



Hungarian Helsinki Committee

# HUNGARIAN HELSINKI COMMITTEE

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20 January 2020, Budapest

## Council of Europe

### DGI – Directorate General of Human Rights and Rule of Law Department for the Execution of Judgments of the ECHR

F-67075 Strasbourg Cedex

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**Subject:** NGO communication with regard to the execution of the judgments of the European Court of Human Rights in the cases *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary* (Application no. 14097/12 and 15707/10)

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its 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" regarding the execution of the judgments of the European Court of Human Rights in the cases *Varga and Others v. Hungary* and *István Gábor Kovács v. Hungary* (Applications no. 14097/12 and 15707/10) on **prison overcrowding and inhuman and degrading detention conditions**.

The HHC is an independent human rights watchdog organisation, with one of its aims being challenging the overcrowding and the inhuman and degrading detention conditions in Hungarian penitentiaries. We operated a detention monitoring program in Hungary for over 20 years, have carried out extensive advocacy regarding the matter before international stakeholders, and have successfully litigated related cases before the European Court of Human Rights, with three out of the six applicants in the *Varga and Others v. Hungary* case being represented by HHC's lawyers. The HHC already submitted two communications under Rule 9(2) in relation to the execution of the judgments in question, at the turn of 2014 and 2015,<sup>1</sup> and in 2017.<sup>2</sup>

**The present communication concerns (i) the Hungarian Government's recent, January 2020 resolution,<sup>3</sup> suspending compensation payments that are due to inmates detained under inhuman and degrading conditions under a Hungarian law adopted after the pilot judgment in the *Varga and Others v. Hungary* case, and (ii) the envisaged amendment of the remedy scheme introduced with the purpose of executing the pilot judgment.**

The HHC is of the view that the suspension of the compensations constitutes **a blatant disregard of the enhanced supervision process** of the execution of the judgments in question **by the Committee of Ministers of the Council of Europe**, considering especially that **the Government's latest action plan from 2019<sup>4</sup> does not indicate in any way that the Government intends to disrupt the existing system** as introduced after the pilot judgment.

<sup>1</sup> DH-DD(2014)1527, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)1527E](http://hudoc.exec.coe.int/eng?i=DH-DD(2014)1527E); DH-DD(2015)231, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)231E](http://hudoc.exec.coe.int/eng?i=DH-DD(2015)231E)

<sup>2</sup> DH-DD(2017)1003, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)1003E](http://hudoc.exec.coe.int/eng?i=DH-DD(2017)1003E)

<sup>3</sup> As explained below, the adoption of the resolution was announced by a Ministry representative on 18 January 2020, but the resolution has not been promulgated yet, so it is not possible to provide a reference number yet for the resolution at this point.

<sup>4</sup> DH-DD(2019)311, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)311E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)311E)



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The Government's recent statements and the Government resolution raise serious concerns not only as to the execution of the judgments in question, but also because they **may lead to another upsurge of Hungarian applications to the European Court of Human Rights over inadequate detention conditions.**

Therefore, the HHC respectfully recommends the Committee of Ministers to call on the Government of Hungary to

- **withdraw its decision to suspend compensations to be paid to inmates detained under inhuman and degrading detention conditions on the basis of domestic law;**
- **and to enter into a constructive dialogue with the Committee of Ministers on any future plans to amend the compensatory and preventive remedy scheme.**

### I. BACKGROUND

In March **2015**, the European Court of Human Rights (ECtHR) issued a **pilot judgment** in the *Varga and Others v. Hungary* case, concluding that the **overcrowding of penitentiary institutions constitutes a structural problem in Hungary** (in violation of Article 3 of the European Convention on Human Rights), and there is a lack of effective preventive and compensatory remedies in this respect (in violation of Article 13 read in conjunction with Article 3 of the Convention). In the pilot judgment, the ECtHR **set out that Hungary should**, by December 2015, produce "a time frame in which to make appropriate arrangements and to **put in practice preventive and compensatory remedies** in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention".

