



Hungarian Helsinki Committee

HUNGARY

Submission by the Hungarian Helsinki Committee

for the UN Universal Periodic Review

11th session, May 2011

8 November 2010

The Hungarian Helsinki Committee (HHC, www.helsinki.hu) is an NGO founded in 1989. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defense 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 and promotes legal education and training in fields relevant to its activities, both in Hungary and abroad. The HHC's main areas of activities are centered on non-discrimination, 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 access to justice, the conditions of detention and the effective enforcement of the right to defense and equality before the law.

Hungarian Helsinki Committee
Hungary, H-1054 Budapest, Bajcsy-Zsilinszky út 36-38.
Hungary, H-1242 Budapest, PO Box 317.
tel./fax: (36 1) 321 4323, 321 4327, 321 4141
helsinki@helsinki.hu
www.helsinki.hu

EXECUTIVE SUMMARY

The Hungarian Helsinki Committee expresses concerns and provides recommendations regarding the following issues:

- the removal of checks and balances of the constitutional framework in which human rights are enforced;
- freedom from torture and cruel, inhuman or degrading treatment, treatment of prisoners, the liberty and security of a person and the right to fair trial, including:
 - the rights of persons deprived of their liberty;
 - the rights of those allegedly ill-treated by officials;
 - the rights of defendants in criminal proceedings;
 - the rights of the child;
 - the situation of the Roma minority with regard to law enforcement.

1. REMOVAL OF CHECKS AND BALANCES FROM THE CONSTITUTIONAL FRAMEWORK IN WHICH HUMAN RIGHTS ARE ENFORCED

At the general elections in April 2010, the new Government coalition gained more than two-thirds of the seats in the Parliament, meaning that the coalition has the possibility to amend the Constitution and other important laws without the consent of the opposition. Making use of this possibility, the new majority has removed some important elements of the system of checks and balances, and guarantees of the rule of law.

1.1. The method of legislation¹

Since the elections in April 2010 a considerable number of the bills adopted by the Hungarian Parliament were introduced to the Parliament by individual Members of Parliament. Under Hungarian laws, bills prepared by a Ministry shall be discussed by other state and social organizations, and Ministries preparing bills shall ensure that those bills may be commented on and allow related suggestions to be made. Furthermore, Ministries shall publish bills, concepts of legislation and the reasoning thereof on their websites, indicating also the state of discussion about them. At the same time, opportunity for commenting on draft bills shall be ensured. It is obvious that the method of introducing bills, implementing the program of the Government by individual MPs was aimed at eluding the above mentioned rules, since the legal provisions guaranteeing the publicity of the procedure of preparing bills do not apply to bills introduced by MPs.

The Constitution was amended already seven times since the elections and further amendments are proposed. In a number of cases, MPs tried to legitimize unconstitutional proposals by passing amendments of the Constitution, turning the constitutional system upside down: if the proposed laws would contradict constitutional provisions, not the laws will be adapted to the Constitution but the Constitution will be rephrased. Furthermore, the new Government started to prepare a new Constitution without giving proper reasons on why it is necessary and without ensuring the effective involvement and influence of the opposition.

1.2. Amending the rules concerning the Constitutional Court

According to the amended rules of the relevant act and of the Constitution, the composition of the Parliamentary Committee nominating judges of the Constitutional Court now reflects the number of MPs in the parliamentary factions. Thus, the recent Government party may nominate and elect Constitutional Court judges without having to take into consideration the opinion of the opposition, thus it may determine the direction of the Constitutional Court's decisions. On 26 October 2010 the Constitutional Court repealed an act of Parliament introducing a special tax of 98% on the compensation for dismissal of those working in the public sphere with retroactive effect, as of 1 January 2010. As a reaction to the decision of the Constitutional Court, MPs of the Government party introduced a bill aimed at narrowing the scope of those acts which may be reviewed by the Constitutional Court. The bill is pending in front of the Parliament.

1.2. Civil servants may be dismissed without any justification

According to the amended rules, employers may dismiss certain civil servants (e.g. those working for the Ministries) without justification. Thus in these cases, due to the lack of reasons given, the dismissal may not be effectively challenged. As a result of the new provisions, civil servants are fully dependent on their employers, making it impossible for the public administration to operate in a professional, politically neutral way and endangering the democratic functioning of the state machinery. In addition to this, a bill pending in front of the Parliament is aimed at extending the possibility of dismissal without justification also to other civil servants.

