup>29</sup> the court may sentence a juvenile offender to serve time in a reformatory institution (reformatory education) if it regards this as necessary for the juvenile offender's development. Under the Code of Criminal Procedure, the court ordering pre-trial detention of a juvenile may order that the pre-trial detention be implemented in a reformatory institution.<sup>30</sup> These institutions, alternative to juvenile penitentiaries, are supervised by the Ministry of Social and Labor Affairs instead of the Ministry of Justice and Law Enforcement.

§ 74 of the Government Report states that no severe problems are raised in relation to the detention of juveniles. This is in clear contradiction with the findings of an investigation the Parliamentary Commissioner for Human Rights conducted in 2008 into conditions in juvenile penitentiaries, prompted by the alleged suicide of an inmate at the Juvenile Penitentiary of Tököl in late 2007.<sup>31</sup>

Whereas the Ombudsman found the conditions satisfactory in two (Kecskemét and Pécs) of the four institutions for juveniles, he expressed grave concerns over the conditions in Tököl and Szirmabesenyő. (Juvenile convicts and pre-trial detainees are held in juvenile penitentiaries, with convicted inmates constituting the majority of detainees.)

While the Ombudsman severely criticized physical conditions in the Szirmabesenyő institution, in relation to Tököl, the Ombudsman stressed that the atmosphere of the juvenile penitentiary was the worst experienced during his entire investigation. Tököl was the only institution that did not provide daily warm showers. The Ombudsman also heard many complaints concerning the quality of food served in Tököl. The Ombudsman warned that the number of penitentiary staff is insufficient in these penitentiaries. A so-called "educator" (*nevelő*) is responsible for so many inmates that it is not possible to fulfill tasks that are aimed at enhancing the detainees' reintegration into society. According to statistics, the number of aggressive acts between inmates rose sharply in 2007 throughout the penitentiary system and particularly among juveniles. Serious acts of violence were committed in the juvenile penitentiaries in Tököl and Szirmabesenyő. In contrast, no such acts were reported in Pécs or Kecskemét. The Ombudsman concluded that the conditions in juvenile penitentiaries where the number of inmates is high pose a direct threat to detainees' right to life, human dignity, and to proper moral, intellectual and physical development.

The Ombudsman also examined county remand prisons where pre-trial detainees are held (both juveniles and adults), and found that in the particular institutions visited, overcrowding was unbearable. For example, the rate of overcrowding was 200% in the Baranya County Remand Prison where 6 people were placed in a cell originally designed for only one person. Practically no cultural and sports activities were available for the inmates (including juveniles). The Ombudsman concluded

<sup>29</sup> Section 118 of Act IV of 1978 on the Criminal Code

<sup>30</sup> Section 454 (2) (a) of Act XIX of 1998 on the Criminal Procedure Code

<sup>31</sup> Later on it was established that the deceased inmate was killed by hanging by his fellow inmates. Report no. 4841/2007 of the Ombudsman. See: <http://www.obh.hu/allam/jelentes/200704841.rtf>

that placement of juveniles in such institutions poses a threat to the juveniles' right to proper moral, intellectual and physical development.

The Ombudsman also examined conditions in juvenile reformatory institutions and found that these are much better equipped and in better condition than the juvenile penitentiaries, also offer a wider range of activities and no serious offences had been committed among detainees. The Ombudsman therefore suggested that the capacity of reformatories be increased because placement in these institutions serves the interests of the juveniles better than placement in penitentiaries. The Ombudsman also suggested that pre-trial detention of juvenile detainees should with the exception of the most severe cases as a rule be served in reformatories.

- *What steps have been taken to follow up the Ombudsman's recommendations and to redress the severe problems revealed by the Ombudsman with regard to juvenile reformatory institutions?*

### **Medical examination of persons admitted to police detention premises performed by police doctors**

The Government Report (§ 95) mentions the training medical employees receive in relation to torture. However, the HHC is of the view that it is highly problematic that physicians who are employed by the police are the ones who record injuries allegedly caused by ill-treatment; hence the right of detained persons to be examined by an independent physician is still not guaranteed. A detainee making allegations of ill-treatment does not have the right to be examined by an independent medical expert. Despite the recommendation of the Council of Europe's Committee for the Prevention of Torture (CPT)<sup>32</sup> made in 2006 to this effect, the practice of taking statements from detained persons presenting injuries has not been reviewed; consequently, the chance of undue pressure put on detainees in this regard still exists.

As an example, in the course of a monitoring visit by the HHC to the Central Holding Facility of the Budapest Police a detained person claimed that his visible injuries were caused by the police officers during his arrest, whereas the medical record issued by the internal physician contained no reference to such injuries.

- *Why has the Government not followed up on the CPT's recommendation that if a detained person presents injuries and makes allegations of ill-treatment, he should be seen by an outside medical expert and the case referred to a prosecutor?*

### **Lack of legislation guaranteeing the rights of persons in short-term arrest**

The Government Report states (§ 97) that in 2006 a circular was issued regulating the rights of arrestees and detainees. This circular was issued by the National Police Headquarters exactly because since 2007 Parliament has failed to adopt legal regulations on the issue.

The legal framework regulating the status of persons under short-term arrest<sup>33</sup> (*előállítás*) is unclear, as when amending the previous Ministerial Decree on the Service Regulations of the Police, the lawmaker simply forgot to regulate this legal institution in details. The previous ministerial decree ruled that the rights and obligations of persons under short-term arrest shall be governed by the same provisions as those of persons under a 72-hour detention and pre-trial detainees held in police cells.

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<sup>32</sup> 2006 CPT Report on Hungary, 18. See: <http://www.cpt.coe.int/documents/hun/2006-20-inf-eng.htm>

<sup>33</sup> Under Article 33 of Act XXXIV of 1994 on the Police (Police Act), a person may be taken into a so-called short-term arrest – inter alia – if he/she is caught in the act of committing a crime; is under an arrest warrant; is suspected of having committed a crime; cannot identify himself/herself or refuses to do so; who is required to give a blood or urine sample in order to prove a criminal or a petty offence; who fails to stop a petty offence when called to do so; etc. A short-term arrest may not last longer than "necessary", but shall not exceed 8 or (in exceptional cases) 12 hours.

However, this sentence is missing from the new Service Regulations<sup>34</sup>, therefore, at this moment no legal provisions govern the rights and obligations of people under a short-term arrest.

This led to situations breaching the ban on degrading treatment, for instance in cases when persons taken into short-term arrest were not provided with food for 8 hours, as there was no regulation prescribing the provision of food. In order to bridge this legislative gap, the National Police Headquarters issued a circular on how to handle short-term detainees (prescribing for instance that food shall be provided if the detention last longer than 5 hours). However, the circular is not a public legal norm and is not easily accessible for citizens. For a long time the HHC has been lobbying for the adoption of a new Ministerial Decree in order to remedy the situation and finds it totally incomprehensible why this has not been done in the past two and a half years. (This problem is also relevant from the point of view of Article 10.)

- *Please explain why since 2007 the Government has not adopted a proper legal norm regulating the situation of persons in short-term arrest.*

### **Follow-up of the CPT's recommendations**

The Government Report (§ 99) states that, following its visit in 2005, the European Committee for the Prevention of Torture (CPT) "concluded that the Hungarian legislation and circumstances conform to the requirements of the Council of Europe".

In contrast to this statement by the Government, it should be recalled that after its 2005 visit, the CPT formulated a number of recommendations<sup>35</sup>: the above recommendation concerning the right to an external doctor, and some further suggestions such as the ones related to the right of detained persons to inform a relative immediately, effective access to a lawyer, improvement of the conditions of detention in police facilities, the expectation formulated in relation to the management of Kalocsa Prison, Szeged Prison and Budapest Remand Prison to deliver the clear message to custodial staff that physical ill-treatment and verbal abuse of inmates as well as other forms of disrespectful or provocative behavior vis-à-vis prisoners are not acceptable and will be dealt with severely; the expectation formulated in relation to the management and staff of Szeged Prison to exercise continuing vigilance and make use of all the means at their disposal to prevent inter-prisoner violence and intimidation, and so on.