Accordingly, **as of 1 January 2017, Hungary put in place a preventive and a compensatory remedy system**, namely a mechanism for complaints about conditions of detention and one to claim compensation in respect of conditions of detention violating fundamental rights. The main steps of the scheme are the following:

- Under the Hungarian Penitentiary Code, detainees may file a complaint with the prison governor about the conditions of their detention. Based on the complaint, the governor shall take measures to improve the conditions. If this is not possible due to the general occupancy rates in the given prison, the governor shall contact the National Penitentiary Headquarters to initiate the transfer of the inmate into a non-overcrowded prison.
- If it is not possible to identify a less crowded prison to which the complainant could be transferred without negatively impacting their family ties, the National Penitentiary Headquarters refers the case back to the prison governor, who in such cases shall consider the granting of certain entitlements mitigating the effects of overcrowding (additional open-air time, additional visits, etc.).
- If the overcrowding problem cannot be solved either within the prison or through a transfer, and the effects of overcrowding cannot be mitigated either, the inmate shall be entitled to receive financial compensation (on the basis of a court decision).

Accordingly, **the recently suspended compensation scheme is a requirement under the pilot judgment, and is an integral part of the domestic remedy system set up after the pilot judgment.**

Moreover, **statistical data shows that the preventive remedy** (i.e. complaints about the conditions of detention) **remains ineffective due to the lack of sufficient prison-capacity, leaving in practice compensation as a sole remedy for many detainees in Hungary** for the inhuman and degrading prison



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conditions. For example, data provided by the National Penitentiary Headquarters to the HHC show that while between 1 January 2017 and 17 April 2019 altogether 17,856 complaints were submitted due to substandard detention conditions, in 12,280 of those cases (**almost 70% of the complaints**), **the governors could not take measures to remedy the situation within the prison concerned**, so the complaint was forwarded to the National Penitentiary Headquarters. Out of these, **only in 284 cases (2.3%) could the complaining detainee be transferred to another prison**, in the remaining over 95% of the cases, there was no less crowded prison into which the complainant could have been transferred, so the case had to be referred back to the prison governor. The HHC does not have an overall number of cases where in the end a court procedure had to be launched to acquire compensation, but it is fair to assume that the number reaches several thousands. The Government itself recently stated that **12,000 court cases for compensation have been launched so far**<sup>5</sup> (i.e. since January 2017 when the system was introduced).

## II. TIMELINE OF RECENT GOVERNMENTAL STEPS & THEIR ENVISAGED IMPACT

The timeline of the events that have led to adopting the Government resolution shows that in just nine days, the Government proceeded from floating the idea of suspending compensations to reaching a formal resolution on suspending payments and foreseeing the dismantling of the existing system. Furthermore, **the wording of the statements clearly foreshadows the envisaged direction of future amendments, i.e. the cutting back (or even the complete elimination) of the domestic system of remedies** to be provided to detainees for substandard prison conditions.

- At an international press conference held on 9 January 2020, **Prime Minister Viktor Orbán** stated that it is an "impossible situation" that Hungary has to pay "millions" to "convicted criminals from the money of Hungarian taxpayers because their detention was not adequate" on the basis of the decision of the Court of Justice of the European Union (*sic* - he presumably meant the ECtHR here). He added that **he had instructed the Ministry of Justice "not to pay a penny" to inmates** on this basis.<sup>6</sup>
- On 11 January 2020, a **high-level representative of the Ministry of Justice**, Pál Völner said that there are no plans to not pay the compensations already awarded to detainees (by the Hungarian courts, on the basis of the Hungarian law). He said that instead, **the Prime Minister's instructions pertained to setting up a "new framework", i.e. formulating new rules** with regard to compensations for inhuman and degrading detention conditions.<sup>7</sup>
- On 15 January 2020, a high-level representative of the Cabinet Office of the Prime Minister, Bence Tuzson stated that it is indeed necessary to suspend the compensations to be paid to "criminals". He also stated that a "business" has been built on compensation payments by NGOs and their attorneys.<sup>8</sup>
- On 17 January 2020, the Prime Minister stated that the payments already made to detainees for inadequate detention conditions amount to over 10 billion HUF, which he considers an "abuse of rights", and, therefore, **the Government will "suspend" compensation payments** to inmates, and **the Government will initiate in the Parliament "immediately" that the respective rules are amended**. In the same interview, the Prime Minister said that the European rules on torture are so lax and absurd that they provide room for "making a business" out of the detention conditions, and used the term "prison business". He added that "the attorneys [involved in the matter] should be dealt with as well, because, after all, they took several billion forints from the state's pocket". He also added that he

<sup>5</sup> See e.g.: [https://index.hu/belfold/2020/01/18/megszuletett\\_a\\_kormanyhatarozat\\_felfuggesztik\\_a\\_bortonkarteritesek\\_kifizeteset/](https://index.hu/belfold/2020/01/18/megszuletett_a_kormanyhatarozat_felfuggesztik_a_bortonkarteritesek_kifizeteset/).