¹ See: Assessing the First Wave of Legislation by Hungary's New Parliament. 23 July 2010. Prepared by: Eötvös Károly Institute, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee. See: http://helsinki.hu/dokumentum/Hungarian_NGOs_assessing_legislation_July2010.pdf (in English), http://helsinki.hu/dokumentum/Az_első_torvenyalotasi_hullam_ertekelese_final_web.pdf (longer version in Hungarian).

2. FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT, TREATMENT OF PRISONERS, THE LIBERTY AND SECURITY OF A PERSON AND THE RIGHT TO FAIR TRIAL

2.1. Actual life sentence: Hungary is one of the few European countries where life imprisonment without the possibility of parole exists.² Despite the view of the CPT and numerous Hungarian experts and NGO's that this form of punishment is degrading and poses serious security problems for the penitentiary system, there is no intention to amend the provisions setting forth the possibility of imposing life imprisonment without parole.

2.2. The "three strikes" rule – amendment introducing mandatory life sentence: The Penal Code's recently passed amendment excludes the individualization of the sanctions by making it mandatory for the judges to sentence suspects to life imprisonment if certain conditions are met. While this infringes the constitutional principle that criminal sanctions shall be individualized in accordance with the specific circumstances of the particular case and perpetrator, the conditions for mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face the same sanction. Moreover the amendment of the Penal Code was not validated by criminal statistics (which show a decreasing tendency in violent offences)³ and was lacking well established rational justification as well.

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

2.4. Detention of juveniles: The relevant investigations of the Ombudsman revealed severe deficiencies in the detention of juveniles. He found the physical conditions unacceptable in two out of the four juvenile penitentiary institutions. He voiced criticism with regard to the high number of violent acts among inmates in these institutions, which he contributed – among other factors – to the insufficient staffing. He also pointed out that some of the remand prisons where juvenile pre-trial detainees are held are unbearably overcrowded with no cultural and sports activities available for the inmates.

2.5. Confinement of juveniles in petty offence proceedings: The recent amendment of the Petty Offence Act has led to a situation in which juvenile offenders committing petty theft (in a value less than EUR 70) almost inevitably end up in confinement for up to 45 days. Alternative sanctions (e.g. such as labour in the public interest or mediation) are not applicable in petty offence proceedings. The new legislation does not take into account Hungary's international obligations as foreseen by the UN Convention on the Rights of the Child either.⁴ The problem is aggravated by the fact the according to the relevant act those who commit a petty offence punishable with confinement, if caught in the act, can be taken into short-term detention (up to 72-hours) by the Police automatically, i.e. the Police do not need to assess the seriousness of the act or the probability of the court imposing confinement. According to further amendments, persons without a judicial appointment became vested with the right to decide in these petty offence cases. These court employees do not meet the standards of an independent judge according to the Constitutional Court's decisions, which means that the rule of habeas corpus may be violated under the new regulation.

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

2.7. The situation of short-term arrestees: Short-term arrest for up to 12 hours is still legal under the Police Act, and the legal framework regulating the status of persons under short-term arrest is still unclear, with only a handful of very basic provisions pertaining to the rights of arrestees, which forced the National Police Headquarters to issue a circular about the minimum standards to be applied to this group of detainees.

2.8. Alternatives of pre-trial detention: Statistics⁵ on the practice of pretrial detention show that the existing alternatives to pre-trial detention are heavily underused, and that in a very highly percentage of cases the courts accept the prosecution's motion for pre-trial detention.⁶

² In the report on its 2007 ad hoc visit to Hungary, the CPT expressed grave concerns over the issue. See: 2007 CPT Report on Hungary, <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>.

³ For the relevant data, see: <http://www.mklu.hu/cgi-bin/index.pl?lang=hu>.

⁴ See Article 37, stating "the arrest, detention or imprisonment of a child [...] shall be used only as a measure of last resort and for the shortest appropriate period of time".

⁵ According to statistics from the Chief Public Prosecutor's Office, on 31 October 2009, the number of pre-trial detainees whose case was still in the investigation phase was 2,300. 70 of them had been detained for over a year, and an additional 481 had been detained for over half a year. In comparison on this day 70 suspects were under house arrest, and 219 under a geographical ban (the ban to leave a certain geographical area, such as a town or a county). See: http://www.mklu.hu/pdf/kenyszint_091031.pdf.

⁶ According to prosecutorial sources in 2009, the number of motions filed by the prosecutor aimed at ordering pre-trial detention was 5,960, and detention was ordered in 93% of the cases. See: <http://www.mklu.hu/cgi-bin/index.pl?lang=hu>.