- *What measures have been taken to follow up on the CPT's recommendations formulated in the 2006 report and also in the 2007 report that specifically dealt with the detention conditions of persons sentenced to life sentence without the possibility of parole?*<sup>36</sup>

### **Actual life sentence**

Hungary is one of the few European countries where life imprisonment without the possibility of parole exists. In the report on its 2007 ad hoc visit to Hungary, the CPT expressed grave concerns over the issue: "More generally, as regards "actual lifers", the CPT has serious reservations about the very concept according to which such prisoners, once they are sentenced, are considered once and for all to be a permanent threat to the community and are deprived of any hope of being granted conditional release. [...] Firstly, no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behavior, the delivery of personal development programs, the organization of sentence plans and security. In the light of the above, the CPT invites the Hungarian authorities to introduce a regular review of the threat to society posed by "actual lifers", on the basis of an individual risk assessment, with a view to

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<sup>34</sup> Decree no. 62/2007. (XII. 23.) of the Minister of Justice and Law Enforcement on the service regulation of the police

<sup>35</sup> 2006 CPT Report on Hungary, <http://www.cpt.coe.int/documents/hun/2006-20-inf-eng.htm>

<sup>36</sup> 2007 CPT Report on Hungary, <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>



establishing whether they can serve the remainder of their sentence in the community and under what conditions and supervision measures."<sup>37</sup>

When drafting the new Criminal Code, it seemed that the legislators intend to abolish the institution: the first versions of the draft contained long reasoning in favor of ceasing the possibility of actual life-long imprisonment. However, in late 2008 a change took place in the Government's approach, and restrictive punitive tendencies appeared in the legislative process. As a result, the possibility of imposing life imprisonment without parole has remained in the Criminal Code.

- *Does the Government, in light of the CPT's recommendations, wish to review the issue of actual life sentence?*

### **Failure to ratify the OPCAT**

Despite publicly stating that Hungary will become a party to the Optional Protocol to the UN CAT (OPCAT), Hungary has still not signed and ratified this instrument. At the time of writing, a decision on the designation of the National Preventive Mechanism is pending.

- *Please provide information about when Hungary wishes to become a signatory to the OPCAT and on which body will be designated as the National Preventive Mechanism.*

### **Information to foreigners in alien policing detention**

Regarding § 90 of the Government Report, it shall be recalled that persons in alien policing detention are entitled to receive information about their rights and responsibilities in the procedure in their mother tongue or in a language they understand. The Hungarian Helsinki Committee's experience in monitoring alien policing detention facilities and expulsion procedures shows that foreigners are often not aware of their rights and obligations, the procedural rules concerning their case, their entitlement to legal assistance and the available legal remedies, partly because the services of professional interpreters are very rarely used in practice in such situations.<sup>38</sup> Considering that many of these persons lack the sufficient educational background, or may not be proficient in the language in which the information is communicated, or may even be illiterate and thus may face serious difficulties in understanding difficult legal texts, the effective exercise of their right to challenge decisions on expulsion or return at the border may be seriously jeopardised.

- *How does the Government ensure that the information provided to persons in alien policing detention (in either written or oral form) is actually understood by the person concerned?*
- *How do proceeding authorities ensure in practice that foreigners taken into alien policing detention (envisaging an expulsion measure) are duly informed about the possibility of submitting an asylum claim even while in detention?*

### **Protection from refoulement and unsafe returns under the Dublin II Regulation**

Hungarian alien policing legislation provides a legal basis for the prohibition and prevention of *refoulement* and thus strives to ensure the extraterritorial application of Articles 6-7 of the ICCPR and Articles 2-3 of the ECHR (see Government Report § 91).

In spite of the legal provisions in effect, the Hungarian Helsinki Committee has witnessed several practices that may constitute a breach of this provision. For example:

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<sup>37</sup> 2007 CPT Report on Hungary, <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>

<sup>38</sup> For detailed reference see the joint report of the Hungarian Helsinki Committee, the National Police Headquarters and the UNHCR Regional Representation on the access to territory and relevant procedures of those in need of international protection ("border monitoring"), pp. 38-41. [http://helsinki.hu/dokumentum/Border\\_Monitoring\\_Report\\_2007\\_ENG\\_FINAL.pdf](http://helsinki.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf)

- a) Alleged cases of forced return of asylum-seekers or foreigners probably in need of international protection to Ukraine, despite the UNHCR's call to refrain from such practices.<sup>39</sup>
  - b) Forced return of asylum-seekers, even persons who are particularly vulnerable, to Greece on a regular basis under the Dublin II Regulation<sup>40</sup> of the EU, despite the UNHCR's call to refrain from such returns<sup>41</sup> and the grave concerns expressed by the Commissioner for Human Rights of the Council of Europe.<sup>42</sup>
- *Does Hungary consider Ukraine a safe third country for foreigners potentially in need of international protection, in light of the UNHCR's adverse recommendations?*
  - *If return to Ukraine is assessed on a case-by-case basis:*
    - *In what percentage of the relevant cases did authorities considered Ukraine unsafe in 2008 and 2009?*
    - *If this assessment has to be made by the Office of Immigration and Nationality (OIN) out of regular office hours, who is the responsible person within the OIN entitled to make this decision and what sort of background information and training does she/he have ensuring the necessary professional capacities?*
  - *Did Hungary return asylum-seekers to Greece in 2008 and 2009 under the Dublin II Regulation? If yes, did Hungary return vulnerable asylum-seekers (such as children, single or pregnant women, traumatised or elderly persons) to Greece in 2008 and 2009 under the Dublin II Regulation?*
  - *What steps did the Hungarian government take to comply with the UNHCR's repeated recommendations concerning the temporary suspension of "Dublin returns" to Greece?*

### **Returns before final decisions on asylum claims**

Legal regulations specify that asylum seekers shall not be expelled until the asylum application is rejected in a final (and executable) decision (see Government Report § 92). Act LXXX of 2007 on asylum ("Asylum Act") does not foresee any formal requirement regarding an asylum application, it may be lodged either in an oral or written form, in any language. The due (and often difficult) identification of a foreigner's wish to seek asylum and the proper registration of asylum claims is therefore a crucial element in ensuring compliance with the above legal obligation. According to the HHC's experience, police officers sometimes fail to identify asylum seekers in border procedures (e.g. references to the war in the country of origin and the wish not to return home may not be considered as an asylum claim, not even in the case of a Somali citizen).

- *How do Hungarian authorities guarantee that the principle of non-refoulement is respected in practice, especially at the border?*
- *Are certain expressions (such as "refugee" or "asylum") required by the relevant Hungarian authorities in order to consider statements by foreigners as intention to seek international protection?*

<sup>39</sup> [www.bordermonitoring-ukraine.eu](http://www.bordermonitoring-ukraine.eu)

<sup>40</sup> Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ("Dublin II Regulation")

<sup>41</sup> UN High Commissioner for Refugees, *Observations on Greece as a country of asylum*, December 2009: [www.unhcr.org/refworld/docid/4b4b3fc82.html](http://www.unhcr.org/refworld/docid/4b4b3fc82.html)

<sup>42</sup> Council of Europe: Commissioner for Human Rights, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008. Issue reviewed: Human rights of asylum seekers*, 4 February 2009, CommDH(2009)6, [www.unhcr.org/refworld/docid/49898d5c2.html](http://www.unhcr.org/refworld/docid/49898d5c2.html)

## Article 9

### Foreigners detained in alien policing detention

Regarding alien policing detention (Government Report §§ 122-123), under Hungarian alien policing law, third-country nationals are entitled to submit a motion for judicial review against an alien policing detention order within 72 hours following its issuance. Alien policing detention may be executed in four designated alien policing jails in Hungary, which are operated by the police. A very strict regime resembling to that used in high-security prisons is applied in three out of the four alien policing jails (in Nyírbátor, at the Budapest Airport and in Kiskunhalas), where detainees are obliged to spend the most part of their day locked in their cells. In practice, not all detainees can spend one hour per day in open air (in contrast to the law)<sup>43</sup> and psycho-social care is extremely limited. In view of the HHC, the strict detention regime cannot be justified with the measure's purpose (i.e. to ensure the foreigner's removal from the country) and cannot be viewed as complying with humanitarian considerations (Government Report § 156). The UNHCR repeatedly expressed similar concerns in its annual "Age and Gender Diversity Mainstreaming" reports<sup>44</sup>.

