



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

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**Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments
of the European Court of Human Rights**

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Subject: Communication from the Hungarian Helsinki Committee concerning the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary (Application nos. 15707/10, 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13)

Dear Madams and Sirs,

The **Hungarian Helsinki Committee (HHC)** is a leading human rights organisation in Hungary and in Central Europe. The HHC monitors the enforcement 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'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.

The HHC ran a detention-monitoring program for over two decades between 1995 and 2017. In this period, the organization carried out 1237 monitoring visits at police jails, 48 visits at penitentiary institutions and made 51 inspections at places of immigration detention. The HHC submitted numerous communications to various international forums (CPT, UNWGD, CPT, SPT, UPR, etc.) in related subject matters. The HHC lawyers have litigated cases related to the conditions of and treatment in detention in Hungarian prisons before domestic forums and the European Court of Human Rights (see e.g. the cases *Engel v. Hungary*, Application no.: 46857/06, and *Csüllög v. Hungary*, Application no.: 30042/08), and three out of the six applicants in the Varga and Others v. Hungary case were also represented by HHC's lawyers.

With reference to the judgments of the European Court of Human Rights (ECtHR) **in the cases of ISTVAN GABOR KOVACS and VARGA AND OTHERS v. Hungary**, and the action plan on the implementation of these judgements submitted by the Government of Hungary, **the HHC respectfully submits the following observations** under Rule 9 (2) of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements". The present submission is primarily an update to HHC's submission of April 2020.

1. Legislation further postponing the payment of compensations for inhuman and degrading detention conditions

On 12 May 2020, the Government submitted to Parliament Draft Bill T/10528, which envisaged to prolong the deadline for paying already granted compensations until 31 December 2020 and the deadline for creating a new compensation system until 31 October 2020.



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On 8 June 2020, the Bill was passed and entered into force on 15 June 2020 as Act LV of 2020,¹ amending CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (hereafter: Penitentiary Code) by inserting Paragraphs (16) and (17) into its Article 436 and modifying its Article 70/B(6). Furthermore, Act LV of 2020 also amended Act IV of 2020 passed in February 2020 and described in detail in HHC's Rule 9 submission of April 2020.

The changes introduced by Act LV of 2020 are the following:

- **The general deadline for paying compensations** granted for inhuman or degrading prison conditions **has been prolonged from 60 to 90 days** after the handing down of the court's judgment,
- **The deadline for the payment of all compensations** (both those already suspended and those to be granted in the future) **to the inmates** held under inhuman or degrading prison conditions **has been prolonged until 31 December 2020**. The time period until this date shall not be taken into consideration when calculating the general 90-day deadline.
- Damages and childcare allowance to be paid from those compensations the payment of which had been suspended until 15 June, shall be paid no later than 15 September 2020. Damages or childcare allowance to be paid from future compensations shall be paid within 90 days from the handing down of the court decision in accordance with the general deadline for payment.
- **The deadline for creating a new compensation system has been prolonged until 31 October 2020** (instead of the former deadline of 15 May).
- **The 30 September 2020 deadline for bringing prison occupancy rates to 100% has not been changed.**

This means that **no payment to any detainee will be made before 1 April 2021** (31 December 2020 + 90 days), as Resolution 1004/2020. (I. 21.) of the Government (setting out that the amount of the compensation awarded by the court shall only be transferred to the claimants on the last day of the statutory deadline for payment – see April 2020 submission) is still in force. **At that date, some compensations will have been suspended for over a year.**

2. Continuation of the Government rhetoric discrediting the compensation system, detainees' rights and the advocates of detainees' rights

The hostile Government rhetoric aimed at discrediting (e.g. through the use of the term "prison business") **detainees launching compensation procedures, their legal counsels and detainees' rights advocates in general has continued.** Some examples are as follows:

- On 9 June 2020, Justice Minister Judit Varga stated on her Facebook page that "[t]he experiences of recent years have highlighted the emergence of a 'prison business' in Hungary, which has turned into a HUF multi-billion industry, based on an abuse of the law, and contradicting the original intentions of the legislator."²
- On 8 June 2020, Fidesz MP Gyula Budai said that „ruthless lawyers affiliated with the political left and the Soros [organizations] are earning hundreds of millions out of the prison business. Representing

¹ http://njt.hu/cgi_bin/njt_doc.cgi?docid=219944.384307

² <https://www.magyarhirlap.hu/belfold/20200609-varga-judit-a-magyar-kormany-a-valodi-cselekvesben-hisz>



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convicted criminals they sue the Hungarian state for billions [of Hungarian forints].” He added that “it is an unscrupulous and greedy abuse of the law” and it was high time that it was ended.³

