



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

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Budapest

Mr Özgür Derman
Head of Division

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

F-67075 Strasbourg Cedex
France

Ref.: DG1/ÖD/PS

Subject: Addendum to NGO communication with regard to the execution of the judgments of the European Court of Human Rights in the István Gábor Kovács v. Hungary and Szél v. Hungary cases

Dear Sir,

The Hungarian Helsinki Committee (HHC) submitted observations and recommendations to the Committee of Ministers related to the above-mentioned case in its letter of 30 October 2014 which was received by the addressee on 7 November 2014.

Following the submission of observations, the HHC has received replies to its FOI requests containing additional information which might assist the Committee to adopt the measures it deems necessary.

Therefore with reference to the Szél v. Hungary and István Gábor Kovács v. Hungary judgements of the European Court of Human Rights and the previously sent information, the HHC respectfully submits the following short observations.

1. In its action plan submitted to the Committee of Ministers on 22 April 2013, the Government of Hungary qualified the introduction of new ("restitutive work") and the improvement of existing ("house arrest") alternative measures as solutions to the overcrowding of prisons. No doubt, these are effective means to reduce the overcrowding rate, but as it is shown below, the application of alternative measures is still very vague in Hungary.
2. The Government submitted its action plan in April 2013, the vast majority of the below data relates to the period from October and November 2014. We deem that the one and a half year passed between the two dates would have been enough time for the Government to take steps towards solving the systemic problem of overcrowding and to show substantive results. However this is not the case as it is revealed in the submissions of the HHC.



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3. The Police provided official information on the actual number of house arrests and geographical bans and the number of the coercive measures secured by electronic tagging. (The data differ from the ones presented in the initial submission of the HHC, because here – in addition to the measures ordered during the investigative and prosecutorial phase of the criminal procedure until the indictment – we show house arrests and geographical bans being in force during the trial phase as well. So the below data indicate the total actual number of house arrests and geographical bans.)

| | Total no. of house arrests | Total no. of geographical bans | House arrests or geographical bans with electronic tagging | Percentage of electronic tagging |
|------------------|----------------------------|--------------------------------|--|----------------------------------|
| 31 October 2014 | 352 | 799 | 207 | 18% |
| 26 November 2014 | 378 | 824 | 234 | 20% |

The above data clearly demonstrate that the number of suspects being under less harsh coercive measures is still extremely low. These data are almost shocking if we compare them with the number of pre-trial detainees which was more than 5,000 on 31 December 2012, that is 28% of all the inmates. (This figure has slightly improved and on 30 September 2014 “only” 26% of the inmates were pre-trial detainees.) The Police do not hold data on the total number of orders on electronic tagging after the introduction of this legal institution on 15 May 2013.

4. It is interesting to observe the data provided by the Public Prosecutor’s Office on the number of house arrests ordered until the indictment in the past five years.

| Year | 2010 | 2011 | 2012 | 2013 | 2014 (until 23 June) |
|----------------------|------|------|------|------|----------------------|
| No. of house arrests | 454 | 393 | 420 | 525 | 230 |

The last digit refers to the first half of 2014. If we double it, 460 would be the predicted number of house arrests ordered this year. There is no need to put up a graph, because it is evident that no major changes have taken place in the past five years concerning the attitude of judges (and prosecutors) ordering (and motioning) the alternative measure of house arrest.

5. The new Criminal Code (Act C of 2012 – new CC) entered into force on 1 July 2013 and introduced two new sanctions: confinement and restitutive work. The Government refers to the latter one as an effective measure to reduce prison overcrowding. Confinement is implemented in penitentiaries; it is exactly the same deprivation of liberty as imprisonment but for a shorter term. Confinement should be applied if the other sanctions (community work or fine) are not appropriate because of the social and personal characteristics of the offender.

The Public Prosecutor’s Office provided data on the use of the two new measures:



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| | Total no. of confinement | Total no. of restitutive work |
|---------------------------|--------------------------|-------------------------------|
| 2013 (from 1 July) | 77 | 39 |
| 2014 (until 30 September) | 315 | 89 |

It can be easily detected that the application of restitutive work – defined by the Government in the commentary of the new CC as a measure contributing to the decrease of overcrowding – is extremely low, moreover it is two and three times lower than the application rate of confinement as a consequence of which the overcrowding further grows. The commentary of the new CC explains that confinement is primarily to be applied if the offender is a juvenile or committed a felony for the first time, before the entry into force of the new CC these offenders received lighter sentences than the deprivation of liberty (e.g. fine or community work).

6. The National Prison Administration does not handle data on the overcrowding rate of pre-trial detainees, however it communicated that county penitentiaries accommodating mostly pre-trial detainees are more overcrowded than the prison system in general. The overcrowding rates of these county institutions were 156% on 31 December 2013 and 169% on 30 September 2014.

Sincerely yours,

Márta Pardavi
co-chair
Hungarian Helsinki Committee