In addition, the HHC questions the effectiveness of the judicial review of alien policing detention orders: the HHC is not aware of a single case during the past several years where local courts found the ordering or prolonging of alien policing detention as unlawful.

- *What legal or other grounds motivate the application of a high-security-like prison regime applied in the alien policing jails ("guarded shelters") of Nyírbátor, Kiskunhalas and the Budapest Airport, considering that the ground for detention (illegal border-crossing) is considered only a "petty offence" under Hungarian law?*
- *What practical measures and mechanisms are in place to ensure medical, psychological and social care for detainees in alien policing detention?*
- *What are the guarantees to ensure access to legal assistance for foreigners in alien policing detention?*
- *Please provide information on the number of cases where courts designated to review alien policing detention orders considered the alien policing measure unlawful and ordered the release of a detained foreigner in 2008 and 2009?*
- *Please provide statistics about the number of persons in alien policing detention in Hungary in the last 3 years, and please provide information about the proportion of asylum seekers among such detainees.*

### Detention of asylum seekers

Regarding § 124 of the Government Report, asylum seekers and refugees are accommodated in three refugee reception centres in Hungary (Békéscsaba, Debrecen and Bicske).

Asylum seekers in the preliminary assessment phase of the asylum procedure and those under the scope of the Dublin II Regulation are usually held in a closed reception centre in Békéscsaba. The Békéscsaba reception center is surrounded by a barbed wire fence and guards with dogs, asylum seekers who are accommodated in the center are not allowed to leave its premises. There is no legal

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<sup>43</sup> Section 61 (3) (h) of the Act II of 2007 on the entry and residence of third-country nationals

<sup>44</sup> See UN High Commissioner for Refugees, *Being a Refugee – How Refugees and Asylum Seekers Experience Life in Central Europe*, 2008 report, pp. 21-22.

[www.unhcr-budapest.org/images/stories/news/docs/08\\_Reception%20conditions/8\\_1\\_AGDM%20report%202008\\_REG/UNHCR-AGDM\\_report\\_2008-ENG.pdf](http://www.unhcr-budapest.org/images/stories/news/docs/08_Reception%20conditions/8_1_AGDM%20report%202008_REG/UNHCR-AGDM_report_2008-ENG.pdf)

ground for this *de facto* detention, the duration of which may amount up to several weeks or months without any judicial review or other procedural safeguards.

Regarding the statement in the Government Report that asylum seekers in detention are released if their asylum claim is referred to the in-merit phase of the asylum procedure, the HHC wishes to call the Human Rights Committee's attention to the practice of keeping asylum seekers in detention beyond this period, in violation of the law<sup>45</sup>.

In April 2009, the Chief Public Prosecutor's Office established (following an examination pursuant to a complaint lodged by the Hungarian Helsinki Committee) that the Office of Immigration and Nationality (OIN) upheld the detention of certain asylum seekers unlawfully, after their admission to an in-merit asylum procedure. The Chief Public Prosecutor's Office submitted a "notice" ("*felszólalás*") to the OIN requesting the immediate termination of this practice, as it was contrary to the Asylum Act. According to information available to the Hungarian Helsinki Committee from its lawyers providing legal assistance in alien policing jails, the unlawful detention practice remains unchanged as of writing, notwithstanding the intervention of the Chief Public Prosecutor.

- *What is the basis of the restriction on the freedom of movement of asylum seekers in the reception centre in Békéscsaba, what is the duration of this restriction, and what remedies are available to challenge it?*
- *What is the legal ground for the prolonged alien policing detention in cases where the asylum seeker's application was referred to the in-merit asylum procedure?*
- *What steps has the Government taken to ensure that the Office of Immigration and Nationality complies with the notice of the Chief Public Prosecutor to immediately release all asylum seekers from alien policing detention whose asylum case has been referred to the in-merit asylum procedure?*

### **Pre-trial detention (Article 9 (3) and (4))**

Regarding the effectiveness of procedures intended to safeguard the right to liberty of the person, such as procedures relating to the ordering of pre-trial detention (Government Report § 105), the HHC is of the view that prosecutors and courts often neglect their duty to consider the individual circumstances of the case and the defendant when ordering pre-trial detention.

As a consequence of the riots in Budapest in September 2006, 72-hour long short-term arrest was ordered in 220 cases, and pre-trial detention was initiated in 172 cases. Complaints received by the HHC showed that for the majority of persons arrested in connection with the riots, prosecutors initiated the ordering of pre-trial detention as a matter of almost automatic routine. Prosecutors' motions for ordering pre-trial detention were prepared on the basis of the same pattern, without considering the different suspected actions and personal circumstances in merits and by referring to identical grounds. Furthermore, during the 72-hour short-term arrest that precedes the decision on the pre-trial detention, the prosecution should gather information whether the suspicion against the defendant is sufficiently well-founded to justify the motion for pre-trial detention. However, in the cases reported to the HHC, the prosecution failed to collect any evidence (even upon the motion of the defense), while in a number of cases by the testimony of neutral witnesses it could have easily been proven that the suspects had not participated in the riots. The courts vested with the task of deciding on the necessity of pre-trial detention also failed to take individual circumstances into account. According to the information provided by the President of the Supreme Court in October 2006, in response to the 172 motions, pre-trial detention was ordered in 145 cases, and a geographical ban or house arrest was ordered in 12 cases. It may be said that the first instance court often simply "put a seal of approval" on the prosecutors' motions without examining these on the

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<sup>45</sup> Section 55 (3) of the Act LXXX of 2007 on Asylum provides that the asylum authority (a part of the Office of Immigration and Nationality) shall initiate the release of an asylum seekers in alien policing detention, whose asylum claim has been admitted to an in-merit procedure (following a maximum 15-day admissibility assessment).

merits. As a result of appeals against pre-trial detention, out of the total of 145 pre-trial detentions ordered after the September 2006 events, only 31 were upheld by the second instance court – this shows that the higher courts shared the opinion that the first instance decisions lacked the necessary grounds.

- *Please describe the practice of initiating and ordering pre-trial detention following the riots in September 2006.*

During the criminal procedure the deprivation of liberty should only be applied if it is inevitable. Alternative measures to pre-trial detention are a geographical ban, house arrest or restraining order<sup>46</sup>. Even though pre-trial detention is the most strict coercive measure applicable, relevant statistics show that in practice alternatives to pre-trial detention are rarely used.

Regarding the prison population, the number of pre-trial detainees is considerably high compared to that of convicted inmates (25-27 % of the total prison population).

According to the statistics of the Hungarian Chief Prosecutor's Office, the proportion of coercive measures in the investigation phase on 31 October 2009: Pre-trial detention: 2300, house arrest: 79, geographical ban: 219, compulsory psychiatric treatment: 6<sup>47</sup>.