- When quoting UN High Commissioner for Human Rights Michelle Bachelet, who said in a statement that “[a]uthorities should examine ways to release those particularly vulnerable to COVID-19, among them older detainees and those who are sick, as well as low-risk offenders”,⁴ the HHC put forth a similar suggestion to the Hungarian authorities around mid-March, the Justice Ministry’s Secretary of State, Pál Völner responded that the HHC “which routinely complains about our country in Strasbourg only to cause harm to Hungary now says that inmates should not serve their sentences imposed by the independent judiciary. They would rather let the criminals loose on the Hungarian people. [...] This suggestion of theirs, just like all the others are generally, is morally and ethically unacceptable and logically nonsensical, since the [...] inmates can be separated in the prisons.”⁵

From among these statements, one is especially concerning – not because it targeted the author of the present submission, but **because it concerned the Rule 9 procedure and attacked the HHC exactly for exercising a right provided to NGOs by the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.** On 15 May 2020, Pál Völner, Secretary of State of the Justice Ministry gave an interview to one of the pro-government news outlets. The interview runs as follows:

*“In a submission [...] the Hungarian Helsinki Committee was heaving because prison compensations cannot be directly transferred to the lawyers’ depository accounts, so the lawyers cannot access this money, and they will not undertake such cases. **This has made it clear what the government has been saying, namely that the prison business is the business of the pseudo-civil rights defenders and lawyers most of whom can be clearly linked to the political left and the Soros-organizations** [emphasis added] [...].*

[...]

The Government’s aim is to stop the prison business that has become a billion-HUF industry, and is an abuse of EU [sic!] and Hungarian legal norms – reminded Völner.

*In its submission, the Helsinki Committee puts forth several recommendations, e.g. that the Hungarian Government should ease on its criminal policy, or that they [the HHC] could continue their prison monitoring. **An even more outrageous suggestion** [emphasis added] is that inmates should be paid a compensation even if the requirements concerning the sufficient ground surface are met – emphasized the Secretary of State, adding that the Helsinki [Committee] would also compensate the inmates for the time spent in the prison hospital.*

³ <https://magyarnemzet.hu/belfold/immar-egyertelmuve-valt-a-baloldal-segiti-a-bortonbizniszt-8216792/>

⁴ <https://www.france24.com/en/20200325-un-urges-prisoner-releases-to-stem-spread-of-coronavirus>

⁵ <https://magyarnemzet.hu/belfold/rabokat-engedne-szabadon-a-helsinki-bizottsag-7931255/>



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***This [Rule 9] submission was obviously written so that their master [reference to George Soros] would stroke their little heads** [emphasis added], like in the transit zone cases – said Pál Völner.*⁶

3. Most recent occupancy rates

According to the National Prison Administration's response to a freedom of information request by the HHC, **on 18 June 2020 the occupancy rate of the Hungarian prisons was 112%** (official capacity: 14,829; actual number of inmates: 16,576). While this is a positive development, **certain individual penitentiaries have remained overcrowded**. In eight prisons (seven remand houses and the Sopronkőhida Maximum and Medium Security prison), the occupancy rate was 130% or higher on that day.

4. Recommendations

The HHC maintain its recommendations formulated in its Rule 9 Submission of April 2020. Its wishes to reiterate the following ones due to the fact that the developments of the past months have further increased their relevance:

- The HHC respectfully calls on the Committee of Ministers of the Council of Europe to **review this group of cases, with special regard to the ongoing changes of the compensation system**, once the review of the compensation system as initiated by the Hungarian Government is complete.
- The Government should ensure that even after the envisaged review, **compensation procedures will comply with** the spirit of the Convention, the ECtHR case-law and especially the pilot judgment regarding Hungary.
- With a view to this, the Government should initiate an **effective, politically neutral and professional way to debate on how to implement the pilot judgement instead of using hostile rhetoric aimed at discrediting the enforcement of detainees' right to humane treatment** and those advocating for such enforcement.
- The Government should guarantee that the **compensation procedure will be practically accessible to all inmates** regardless of their financial or social status and that legal representation could be available by them. With a view to this, the limitation that counsels are banned from collecting their clients' compensations on their depository accounts should be removed from the law.
- **The suspension of compensation claims awarded by the courts should be terminated with immediate effect.** There is no justifiable reason to keep inmates waiting for long months for compensation that has been awarded to them by a lawful court in a lawful proceeding for the violation of their fundamental right to not being subjected to degrading treatment.

⁶ <https://www.origo.hu/itthon/20200514-volner-a-bortonbiznisz-az-alcivilek-es-a-soroshoz-kotheto-ugyvedek-uzlete.html>