<sup>6</sup> See e.g.: [https://index.hu/belfold/2020/01/09/orbaninfo\\_gyongyospata\\_gyori\\_gyerekgyilkos\\_birosagi\\_iteletek\\_biralat/](https://index.hu/belfold/2020/01/09/orbaninfo_gyongyospata_gyori_gyerekgyilkos_birosagi_iteletek_biralat/), <https://hungarianspectrum.org/tag/roma-segregation/>.

<sup>7</sup> See e.g.:

[https://index.hu/belfold/2020/01/11/volner\\_szerint\\_felreertettek\\_amikor\\_orban\\_azt\\_mondta\\_ne\\_fizessenek\\_karteritest\\_a\\_raboknak/](https://index.hu/belfold/2020/01/11/volner_szerint_felreertettek_amikor_orban_azt_mondta_ne_fizessenek_karteritest_a_raboknak/).

<sup>8</sup>The interview is available here in Hungarian: <https://hirtv.hu/magyarorszageloben/tuzson-az-nem-lehetseges-hogy-bunozoknek-fizet-a-magyar-allam-2493378>.



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expects the above-mentioned attorneys to turn to European courts if the rules are amended, and he expects that European judges will also find it problematic that “the sun does not shine into the cell sufficiently” (i.e. these bodies are likely to find detention conditions in Hungarian prisons inadequate), but he finds it better to point out the absurdity of a legal framework than to “pay as a fool”.<sup>9</sup>

- On 18 January 2020, Pál Völner from the Ministry of Justice said that the Government suspends compensations with an immediate effect, and that the Government has already adopted an official resolution in that regard. He added that in the upcoming days the Ministry of Justice will review the legal rules, and will inform the Government about the outcome of the review probably already during the week of 20 January 2020.<sup>10</sup> The Government resolution has not been promulgated yet as of 20 January 2020.

The suspension of the compensation scheme from one day to another is **extremely problematic because it deprives thousands of detainees from the compensatory remedy, being the only available remedy for a majority of them.** This is in stark **contrast with the pilot judgment** delivered in the *Varga and Others and Hungary* case, **and the decisions reached by the Committee of Ministers** in the framework of the enhanced supervision of the execution of the pilot judgment.

As referred to above, the exact wording and content of the Government resolution is not public yet, and it is not clear from the statements whether the Government’s resolution suspended (or will suspend) the payment of compensations already awarded by domestic court decisions, or wants to suspend the scheme *pro futura*. (It is important to underline that if the former scenario applies, the executive’s decision to not comply with final and binding domestic court decisions is also highly problematic from a rule of law aspect.)

In any case, **the suspension of the compensations can easily – and will most probably – result in a grave upsurge in applications submitted to the ECtHR by Hungarian inmates, given that the suspension deprives thousands of Hungarian inmates from an effective remedy.** As explained above, the HHC does not have access to the exact data on currently ongoing procedures aimed at acquiring compensation, but – based on the numbers cited and the statements of the Government – it is fair to assume that the number reaches several thousands. This means that in theory, **thousands of applications could reach the ECtHR after the suspension of the compensation payments and/or the whole compensation scheme.** This is entirely plausible also in practice e.g. if we take into account that in November 2017, after it declared the domestic remedies introduced effective in the case of *Domján v. Hungary*, the ECtHR had to resume the examination and declare inadmissible over 8,000 formerly suspended cases.<sup>11</sup>

### III. RECOMMENDATIONS

Due to the reasons above, the HHC respectfully recommends the Committee of Ministers to call on the Government of Hungary to

- **withdraw its decision to suspend compensations to be paid to inmates detained under inhuman and degrading detention conditions on the basis of domestic law;**
- **and enter into a constructive dialogue with the Committee of Ministers of the Council of Europe on any future plans to amend the compensation and preventive remedy scheme.**

<sup>9</sup> For the full interview in Hungarian, see: <http://www.miniszterelnok.hu/orban-viktor-a-kossuth-radio-jo-reggelt-magyarorszag-cimu-musoraban-8/>.

<sup>10</sup> See e.g.: [https://index.hu/belfold/2020/01/18/megszuletett\\_a\\_kormanyhatarozat\\_felfuggeszti\\_a\\_bortonkarteritesek\\_kifizeteset/](https://index.hu/belfold/2020/01/18/megszuletett_a_kormanyhatarozat_felfuggeszti_a_bortonkarteritesek_kifizeteset/).

<sup>11</sup> See e.g.: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168078aeb6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168078aeb6).