Number of measures ordered by the first instance courts <sup>48</sup>				
Year	Pre-trial detention	Geographical ban	House arrest	Total
2007	4,882	125	70	5,077
2006	4,896	127	45	5,068
2005	5,166	129	38	5,333
2004	5,424	134	35	5,593
2003	6,107	111	26	6,244
2002	6,487	124	16	6,627
Total	32,962	750	230	33,942

#### *Trends in the number of detainees<sup>49</sup>*

	31 December 2005	31 December 2006	31 December 2007
<i>Pre-trial detainees</i>	3,981	3,786	3,822
<i>Convicts</i>	11,469	10,782	10,259
<i>Other*</i>	270	253	272
<i>Total</i>	15,720	14,821	14,353

\* Compulsory psychiatric treatment, petty offence custody, etc.

- *Please provide information on the proportion of pre-trial detention compared to other alternative measures and the number of pre-trial detainees compared to convicted prisoners.*
- *Please provide information on the average duration of pre-trial detention, and also provide statistical information on how often the exceptions to the 3-year maximum duration of pre-trial detention are used.*

<sup>46</sup> Section 130 (2) of the Criminal Procedure Code

<sup>47</sup> Source: Hungarian Chief Prosecutor's Office's website, [www.mklu.hu](http://www.mklu.hu)

<sup>48</sup> Source: Hungarian Chief Prosecutor's Office's website, [www.mklu.hu](http://www.mklu.hu)

<sup>49</sup> Source: Yearbooks of the Hungarian Penitentiary Headquarters: 2005, 2006, 2007 ([www.bvop.hu](http://www.bvop.hu))

## **Defendants' right to be informed (Article 9 (2))**

As hinted at in §§ 106 and 107 of the Government Report, at the beginning of interrogation, the suspect shall be informed of the nature of the suspicion as well as the essence of the legal regulations applicable to the offence ("communication of suspicion").

Whereas the "communication of the suspicion" is almost always carried out properly, two practical problems need to be pointed out. Under the Police Act<sup>50</sup>, a person may be taken into "short-term arrest" if he/she is caught in the act of committing a crime or if he/she is "suspected of having committed a crime". It is an existing police practice to question persons in short-term arrest without formally initiating criminal proceedings. As this informal questioning takes place before a criminal procedure starts, the police are not formally obliged to inform the arrested person about his/her rights as a suspect or the suspicion in the above-described form. Officers write a report on what the future suspect said, and the report is attached to the case file; however it also happens that information provided this way makes its way into the record of the formal interrogation, since if someone makes a confession while being "called to account", he/she will be easily pressed to repeat it at the formal interrogation, especially if the defense counsel is absent from the first interrogation.

The communication of the suspicion at the first interrogation must be performed in a way that the evidence on which the suspicion is based shall not be presented to the suspect.<sup>51</sup> Until the investigation is closed (i.e. when the investigating authority is satisfied that no further investigatory acts are needed and the case can be forwarded to the prosecution to decide whether to drop the case or press charges), the defense is severely restricted in knowing what the basis for the accusation is. This is due to the fact that in the investigation phase access to documents is limited: the suspect and the defense counsel have guaranteed access to only the expert opinions and the minutes of those investigative acts where they are allowed to be present. They may be granted access to other documents only if this does not jeopardize the interests of the investigation. As the Criminal Procedure Code practically restricts the defense counsel's presence to the suspect's interrogation and to the hearing of witnesses whose interrogation was initiated by either counsel or the suspect, this provision severely limits the defense's right to inspect documents, since practice shows that investigating authorities tend to reject all requests for inspection without consideration of the individual circumstances.

After the conclusion of the investigation, the investigating authority has to present the complete case file to the defense. The suspect and his/her counsel are allowed to inspect all documents that may serve as the basis for indictment. From this moment on, the defense has full access to the files.

This limitation on the defense's ability to access case documents becomes especially problematic in relation to pre-trial detention, since evidence serving as the basis of ordering and maintaining the detention is also withheld from the defense.

- *Please explain the legal background and practice concerning the right to information in the course of the criminal procedure regarding the reasons for ordering pre-trial detention.*

## **Right to compensation for unlawful arrest or detention (Article 9 (5))**

With respect to the right to compensation (see Government report § 107), it should be noted that claims for compensation should be submitted within six months from the date of the binding decision. Even though the rules of Civil Code are applicable in this procedure, the aggrieved party has only six months to file the claim, which is considerably shorter than the five-year time limit stipulated for suing for damages under the Civil Code.

According to the data given by the Ministry of Justice, in 2007 (until 30th September) the court decided of adjudging compensation in 94 cases, the total sum adjudicated was 188.206.372 HUF.

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<sup>50</sup> See at cf. 33.

<sup>51</sup> Joint Decree no. 23/2003. (VI. 24.) of the Minister of Interior and the Minister of Justice on the Detailed Rules of Investigation Conducted by Organizations under the Minister of Interior (Investigation Decree)

There is no data available of the number of cases where victims of deprivation were entitled to compensation.

- *Please provide data on the number of cases where victims were entitled to compensation because of deprivation of liberty, based on the provisions of Criminal Procedure.*
- *Please provide data on the number of cases when a victim of deprivation of liberty was given compensation including the sum of money adjudged to them.*

## **Article 10**

### **Ill-treatment in detention**

In the discussion on Article 7, the Government Report (§§ 81-82) provides data concerning legal actions initiated in relation to offences committed against detainees. The criticism voiced by the HHC in relation to the lack of reliable statistics under Article 7 is also valid here: the numbers also include offences committed against detainees by fellow detainees and crimes against property of detainees, which obviously do not fall under the scope of Article 10. Furthermore, it is highly likely that these numbers only include identified offences ("ismertté vált bűncselekmények") and not to all the reports filed in relation to such incidents.

The HHC has no statistics specifically indicating the outcome of procedures launched on counts of ill-treatment against detainees, but it is highly likely that the sanctions in these cases are not stricter than in the case of ill-treatment in general.

- *Please provide statistics on cases under Articles 226, 227 and 228 of the Penal Code in relation to detainees, where the number of indictments is measured against all the reported offenses ("eljárás kezdeményezés összesen") and not against identified offenses ("ismertté vált bűncselekmény").*
- *Please provide statistics on sanctions imposed in cases conducted under Sections 226, 227 and 228 of the Criminal Code in relation to detainees as well as statistics on the use of exoneration in such cases and data on the number of prison personnel who remained in service despite convictions on such charges.*
- *What are the reasons underlying the lenient sentencing practice in criminal proceedings launched against law enforcement officials for ill-treatment of detainees?*

### **Lack of access to an independent doctor for persons complaining of ill-treatment**

As in the case of police jails, inmates of penitentiary institutions are also not guaranteed access to an independent physician if they complain of ill-treatment, which is contrary to the CPT's relevant recommendations (see discussion under Article 7).

- *Please provide information about the procedure in penitentiaries followed in case of alleged ill-treatment, and whether detainees may have access to an independent physician to record injuries?*

## **Medical examinations carried out in the presence of law enforcement personnel**

Despite the CPT's recommendations<sup>52</sup>, medical examinations of detained persons are systematically still carried out as a rule in the presence of police officers, even when the person examined has to strip naked. (It should be noted that this is also valid with regard to pre-trial detainees and convicted prisoners; the HHC's civilian prison monitors noted this practice in penitentiary institutions as well.) This practice raises serious concerns also from the aspect of personal data protection.<sup>53</sup>

- *Please provide information on whether there are playns to guarantee that law enforcement personnel may be present at the detainee's medical examination only under exceptional circumstances.*

## **Limited use of provisions allowing inmates to leave the penitentiary institution for short periods of time**

The Government Report describes mitigated prison rules (*EVSZ*) in detail (§ 140) but does not contain data on how these provisions are applied in reality. The HHC's experience shows that this possibility remains practically unused: this possibility is granted to very few inmates and only in certain penitentiary institutions.

- *Please provide statistics on the use of mitigated prison rules, including the number of detainees who were allowed to leave the penitentiary while placed in such regime.*

## **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.<sup>54</sup> 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.

