HUNGARIAN HELSINKI COMMITTEE

Briefing paper for the ad hoc visit to Hungary by the Committee for the Prevention of Torture

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I. Fundamental issues concerning pre-trial detention

The entry into force of Act XIX of 1998 (the New Code of Criminal Procedure) on 1 July 2003 will solve a number of problems raised by Act I of 1973 (the Old Code of Criminal Procedure), such as the lack of a final time limit for the duration of pre-trial detention or the deficiencies in the appeal system concerning decisions on pre-trial detention. There are a number of issues however, with regard to which the criticism formulated in connection with the Old Code is also valid for the new one. These are summarized below.

1. Grounds for ordering pre-trial detention and the presumption of innocence

Under § 129 of the New Code of Criminal Procedure, "In the case of an offense punishable with imprisonment the defendant may be subjected to pre-trial detention if
a) he/she has escaped or hid from the court, the prosecutor or the investigative authority, he/she has attempted to escape, or during the procedure another criminal procedure is launched against him/her for an offense punishable with imprisonment;
b) taking into account the risk of his/her escape or hiding, or for any other reason, there is well-founded ground to presume that his/her presence at the procedural acts may not be secured otherwise;
c) there is well-founded ground to presume that if not taken into pre-trial detention, he/she would – through influencing or intimidating the witnesses, eliminating, forging or hiding material evidence or documents – frustrate, hinder or threaten the procedure;
d) there is well-founded ground to presume that if not taken into pre-trial detention, he/she would accomplish the attempted or prepared offense or would commit another offense punishable with imprisonment."

In our view, the provision according to which someone may be taken into pre-trial detention if it may be presumed that he/she would commit another offense punishable with imprisonment if he was not taken into custody contains the risk that a certain "abstract danger" would suffice for ordering pre-trial detention. It also contradicts the basic constitutional principle of the presumption of innocence. Prior to 1 April 2000, pre-trial detention could be ordered on the grounds of reasonable belief that the accused person would commit "another offense" if he was not taken into custody. However, the Hungarian Constitutional Court abolished this provision, declaring that it contradicts the constitution and the principle of presumption of innocence. This required an amendment of the Old Code of Criminal Procedure, as a result of which the above quoted new text entered into force. The same provision appears in the New Code of Criminal Procedure. In our opinion, the reformulated text still contradicts the constitution since the basic principle of presumption of innocence is infringed. The fact that the danger of committing "another offense" as a possible condition of pre-trial detention was replaced by the danger of committing "another crime punishable with imprisonment" does not solve the problems related to the violation of the presumption of innocence.

2. Practice of ordering pre-trial detention and pace of the procedure in the case of remand prisoners

Courts in many instances still seem likely to consider ordering pre-trial detention a "mere formality". According to the evidence of the annual statistical bulletins of the Chief Public Prosecutor's Office, it has for years been a tendency that on average the courts decided against the prosecutor's motion proposing the ordering of pre-trial detention in only about 6-8 percent of the cases. There is reasonable ground to believe that in ordering pre-trial detention, courts greatly and in some cases automatically rely on the motion initiated by the police and submitted by the prosecutor, and sometimes fail to consider whether the legally required conditions of pre-trial detention are present. This observation is substantiated by a scientific study,[1] which – based on statistical data – explains the frequency of pre-trial detention, *inter alia*, by the fact that "neither the prosecutors, nor the courts pay enough attention to thoroughly scrutinizing the grounds for ordering pre-trial detention or the possible counter-arguments: on the basis of the investigative authority's motion they tend to initiate and order pre-trial detention sometimes even in doubtful cases."

In terms of the relevant provisions of both the Old and the New Code of Criminal Procedure (§§ 96 and 136 respectively), it is the authorities' duty to make efforts to minimize duration of pre-trial detention, and to accord a fast-track treatment if the defendant is in pre-trial detention. These provisions look nice on paper, the reality however is different. According to the figures provided by the annual statistical bulletin of the Chief Public Prosecutor's Office, out of the 7872 pre-trial detentions implemented in 1999, 1107 (14 percent) lasted longer than 6 months (including 143 cases, in which the duration of the detention exceeded one year) and 1517 (19.3 percent) were terminated within one month. In 2000 out of 7392 pre-trial detentions 1169 (15.8 percent) exceeded six months, i.e. the number and percentage of such detentions increased, although a higher percentage of detentions were terminated within one month (22.5 percent, or 1666 instances) and the number of detentions exceeding one year decreased to 128. The latest figures at our disposal pertain to the first half of 2001: the number of pre-trial detentions exceeding six months grew by 0.05 percent compared to the first half of 2000 (from 527 to 556) and their proportion compared to the total number of pre-trial detentions also increased from 14.1 percent to 16 percent. Pre-trial detention of foreign nationals may be particularly lengthy in case Hungarian citizen accomplices do not appear in court in response to subpoenas.