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

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

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

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

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

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

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

2.13. Judicial practice in ill-treatment cases: According to available statistics up to the year 2006, judges are more lenient vis a vis police officers ill-treating civilians than the other way round.⁷

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

2.14. The Independent Law Enforcement Complaints Board: The Board investigates violations and omissions committed by the police and border guards, provided that such violations and omissions substantively concern fundamental rights. However, there are certain deficiencies concerning the Board's mandate, including the fact that (i) the Board is not vested with the right to hear police officers: the officers are free to decide whether or not they give a statement upon the Board's inquiry; (ii) the Board is not vested with the right to interfere with the judicial review of the National Police Chief's decisions; (iii) it is understaffed compared to its growing workload.

3. SITUATION OF THE ROMA MINORITY WITH REGARD TO LAW ENFORCEMENT

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

3.2. Handling of violent attacks against the Roma: In August 2009, the suspects of the series of fatal attacks⁸ against Roma people were arrested. At the same time severe omissions and negligence on the part of state authorities in handling the

⁷ For the relevant statistics and further information, see:

http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HelsinkiCommittee_Hungary_HRC100.pdf, pp.9-10.

⁸ Killing 6 and injuring 5 victims and threatening the lives of 55 other people between the end of 2008 and the summer of 2009.

incidents have been revealed.⁹ Despite these problems, there is no information on whether the competent authorities have devised a plan to address the problem of investigating and prosecuting hate crimes in general, such as the fact that authorities seem to be reluctant to qualify potential hate crimes as such and go for the qualification that is easier to substantiate (e.g. a simple “bodily harm” instead of “violence against a member of a community”).

3.3. Police officers biased against the Roma: According to empirical sociological research, police officers are highly biased against the Roma, which may seriously influence the way they treat victims of Roma origin and conduct in racially motivated crimes. Researches point out that problems in this regard include ethnic profiling in the police practice, the discriminative practice of ID checks and the lack of effective agreements of cooperation between the police and Roma minority self-governments.¹⁰

RECOMMENDATIONS

The Hungarian Helsinki Committee urges the Hungarian Government to comply with the following recommendations.

With regard to the removal of checks and balances of the constitutional framework in which human rights are enforced:

- The Constitution should not be amended on an ad hoc basis and amending the Constitution should not be used as a means of legitimizing unconstitutional laws proposed.
- The Constitutional Court’s scope of authority should not be narrowed.
- The publicity of the procedure of preparing bills do should be ensured.

With regard to the freedom from torture and cruel, inhuman or degrading treatment, treatment of prisoners, the liberty and security of a person and the right to fair trial:

- ‘Actual life imprisonment’ (i.e. life long sentence without the possibility of parole) should be eliminated, thus conditional release should be made available to all prisoners.
- Grade 4 prisoners should not be subject to severe disadvantages and restrictions compared to fellow inmates and should be provided with the reasons of their placement.
- The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment should be signed and ratified, and the National Preventive Mechanism should be designated.
- Persons deprived of their liberty who claim to have been ill-treated by officials should have access to independent medical examination.
- Effective remedy should be provided to victims of ill-treatment by officials.
- The possibility of sanctioning juveniles with a confinement in case of petty offences should be eliminated and it should be ensured that alternative sanctions are applicable in petty offence proceedings against juveniles.
- The conditions in juvenile penitentiary institutions should be improved and effective steps should be taken in order to reduce the number of violent acts among inmates in these institutions.
- The rights and situation of those under short-term arrest shall be regulated in an adequate manner.
- The existing alternatives to pre-trial detention should be used by the competent authorities.
- Video-recording of interrogations should be made obligatory.
- Effective steps should be taken in order to address the structural deficiencies of the system of ex officio appointments and enhance the quality of the performance of ex officio defense lawyers.
- Steps should be taken in order to address the deficiencies as to the mandate of the Independent Law Enforcement Complaints Board.

With regard to the situation of the Roma minority with regard to law enforcement:

- The systematic and comprehensive monitoring of all incidents that may constitute racist offences should be introduced, covering all stages of proceedings.
- Effective steps should be taken in order to address the problems of investigating and prosecuting hate crimes.
- Effective steps should be taken in order to reduce racism and prejudices among police officers.

⁹ An example for this is the Tatárszentgyörgy case that took place in February 2009. A joint NGO report 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. See: 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>.

¹⁰ 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. The findings of the Strategies of Effective Police Stop and Search (STEPSS) Project carried out by the Hungarian Helsinki Committee in 2007-2008 (see: http://helsinki.webdialog.hu/dokumentum/MHB_STEPSS_US.pdf) and the investigation of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities (<http://www.kisebbségiombudsman.hu/data/files/126395090.pdf>) are also similar.