- *Please provide information about whether there has been any follow up on the CPT's recommendations concerning the HSR regime in Szeged.*

## **Material conditions amounting to degrading treatment of inmates**

Whereas newly built detention facilities are usually of high standard from the point of view of physical conditions, in some of the older buildings (some built in the 19<sup>th</sup> century) the conditions are such that they amount to degrading treatment. Both in some penitentiary institutions and police jails, there are for example still hundreds of detainees who are placed in cells where the toilet is separated from the rest of the cell only by a textile curtain.

In some of the county remand prisons (where mostly pre-trial detainees are placed), overcrowding is so high that the placement of inmates can only be solved under inhumane circumstances. In the Baranya County Remand Prison for instance, the rate of overcrowding was for a long time 200 %. In some cells inmates are placed on two three-level bunk beds, where the space between the levels of the bed is so small that inmates cannot sit up, and the space between the beds is so narrow that only one person can stand up at a time and an adult man can hardly squeeze by. So while the average rate

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<sup>52</sup> 2006 CPT Report on Hungary, 17. and 24.

<sup>53</sup> According to Section 2 (2) (a) and Section 3 (2) of the Act LXIII of 1992 on Personal Data and the Disclosure of Public Interest Data, data concerning illness or medical status are qualified as sensitive data, and as such, can only be processed (obtaining a data qualifies as data procession as well) if an Act of Parliament prescribes so or the person to whom the data refers (the data owner) gives a written permission. The situation described clearly infringes these provisions.

<sup>54</sup> <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>



of overcrowding may not seem extreme (according to the Government Report (§ 157) it is 130 %), in some institutions the situation is close to intolerable.

- *Please provide the countrywide number of prison or police cells without separated toilets.*
- *Please provide data on the lowest per person free-moving space in the Hungarian prison system.*

### **The conditions of pre-trial detention**

The problem of overcrowding concerns pre-trial detainees to the greatest extent. The Government Report's data (§ 157) show a decreasing trend, but the recent increase in punitive tendencies has resulted in the reversal of the positive trends. At the end of July 2008, the number of pre-trial detainees was 3,865 persons, by the end of December 2009, this number has increased to 4,322.

The 200 % overcrowding rate of the most overcrowded county penitentiaries (Bács-Kiskun County, Baranya County, Hajdú-Bihar County, Borsod-Abaúj-Zemplén County and Szabolcs-Szatmár-Bereg County) was reduced to an average of 150 % through placing inmates in other institutions, however, the overcrowding rate of the Bács-Kiskun County Penitentiary Institution was still 200 % in January 2009.

#### *Trends in the number of detainees*

	<i>31 December 2005</i>	<i>31 December 2006</i>	<i>31 December 2007</i>
<i>Pre-trial detainees</i>	3,981	3,786	3,822
<i>Convicts</i>	11,469	10,782	10,259
<i>Other*</i>	270	253	272
<i>Total</i>	15,720	14,821	14,353

\* Compulsory psychiatric treatment, petty offence custody, etc.

Overcrowding adversely impacts pre-trial detainees' other rights as well. Due to the high number of inmates, accomplices cannot be safely separated. Therefore, apart from the one-hour open door exercise, cells are closed all day. The number of visits is restricted to the legal minimum (one per month) as it is difficult for the penitentiary system to organize more visits for so many people. Sports and cultural activities are practically missing, working is impossible. Pre-trial detainees are in most cases under much worse circumstances than persons held in high security prison regimes, although the conditions of their detention should be as close to free life as possible (since they are not convicted). Thus, pre-trial detention is like punishment before the sentence.

- *Please provide information on measures taken to overcome overcrowding in institutions holding pre-trial detainees. Please provide updated statistics on the prison population and the proportion of those detained awaiting for trial, compared to convicted prisoners.*
- *Please provide information on steps to improve the situation of pre-trial detainees and bring their detention as close to circumstances required by international norms as possible.*

### **Grade 4 prisoners placed in special security units or cells**

Although the law<sup>55</sup> expressly provides that placement in different security groups may not have any impact on detainees' rights, in practice those qualified as Grade 4 prisoners<sup>56</sup> (held in the most severe

<sup>55</sup> Section 44 of Decree no. 6/1996 of the Minister of Justice (Penitentiary Rules)

<sup>56</sup> According to Article 42 of Penitentiary Rules, upon his/her reception to the penitentiary institution, the inmate is placed in one of four security regimes according to the threat he/she poses to the security of detention. Grade 4 prisoners are those who are expected to escape or commit an act severely endangering or violating the order of the penitentiary or his/her or other people's right and/or physical integrity or who have already committed such

regime) suffer disadvantages. These prisoners may be placed into special security units or special security cells,<sup>57</sup> which means that they are under constant supervision; they may move within the territory of the institution only with permission and under supervision; they are always handcuffed when leaving their otherwise always closed cells; their participation in communal (sport or cultural) activities is restricted, so they practically may not meet any other prisoner, e.g. spend their one-hour outside activities in a separate yard which is much smaller and not even open-air in the true sense of the word; the range of objects and articles the inmate may keep with him/herself may be restricted etc. Those placed in a special security cell may be subject to even more rigorous rules (their cells are smaller, they are placed alone having no contact with other detainees at all).

A special case of placement is when an inmate is placed in a special security cell not because he/she is considered dangerous, but in order to protect him/her from others.

The admission committee of the given penitentiary institution may order that the inmate will be placed in a special security cell for a maximum of three months. The admission committee may prolong placement with a further three months on two occasions. After nine months, placement shall be ordered by a special committee appointed by the national commander. The special committee shall examine at least once in every six months whether placement in the special security cell is well-founded.<sup>58</sup> The admission committee may order the placement of the inmate in a special security unit for a maximum of six months, which can be prolonged (the law does not clarify, for how long). It should be examined once in every six months whether placement in the special security unit is well-grounded.<sup>59</sup>

The CPT called upon the Hungarian authorities to provide the defendants "written information on the reasons for the measure as well as the opportunity to express their views on the matter"<sup>60</sup>. In spite of the decision's above-listed impacts on detainees' rights, in most cases no reason is communicated to the prisoner as a justification of the decision regarding his/her grading, since the law prescribes that the reasons may be revealed only if that does not threaten the safety of the detention. 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. Furthermore, it is up to the penitentiary institution to decide whether a Grade 4 prisoner is detained under general conditions or in a security unit or cell. The procedure is informal in the sense that there is no formally regulated procedure or placement decision communicated to the affected prisoner. There is no effective legal remedy against the placement, and it is not possible for the inmate to initiate the review of his/her isolation. Furthermore, the CPT's recommendation<sup>61</sup> concerning the review of the policy of the application of means of restraint to prisoners placed under a special security regime was not taken into consideration.

Special security units are operated in the high-security prisons located in Sopronkőhida and Sátoraljaújhely.

- *Please provide information on plans to amend the legislation to guarantee that Grade 4 prisoners have access to effective remedy against their placement in the Grade 4 security group.*

## **Overlapping issues**

Some issues that fall under the scope of Article 10 have already been touched on in relation to Article 7, such as the legal gap concerning those under short-term arrest (*előállítás*), ill-treatment cases that took place in September-October 2006 (as numerous persons were subjected to ill-treatment when

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acts, and whose safe detention may only be guaranteed through guarding or – exceptionally – through surveillance.

<sup>57</sup> Section 47 of the Penitentiary Rules

<sup>58</sup> Section 47 (5) of the Penitentiary Rules

<sup>59</sup> Section 47 (6) of the Penitentiary rules

<sup>60</sup> 2006 CPT Report on Hungary, 64.

<sup>61</sup> 2006 CPT Report on Hungary, 66.

already detained) and the problem of actual life sentence. These issues are dealt with in detail under Article 7.