Under the New Code of Criminal Procedure, a special investigative judge will bring the decision on the ordering of pre-trial detention. It needs to be seen whether this solution will make the ordering of pre-trial detention "less automatic". As of yet, we do not know it either whether the new rules will guarantee that the criminal procedure would be shorter in the case of remand prisoners.

3. Pre-trial detention implemented in police premises

Under the current regulation, pre-trial detention should, as a rule, be implemented in penitentiary institutions, however, until the closing down of the investigation it may also be enforced in a police jail [§ 116 (3) of Law Decree 11/1979 on the Implementation of Sanctions and Measures (1979. évi 11. törvényerejű rendelet a büntetések és az intézkedések végrehajtásáról, hereinafter: Penitentiary Code)]. Available data show that the implementation of pre-trial detention in police premises is far from being exceptional. Although there has been some decrease in the number of pre-trial detainees held in police premises, on 31 December 2002, out of the 6,523 remand prisoners, still 2,194 (33%) were detained in police premises.

A solution for this problem could be the entry into force of § 135 of the New Code. This provision would maximize the duration of pre-trial detention implemented in police premises to two months (in exceptional cases, and upon the decision of the court, pre-trial detainees may be held in police establishments for a maximum of 30 days, and they may be sent back twice to police establishments,

[1] Erika Róth: Az elítélés előtti fogvatartás dilemmái (Dilemmas of pre-trial detention). Budapest, Osiris kiadó 2000, Doktori mestermunkák sorozat ('Doctoral Masterpieces' series), pp. 120–131

each time for a maximum of 15 days, in exceptional circumstances justified by the investigation). However, unlike the rest of the New Code of Criminal Procedure (which – as outlined above – will come into force on 1 July 2003), this particular provision will not be effective until 1 January 2005. The argument for this is that the penitentiary administration lacks the required personal and material resources and therefore would not be able to cope with such an influx of detainees into the already overcrowded system (the number of inmates in penitentiary institutions is over 18,000, whereas the system could – lawfully – only hold some 11,000 persons).

Although the Hungarian Helsinki Committee's stance is that § 135 of the New Code of Criminal Procedure ought to enter into force as soon as possible, the prison monitoring program's experiences in the Balassagyarmat Prison (in October 2002) underline doubts about the prison system's capacity to cope with the extra burden. In this prison due to the problem that as a result of the overcrowding, the accomplices cannot be separated during community activities, such as sports, the daily open air exercise, visits to the library, etc., the rights of remand prisoners are in practice restricted to a greater extent than the rights of inmates placed in the maximum security regime: remand prisoners are not allowed to participate in sports activities, during the open air exercise they are not allowed to talk to each other and are obliged to walk around in circles in a row, they cannot visit the library (although they may request books). This proves that unless the penitentiary system is provided with the necessary resources, the transfer into penitentiaries of remand prisoners held in police premises may lead to the evolution of catastrophic circumstances.

In his answer to the last report of CPT, former Minister of Interior Sándor Pintér claimed that the transfer of remand prisoners held in police jails would further increase the overcrowding that was also severely criticized by the report. The new government elected in May 2002 called on the police and the penitentiary administration to start negotiations about the handing over of some police facilities where pre-trial detention is implemented to the penitentiary administration (as this way the transfer could be performed without increasing the overcrowding in the existing penitentiaries), however, there have been no results to date. According to penitentiary officials, the penitentiary administration has received no budgetary sources to cover the additional expenditures that the taking over of the police facilities would entail (e.g. the salaries of the additional personnel).

4. The ground for the limitation of the rights of remand prisoners and recent changes in the regulations concerning police jails

The purpose of pre-trial detention – the ground for the limitation of the freedom of a person who has not yet been sentenced – is to secure the criminal procedure. Therefore, only those limitations of the remand prisoner's rights should be acceptable that are related to this purpose and ground. Theoretically for example nothing should prevent the remand prisoner from being allowed to order food for a nearby restaurant, ask his/her relatives to bring food on a daily basis, subscribe to a daily paper or see his/her 2-3 year old child as often as he/she wants to, as the exercise of these rights bear no relevance to the success of the criminal procedure.

Although we do not believe that all this can be made possible, we must call attention to the sometimes completely contrary approach of the Hungarian authorities, which is clearly illustrated by the 2001 amendments of the provisions pertaining to the rules of pre-trial detention implemented in police jails.