### **Conditions of detention in alien policing jails**

The Government Report (§§ 154-155) refers to the former Border Guard's (Police since the merger of the two organisations in 2008) widespread relations and cooperation with international organisations, churches and Hungarian non-governmental organisations which contribute to the improvement of the conditions faced by foreigners in alien policing detention. The Hungarian Helsinki Committee's experience in monitoring alien policing jails, however, shows that despite the aforementioned cooperation agreements, foreigners held in alien policing detention are often practically isolated from the outside world. They face remarkable difficulties in communication with alien policing jail guards; social, psychological and psychiatric assistance is practically unavailable while in detention.<sup>62</sup>

- *How are the cooperation agreements the Police has with non-governmental organisations implemented in practice? Is there any specific non-governmental or religious organisation that provides*
  - *psychological or psychiatric care,*
  - *medical care,*
  - *social care (including leisure or learning activities),*
  - *food or clothing donations**to foreigners held in alien policing detention on a regular basis?*

### **Article 13**

Regarding § 164 of the Government Report and legal safeguards in expulsion procedures, it should be noted that a request for judicial review against an expulsion measure does not carry an automatic suspensive effect on removal. The HHC's experience shows that due to the lack of appropriate and comprehensive information, foreigners are rarely aware of the fact that they have to explicitly ask for the suspension of expulsion measures when submitting a motion for judicial review in these cases. It is also problematic that expelled foreigners are not automatically provided with free legal assistance and representation before the court.<sup>63</sup>

- *Are expelled foreigners informed about the possibility of submitting a motion for judicial review against the decision in expulsion? If yes, in what form and language?*
- *Are expelled foreigners duly informed that the suspension of expulsion measures shall be explicitly requested (i.e. the judicial review does not trigger an automatic suspensive effect)? If yes, in what form and language?*
- *Are foreigners entitled to receive free legal assistance in expulsion procedures and how may they exercise this right?*

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<sup>62</sup> For further reference see UN High Commissioner for Refugees, *Being a Refugee – How Refugees and Asylum Seekers Experience Life in Central Europe*, 2008 report, pp. 21-22.  
[www.unhcr-budapest.org/images/stories/news/docs/08\\_Reception%20conditions/8\\_1\\_AGDM%20report%202008\\_REG/UNHCR-AGDM\\_report\\_2008-ENG.pdf](http://www.unhcr-budapest.org/images/stories/news/docs/08_Reception%20conditions/8_1_AGDM%20report%202008_REG/UNHCR-AGDM_report_2008-ENG.pdf)

<sup>63</sup> Please see the joint report of the Hungarian Helsinki Committee, the National Police Headquarters and the UNHCR Regional Representation on the access to territory and relevant procedures of those in need of international protection ("border monitoring"), p. 43.  
[http://helsinki.hu/dokumentum/Border\\_Monitoring\\_Report\\_2007\\_ENG\\_FINAL.pdf](http://helsinki.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf)

- *How are judges carrying out the review of expulsion orders trained on relevant human rights obligations (e.g. the prohibition of torture, right to privacy and family life, non-refoulement, etc.)?*

## Article 14

### Problems of the ex officio appointed defense counsel system

The Government Report outlines the system of appointed defense counsels (§§ 177 and 180) and also mentions the criticism voiced in relation to its functioning (§ 267). While acknowledging the Government's plans to reform the system, the HHC wishes to call attention to the scale of the problem, and to the fact that a temporary solution would be available even before a comprehensive reform takes place.

In the HHC's view, the fact that in the investigation stage the appointed counsel is selected by the investigating authority (mostly the police) poses a severe threat to effective defense. In the investigation phase, the defense counsel is selected by the investigating authority, which is disinterested in efficient defense work. For the investigator, it is undoubtedly easier to deal with a defense counsel who is not too active, who does not bombard him/her with questions, remarks and motions, or who may not even show up. In addition, for the suspect it is difficult to trust a counsel who was selected by the person who is in charge of the investigation against the defendant.

There are some attorneys who base their law practice principally on ex officio appointments. Such lawyers may become financially dependent on the member of the police who takes decisions on appointments.

The results of a series of inquiries to police stations by the HHC show the widespread practice of 'in-house' lawyers:

<b>Police station</b>	<b>No. of appointments in 2007</b>	<b>Proportion of cases taken by the most often appointed counsel in percentage of all cases</b>	<b>Proportion of cases taken by the two most often appointed counsel in percentage of all cases</b>
Budapest, 1 <sup>st</sup> district	83	55%	69%
Budapest 5 <sup>th</sup> district	192	65%	82%
Budapest 17 <sup>th</sup> district	135	37%	68%
Budapest 18 <sup>th</sup> district	229	55%	70%
Budapest 20 <sup>th</sup> and 23 <sup>rd</sup> district	97	61%	67%

At all these police stations two lawyers took over two-thirds of all the appointments.

This practice is likely to significantly contribute to the problem that appointed counsels as a rule fail to show up in the investigation phase. A survey carried out by the Crime Investigation Department of the National Police Headquarters, involving the 23 regional investigation units of the National Police and based on targeted data collected during June and July 2006<sup>64</sup>, showed that in 14 out of the 23 county police headquarters, appointed counsels attended less than 50 per cent of first interrogations. The average rate for all 23 units was 34.9 percent, meaning that overall almost two-thirds of indigent defendants faced their first interrogation without professional legal assistance.

<sup>64</sup> Zs. Szabó, S. Szomor: Fegyvergyelőség, in Rendészeti Szemle, Vol. 55, Issue 2007/3. pp. 19-41.

It is obvious that even until the appointing authority may be replaced with an organization independent of that which is involved in the criminal procedure, the selection of defense counsels must be randomized, so that the investigating authority is not able to influence the result of the appointment. This could be achieved by a computer program that could be integrated into the general IT system of the Police.

- *How does the Government aim to ensure that ex officio appointed defense counsels are selected and work independently of investigating authorities? Does the Government plan to introduce, in advance of the comprehensive reforms promised for 2011, any measure to prevent the police from appointing "in-house" lawyers?*

### **Concerns regarding adequate time and facilities for the preparation of defense**

While the law prescribes that sufficient time and opportunity shall be provided for the preparation of defense (Government Report § 178), the Government Report fails to give an account of the problems in the practical implementation of the related provisions.

First of all, it should be noted that the mandatory nature of defense does not require **the presence of defense counsel at individual procedural actions in the investigation stage**. Thus, if the notified counsel fails to show up for any reason, it will not prevent the investigative authority from interrogating the defendant. The situation is different in the judicial phase: if defense is mandatory, no hearing may be held without the presence of defense counsel.

As of 1 June 2007, if the suspect's detention is ordered, it is guaranteed that he/she can retain a lawyer prior to the first interrogation.<sup>65</sup> If the suspect claims before the interrogation has taken place that he/she has retained counsel, and requests that counsel be notified, the investigating authority shall notify the counsel about the interrogation by fax, e-mail, or if this is not possible, by telephone. This, however, still may not mean that counsel actually has the chance to be present.

When asked about the actual practice, practitioners have said that suspects who (usually from an earlier case) already have ongoing contacts with a lawyer are in a relatively good position. If this is the case, the investigating authority usually attempts to contact the lawyer, although the notice given is often very short, not to mention instances when a fax or e-mail is sent to the lawyer's office late at night, when the chances of the lawyer receiving notification are practically non-existent. If the suspect cannot immediately name a lawyer, he/she will not be allowed to call relatives or acquaintances to inquire about one. In such cases, the interrogation is conducted and only afterwards does the suspect have the chance to try to arrange the retainer.

Late notification is also a problem with regard to appointed lawyers. The Police's own internal research<sup>66</sup> provides convincing evidence on the issue. In one county, for example the average time between notification and the commencement of the interrogation was 30 minutes, which in most cases is obviously not sufficient for the lawyer to attend. In 16 counties, the notification was sent out on average only an hour before the scheduled time (while counties cover a large geographical area in Hungary). Obviously, if the notification is sent by fax and no attempt is made to reach counsel by phone (which is often the case), there is a good chance that counsel will not be informed about the interrogation in sufficient time to allow him/her to try to have it rescheduled.

With regard to **information on the nature and cause of the charge** against the suspect, two practical problems should be highlighted. Under Act XXXIV of 1994 on the Police ("Police Act"), a person may be taken into 'short-term arrest' if he/she is caught in the act of committing a crime, or if he/she is 'suspected of having committed a crime'. It is current police practice to question persons in short-term arrest without the formal commencement of the criminal proceedings. This practice<sup>67</sup> has

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<sup>65</sup> Joint Decree no. 23/2003. (VI. 24.) of the Minister of Justice and the Minister of Interior no. 23/2003. (VI. 24.)

<sup>66</sup> Survey carried out by the Crime Investigation Department of the National Police Headquarters, involving the 23 regional investigation units of the National Police and based on targeted data collected during June and July 2006. Zs. Szabó, S. Szomor: Fegyvergyelőség, in Rendészeti Szemle, Vol. 55, Issue 2007/3. pp. 19-41.

<sup>67</sup> Termed 'elszámoltatás' calling somebody to account in police jargon.

no legal basis, but officers and attorneys interviewed during the HHC's 2008-2009 survey have confirmed its use in practice. As this informal questioning takes place before the beginning of a criminal procedure, the police are not formally obliged to inform the arrested person about his/her rights as a suspect, or of the suspicion in the above form. Officers write a report on what the future suspect said, and the report is attached to the case file. However, information provided this way makes its way into the record of the formal interrogation, since if someone makes a confession while being 'called to account', he/she will usually be pressed quite easily to repeat it at the formal interrogation, particularly if defense counsel is not present at the first interrogation (see above).

Another problematic practice arises when prospective suspects are heard as witnesses. Act XIX of 1998 on the Code of Criminal Procedure does not prescribe an obligation of the investigating authority to warn the witness that he/she may become a suspect (although the law poses the obligation on the investigating authority to warn a witness that he/she is not obliged to answer questions in relation to which he/she may accuse him/herself or his/her close relative with a criminal offence). According to experienced defense counsels, investigating authorities do not provide information on what kind of offence they are investigating, but rather pose a series of questions, so that potential suspects are not informed about the nature and cause of the accusation.

- *What steps has the Government taken to guarantee effective access to a lawyer for defendants by making sure that the provisions concerning the notification of lawyers do not remain a mere formality?*
- *What measures have been taken to guarantee that the provisions concerning information on the nature and cause of the charge against the suspect are implemented effectively?*

### **Problems concerning language use in the criminal procedure**

Although it may not be clear from the Government Report (§§ 182 and 196 read in conjunction), costs arising in relation to the suspect and defendant's language use are borne by the State. However, this issue is not unproblematic.

No interpreter is provided by the State for the purposes of consultation between the lawyer and the client. This creates a significant inequality between indigent and paying clients. While clients who can afford to retain a lawyer can also pay an interpreter to translate during the consultation, indigent defendants, unless the lawyer speaks the relevant language, can only consult with their appointed lawyer immediately before the procedural act (when the official interpreter is around) and are forced to rely on interpreters chosen by the authority. This is particularly problematic in the investigation phase of the procedure.

Translation of documents produced in the framework of the criminal procedure is also paid by the State, but with certain restrictions. The translation of decisions (including the verdict) and other official documents that are required to be delivered to the addressee shall be the responsibility of and paid by the court, prosecutor or investigating authority that has adopted the decision or issued the official document. Other documents, however, (for example, minutes of procedural actions) are not translated by the authorities, and if the suspect wishes to receive them in his/her mother tongue, he/she is required to pay for the translation.

This means that, while at the beginning of the investigation, the communication of the suspicion is translated by an interpreter, the records are not available free of charge for the suspect in his/her mother tongue. The bill of indictment is translated and those costs are borne by the state, but the records of interrogations or court hearings are not available for free, whereas the verdict is again translated into the required language and that is also paid by the state. Not having the minutes of the interrogations and court hearings translated significantly restricts the defendant in preparing his/her defense and also hinders him/her in exercising certain procedural rights (such as the right to request the modification of the minutes).

Obviously, indigent defendants who cannot afford to pay for the translation of those documents that the State authorities are not obliged to have translated are in a significantly worse position than wealthy defendants who can pay for this service.

- *What steps has the Government taken to enhance foreign defendants' right to language use in criminal procedures?*

### **Success rate of the prosecution and miscarriages of justice**

The success rate of the Hungarian prosecution is extremely high: 96.7 %, 96.8 %, 96.7 % and 96.5 % in 2005, 2006, 2007 and 2008 respectively.

According to attorneys, this is due to a certain "presumption of guilt" on the part of the judiciary, which is strengthened by stronger feelings of collegiality with the prosecutors than lawyers. Attorneys claim that Hungarian courts (particularly courts of second instance) are conspicuously reluctant to deliver acquittals. This seems to be confirmed by a former judge, who says that "acquitting decisions have to be substantiated in much more detail than convictions. [...] The existence of this approach is highlighted by a 2006 research which proves that most county courts seem to have an 'aversion' to acquittals and a significantly larger proportion of acquitting first instance decisions are quashed than convictions. This fact is important, as it does not seem likely that judges are more negligent when they acquit the defendant than when they condemn him/her. Thus, it seems that courts of second instance look at acquittal as some kind of a 'mistake'."<sup>68</sup>

Judges and prosecutors interviewed by the HHC on the other hand questioned this view and tended to attribute high conviction rates to the fact that the prosecution does not risk taking 'weaker' cases to court (although one of the judges admitted that, particularly younger judges tend to rely on the indictment to a greater extent than their more experienced colleagues).

This issue is related to the lack of investigations into serious miscarriages of criminal justice. Examples include the following instances:

In a bank robbery committed in Mór, in May 2002, the two perpetrators killed 8 persons. Two weeks after the robbery, Ede Kaiser – a known criminal – was named by the police as one of the suspects. Ede Kaiser was sentenced to life imprisonment without probation in December 2004. The appeals court upheld the decision in October 2005. Kaiser pleaded innocent throughout the whole procedure. His girlfriend, her parents and a fourth person verified his alibi, claiming that he had been in Budapest at the time of the robbery. The prosecution accused these four persons of giving a false testimony. In February 2007, the police found convincing evidence that the robbery was committed by other persons than originally accused. In December 2009, Kaiser was acquitted as a result of his re-trial.

On 4 March 1999, a man was robbed and murdered in the village of Újszentmargita, Hungary. Before the incident the victim had a few drinks in a bar together with Ferenc Burka jr. and his father, Ferenc Burka, both Roma. The next day the Burkas were arrested and an investigation started against them. Two witness testimonies were considered sufficient evidence for an indictment decision: one from the bartender and another from a villager who saw the two Roma men walking in the direction of the victim's house. The prosecutor's investigation was based only on circumstantial evidence. On 11 April 2000, the prosecutor pressed charges against them and they were sentenced to 15 and 13 years of imprisonment. They were kept in detention for 6 years. After a long procedure, the Szeged Appellate Court ordered a retrial and on 20 July 2005, the court found them not guilty and ordered them released. The decision was upheld on appeal at the Debrecen Appellate Court on 25 April 2006. It turned out that evidence

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<sup>68</sup> Mátyás Bencze: A jogalkalmazási folyamat szociológiai vizsgálata (manuscript).

suggesting that another person committed the murder has been neglected by the authorities.