The rules of pre-trial detention implemented in penitentiary institutions are found in the Penitentiary Code (see above) and Decree 6/1996 of the Minister of Justice on the Rules of the Implementation of Imprisonment and Pre-trial Detention (6/1996 IM rendelet a szabadságvesztés és az előzetes letartóztatás végrehajtásának szabályairól, hereafter: Penitentiary Rules), whereas pre-trial detention enforced in police premises is regulated by Decree 19/1995 of the Minister of the Interior on the Regulation of Police Jails (19/1995. BM rendelet a rendőrségi fogdák rendjéről, hereafter: Police Jail Regulation). The rights of remand prisoners were for a long time regulated differently in the two decrees – a solution criticized on several occasions by experts, attorneys and human rights activists. To mitigate the adversarial consequences of the lack of a unified regulation, in 2001 decision makers

took a measure (Decree 23 of 2001 of the Minister of the Interior) to harmonize – to the possible extent – the provisions of the two decrees. Although this brought about positive changes as well, in a number of instances instead of taking the option offering more rights for the detainees, the stricter solution was chosen. Before its amendment (coming into effect on 26 October 2001), § 2 (1) (c) of the Police Jail Regulation guaranteed at least two visits per month and two packages per week for remand prisoners held in police facilities. As under the Penitentiary Code, inmates detained in penitentiary institutions can have at least one visit and receive at least one package per month [§ 118 (1)], the above quoted provision of the Police Jail regulation was amended accordingly: since October 2001 at least one visit and one package per month must be guaranteed for remand prisoners detained in police jails.

Although the text says "at least", in a number of police jails not more than that is allowed (in others the old rule has been maintained). Thus, while before October 2001 a remand prisoner could receive at least eight packages per month (two per week) in a police jail, after that date this number decreased to one. Interestingly, this harmonization was not paralleled by a harmonization of the provisions concerning the possible maximum weight of the package. Under § 91 (3) of the Penitentiary Rules, the maximum weight of the package a remand prisoner held in a penitentiary institution can receive is five kilograms, whereas in terms of § 7 (2) of the Police Jail Regulation, the weight of the package may not exceed three kilograms. This provision however was not amended in October 2001.

We believe that having nothing to do with the success of the criminal procedure, such restrictions are not in line with the purpose of the institution of pre-trial detention, and are therefore illegitimate. If police jails had until the amendments of October 2001 been able to handle two packages per week and two visits per month, no argument can be found for the reduction of these numbers. Harmonization should therefore have been performed the other way round: by bringing the rules pertaining to pre-trial detention implemented in penitentiary institutions in line with the Police Jail Regulations.

II. Implementation of the provisions pertaining to pre-trial detention

1. Written correspondence

As a rule, the written correspondence of remand prisoners is not restricted, but it may be – regularly or on an ad hoc basis – controlled (correspondence with the defense counsel, state organs, international organizations, etc. shall not be controlled). Under § 6 of the Police Jail Regulation, in police jails it is the task of the police (as the organ implementing the detention) to control the correspondence and forward the letters within two working days. The interpretation of "forwarding" is somewhat unclear. The letters written by remand detainees are handed over to the guards, who forward them to the investigator of the case. It is the investigator who performs the control and then sends the letter to the post. In many cases it takes the investigators weeks to actually mail the letters. In our interpretation when the law speaks about the obligation to forward the letters within two working days, the mailing of the letters is meant and not their being forwarded to the investigators. This however ought to be made clear by the statute.

In accordance with Annex 13 of Direction 19/1996 of the National Police Headquarters, records are kept of the correspondence, however, these fail to provide information on when the investigator has actually sent the letter to the post. Only the date when the remand prisoner hands over the letter to the guard and the time of the letter's forwarding to the investigator are indicated. Similarly, the records fail to indicate when letters sent to detainees are received by the police. Only from the postal stamp can one draw conclusions as to when the police might have the letter, so it is again rather difficult to control whether the detainee received the incoming letter within two working days.

2. Reception of visitors

In our view, it is a violation of the pertaining regulations that in some police jails remand prisoners may only receive visitors in special booths where the parties are separated by a glass or fiberglass

wall. This can be especially humiliating when the remand prisoner is visited by his/her family members, with special regard to small children.

Under § 5 (4) of the Police Jail Regulation the visit shall be interrupted if the visitor hand s over an object that threatens the success of the criminal procedure or the security of the detention. This implies that as a rule, visitors shall be able to hand over objects, so separation by a wall was clearly not foreseen by the legislator.

A similar problem exists in the Venyige street remand prison of the Budapest Penitentiary Institution, where the visiting room is built in a way that all the detainees and the visitors are separated by a fiberglass wall. In this case the violation of the relevant legal provisions is even more obvious, as in terms of § 90 of the Penitentiary Rules, the prison warden may order that the detainee may only speak to the visitor through a bar or from a closed booth if this measure is justified by security reasons. From this formulation it is clear that if no special security reasons exist, the separation cannot be justified and is therefore against the law.

Apart from extreme cases, the success of the criminal procedure is unlikely to be put at risk by allowing the remand prisoner to touch his/her beloved.

3. Telephone use of remand prisoners

Under § 6/B (1) of the Police Jail Regulation, remand prisoners shall be entitled to make phone calls in accordance with the technical possibilities of the given jail. Phone calls may be controlled but (2) of the same § makes it clear that certain phone calls (to the defense counsel, to state organs, international organizations, etc.) may not be controlled. The practice concerning phone calls varies widely in the police jails of Hungary. Some solutions constitute a blatant violation of the pertaining regulations:

- In Tatabánya the police chief prohibited any phone calls by remand prisoners, although the jail does have a telephone;
- In Eger even telephone conversations with the defense counsel are controlled;
- In Nyíregyháza a phone call is regarded as being equal with a visit, so if the remand prisoner talks to his relative, they are not allowed to personally meet in that month.

Another problem related to phone calls in Budapest police jails is that if the investigator of the case is seated in a police station different from where the remand prisoner is detained (i.e. in another district), the remand prisoner cannot have a telephone conversation with his/her relatives. The reason is that such phone calls must be controlled. The person performing the control is the investigator as he knows what bears relevance to the criminal case. The investigator however will not travel to a police jail located in another district just to exert the control. In theory, there is a possibility for the investigator to appoint someone at the place of the detention to exercise the control, but in practice it does not happen, which prevents remand prisoners from being able to contact their relatives via the phone.

Making phone calls to the defense counsel is also a problem in the Venyige street remand prison. According to the prison's house rules, one phone call not longer than five minutes may be made per week. This also pertains to telephone conversations with defense counsels, which we regard as an unlawful restriction of the remand prisoner's right to defense.

4. Use of television sets in police jails

The Police Jail Regulation only allows the use of television sets that operate on batteries (Appendix point 6). In practice, the application of this provision often means that detainees have to wait for a period of time before they are actually allowed to use their television set: the police frequently rely on arguments such as "a technical expert has to examine the set to see if there are no prohibited objects hidden therein, or to see whether the set has been modified to receive other than television broadcast signals, but the police lacks the financial resources to commission an expert". An additional problem in this regard is that batteries in most cases are not able to function for more than an hour, but they can

only be sent to the detainee in a package that is allowed only once a week. The use of chargeable batteries is, however, not permitted, as they are not listed in the regulation.

5. Open-air exercise in police jails

With regard to open-air exercise (§ 3(1) of the Police Jail Regulation), the HHC found that in the Szekszárd police jail, detainees do not have the opportunity to open-air exercise during the weekends. This situation is reflected in the house rules as well, since the number of jail staff is reduced on weekends. Moreover, in the Budapest 4th district police jail, there is no walking yard at all; therefore the police station's car park is used – but only outside of working hours.

6. Miscellaneous problems

Furthermore, the Hungarian Helsinki Committee has encountered various problems that adversely affect detainees' daily life:

- In the Budapest 2nd district police jail, beds are so narrow that about one-third of the mattress hang down from the wooden boards of the bed. Therefore detainees often sleep on the floor because they can fall off the bed if they turn on their other side during sleep. In November 2002, the HHC, having called the attention of the police to this problem, received the response that the police have commissioned work to widen the beds. The HHC is aware that reconstruction work is on-going in the jail, but beds have not been replaced until today.
- In the In the Budapest 6th-7th district police jail, buckets have been placed in the cells for detainees to use for hygienic purposes because they are only allowed to leave to cell for the toilet in the morning, at noon and in the evening.
- In many jails, there is no natural lighting in the cells, thereby damaging detainees' eyesight (contrary to § 14 (2) of the Police Jail Regulation). Additionally, ventilation is inadequate, which during the summer leads to unbearable heat due to the lack of fresh air (contrary to § 14 (4) of the Police Jail Regulation).
- In the Budapest 14th district police jail, it often happens that police officers do not forward letters written by the detainee to the Minister of Justice or the Budapest Chief Prosecutor, because the officer believes that these organs lack the competence to proceed in the detainee's complaint. This practice is in clear contravention to § 3 (4) and § 4/A of the Police Jail Regulation. The HHC found that the lieutenant in question was completely unaware of the relevant legal provisions.
- The HHC has found that in several cases the medical examination upon reception into the jail is inadequate and formal.