Ernő Setét is a musician of Roma origin. Together with another perpetrator, he was charged with beating three homeless persons, and then tearing off the golden chain of one of the victims at 3 and 4 a.m. on 6 August 2005. Setét became a suspect after he was arrested on 17 September 2005 by a police officer who thought Setét had matched the arrest warrant's description based on the statement of the victims. The victims recognized Setét, who had a very firm alibi: the evening before, he gave a concert in Demecser (260 kilometers from Budapest) that ended late at night. He wished to verify this alibi with witnesses present at the concert, the persons who travelled back to Budapest in his car, the employee of the gas station where he stopped to buy fuel, the cell information of his mobile phone, but the first instance court refused to take any of the evidence into account and sentenced Setét (who had a clear criminal record) to 4 years of imprisonment in August 2006. The court of second instance quashed the decision and ordered a repeated trial. In the repeated procedure Setét was acquitted. Altogether he spent 16 months in pre-trial detention.

In reaction to the Mór fiasco, Vice President of the Supreme Court Bertalan Kaposvári announced his intention to set up a commission consisting of judges, representatives of other legal professions and the academia to look into cases of severe miscarriages of justice with the purpose of identifying those systemic deficiencies that lead to the erroneous decisions. The initiative was fiercely attacked by judicial leaders, and finally nothing happened to draw the conclusions from the cases.

- *What steps has the Government taken to identify the systemic root causes of miscarriages of justice?*

## **Article 19**

The association Hungarian Guard ("Magyar Gárda"), an extremist right-wing paramilitary group was dissolved by a legally binding court ruling in 2009, claiming that the activity of the Magyar Gárda has infringed the rights and freedom of others. However, members of the Magyar Gárda continue to carry out their activities (e.g. attending demonstrations in the uniforms of the Magyar Gárda), claiming that they are members of the "New Magyar Gárda", which is a new association in their view. According to recent news, the prosecutor's office terminated the criminal proceedings initiated against leaders of the "New Magyar Gárda" on account of the fact that they have acted as leaders of a dissolved association (which constitutes a criminal offence under Hungarian law), claiming that the two organizations are not the same.

- *Please provide information on the Magyar Gárda and reasons for terminating criminal proceedings started on account of acting as leadership in a dissolved association against the leaders of the Új Magyar Gárda.*

## **Article 20**

Incitement to hatred is punishable under Article 269 of Act IV of 1978 on the Criminal Code. However, it seems that the practice of authorities concerning the use of this provision leaves much to be desired. Despite the wide-spread racist, homophobic, anti-Semitic and xenophobic public speech, it seems that the authorities are reluctant to order investigations, file indictments or impose sentences in these cases.

- *Please provide information on the number of reports, indictments and final decisions based on Article 269 of Act IV of 1978 on the Criminal Code in recent years.*



## Article 21

As far as right to assembly is concerned, the current legal provisions are often misused, and police practice is inconsistent. In 2008 for example the Gay Pride March was initially banned by the Police, arguing that it would be impossible to ensure traffic in another way, being an obviously ill-founded argument: it was clear that the real aim of the ban was to avoid conflicts of those participating in the march and right-wing radicals. NGOs and politicians expressed their deep concerns regarding the decision of the Police, and finally the Budapest Police Headquarters withdrew its decision banning the march.

Other examples include the ban of a demonstration intended to hold in August 2009, in order to commemorate Rudolf Hess, a Nazi war criminal. Police banned the planned march, claiming that the participants will surely commit criminal offences, and the court considered the police decision lawful. However, according to the current legal provisions it was not possible to impose a ban on the march, since the relevant provisions do not make it possible to ban demonstrators based on the fact that the demonstrators surely will commit a criminal offence, but it should have been dissolved immediately as soon as the demonstrators commit a criminal offence.<sup>69</sup>

Practice regarding dissolving demonstrations is also inconsistent, with special regard to the demonstrations organized or attended by members of the dissolved Magyar Gárda. Furthermore, the current legal provisions do not address a number of problems that have emerged in the past years with regard to the right to assembly (e.g. the case of several demonstrations to be held at the same time at the same place).

- *Please provide information on cases when a demonstration was banned by the police on grounds that traffic may not be ensured in another way.*
- *Please provide information in general on the practice of banning demonstrations.*
- *Please provide information on the practice of banning and dissolving demonstrations organized or attended by the members of the dissolved Magyar Gárda.*

The practice related to a relatively new provision of Act LXIX of 1999 on Petty Offences, named "infringement of the freedom of association, the freedom of assembly, and the right to participate in electoral assemblies", and the similar provisions of Act IV of 1978 on the Criminal Code is also problematic. An example for this is the case of two men taken into short-term arrest on 15 March 2009 for committing the petty offence referred to by shouting at the official raising of the Hungarian flag, even though it was not a demonstration in terms of Act III of 1989 on the Right to Assembly. The Parliamentary Commissioner for Civil Rights also issued a statement in May 2009<sup>70</sup> saying that the state or persons representing the state may not be the subject of the right to assembly, consequently, programs organized by the state or local governments do not fall under the scope of Act III of 1989 on the Right to Assembly, and disturbance of these programs may not constitute a petty offence.

- *Please provide information on the use of criminal law and petty offence provisions related to infringement of the right to assembly.*

## Article 23

### Common law partnerships

Common-law partnerships (Government Report §§ 242 and 246) enjoys legal recognition and provide a set of rights in Hungarian legislation. The institution of registered partnership was also created by

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<sup>69</sup> For the standpoint of the HHC, see: [http://helsinki.hu/Friss\\_anyagok/htmls/614](http://helsinki.hu/Friss_anyagok/htmls/614)

<sup>70</sup> OBH 2624/2009, available at: <http://www.obh.hu/allam/aktualis/htm/kozlemeny20090525.htm>

Act CLXXXIV of 2007 for same-sex partners, ensuring a legal status similar to that of marriage (except for the right to adoption). Immigration and asylum legislation do not reflect these positive developments, considering unmarried or same-sex couples as ineligible for family reunification.

- *Does the legal interpretation of family tie differ in immigration/asylum legislation and in general rules of civil law? If yes, what is the reason for applying different interpretations?*

## Article 24

Regarding the protection of unaccompanied minor asylum seekers, practice shows that despite the provisions in the Asylum Act emphasising the importance of considering the "best interest of the child", authorities fail to duly address the specific needs of unaccompanied asylum seeker children. According to the HHC's experience, the current regime (in which *ex officio* appointed legal guardians represent children in the asylum procedure) results in a situation where the persons being responsible for representing the interest of the minor in asylum procedures are not able to represent them effectively, hence minor asylum seekers remain without appropriate legal assistance and protection. In some cases witnessed by the HHC, appointed legal guardians failed to contest the negative decision of the Office of Immigration and Nationality within the deadline set out in the law. Due to insufficient coordination between the OIN and the competent Guardianship Office, appointed legal guardians are not prepared to undertake such activity as they do not receive specialized training in asylum law or international human rights law.<sup>71</sup>

- *What specific measures are taken in practice by Hungarian authorities to ensure respect for the "child's best interest" in case of unaccompanied minor asylum seekers?*
- *How is the quality of legal representation provided by ex officio appointed legal guardians in case of unaccompanied minor asylum seekers assessed? What kind of specific (legal, psychological, intercultural, etc.) training provided to legal guardians representing unaccompanied minor asylum seekers?*

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### The Hungarian Helsinki Committee

The Hungarian Helsinki Committee is a non-profit organisation founded in 1989 and registered as an association with prominent public benefit status in Hungary. It is a member of the European Council on Refugees and Exiles (ECRE).

The Hungarian Helsinki Committee (HHC) monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantee the consistent implementation of human rights norms. The HHC promotes legal education and training in fields relevant to its activities, both in Hungary and abroad.

The HHC's main areas of activities are centred on protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

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<sup>71</sup> For further information see: Júlia Iván: *La protection des mineurs isolés étrangers en Hongrie*; Pro Asile, La revue de France Terre d'Asile N°20, Numéro spécial mineurs isolés étrangers, Novembre 2009. <http://www.france-terre-asile.org>