Briefing paper

for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

on the occasion of the CPT's periodic visit to Hungary

28 March 2013

The Hungarian Helsinki Committee (HHC) is an NGO founded in 1989.
It monitors the enforcement in Hungary 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 strives to ensure that domestic legislation guarantee the consistent implementation of human rights norms. The HHC promotes legal education and training in fields relevant to its activities, both in Hungary and abroad.
The HHC's main areas of activities are centred 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 defence and equality before the law.

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The Hungarian Helsinki Committee (HHC) wishes to respectfully call the attention of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the following problems which the HHC observed in the course of its activities regarding penitentiary institutions, police cells and immigration jails.

Since the last visit of the CPT to Hungary in 2009, the HHC visited the following penitentiary institutions: Szirmabesenyő Regional Juvenile Penitentiary Institution, Tiszalök National Penitentiary Institution, Veszprém County Penitentiary Institution, Szombathely National Penitentiary Institution and most recently the Kalocsa High and Medium Security Prison and the so-called "summer prison" in Nagyfa, which belongs to the Szeged High and Medium Security Prison.[1]

Furthermore, the HHC's Human Rights Legal Counseling Program has received hundreds of letters and complaints from inmates. The HHC has also closely monitored legal developments and commented on a series of draft laws related to the issue of detention, and has also been involved in various research projects, including a project in 2012, covering 11 penitentiary institutions throughout the country. Findings below are based on these experiences.

1. Penitentiary institutions

1.1. Detention conditions

As far as detention conditions in penitentiary institutions are concerned, most of the problems referred to below will be repetitive as compared to former findings, as the situation remained unchanged since 2009 in many aspects.

1.1.1. General physical conditions

It should be noted that the general physical conditions of penitentiary institutions vary greatly in Hungary. The newly built or reconstructed institutions (i.e. the penitentiary institutions in Tiszalök, Szombathely and Veszprém) satisfy almost all requirements prescribed by national and international human rights laws. However, the circumstances in the vast majority of the older institutions are still hardly bearable. In Kalocsa, for example, during a visit in July 2012 colleagues of HHC observed that the ventilation was very poor in almost all the cells, while the interior temperature reached 40 ºC. The toilets in the cells did not have independent ventilation, and, furthermore, in some cases they were only separated with curtains from the rest of the cell. The same conditions were recorded by the Ombudsman (the Commissioner for Fundamental Rights) concerning the Jász-Nagykun-Szolnok County Penitentiary Institution. Moreover, an inmate in Szolnok complained to the Ombudsman about cockroaches that could be found even in the bread detainees got for breakfast.[2] It is very common that the so-called transfer-cells are particularly run-down and dirty as observed by the HHC e.g. in Nagyfa in September 2012. The doors of the toilets could not be properly shut, however, it should be noted that after the HHC's visit the transfer cell was repainted and the door was repaired.

1.1.2. Living space and overcrowding

According to the Hungarian legal rules, "if possible", the number of people to be placed in a cell shall be defined in a way that each inmate has 6 m^3 of air space and – in the case of adult male inmates – 3 m^2 of moving space, while the minimal living space is 3.5 m^2 for women and juveniles.[3] It shall be emphasized that in 2010, the Government responded to the problem of overcrowding by amending the respective law instead of decreasing the number of detainees, and, according to the amendment,

[1] The HHC's reports on prison monitoring visits are available in Hungarian at: http://helsinki.hu/jelentesek-a-buntetes-vegrehajtasi-intezetekben-tett-latogatasokrol.
[2] Report no. AJB-1753/2012. of the Commissioner for Fundamental Rights,
[3] Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Executing Imprisonment and Pre-trial Detention, Article 137.

the minimal living space for detainees should be ensured only "if it is possible". Thus, also overcrowded institutions comply with the law. Furthermore, the minimal living space set out by the law is obviously well below the standard set out by the CPT as an approximate, desirable guideline for a detention cell. However, Hungarian penitentiaries do not even comply with the domestic regulation in most of the cases. In the Kalocsa High and Medium Security Prison, for example, HHC visited a cell of 8,2 m² shared by four prisoners.

When commenting on the HHC's report on the monitoring visit to Nagyfa, the Head of the National Penitentiary Headquarters admitted that circumstances experienced in Nagyfa – similar to those in Kalocsa – do not comply with the requirement established by the European Court of Human Rights (ECtHR) in this regard. However, he added, that under the present financial situation the circumstances will not improve neither on short nor medium terms, the underlying reason being that the infrastructural situation remains unchanged while the number of people in detention constantly increases.

It shall also be mentioned at this point that in its decision issued in the case Szél v. Hungary (Application no. 30221/06, Judgment of 7 June 2011), the ECtHR established the violation of Article 3 of the European Convention on Human Rights because the applicant spent around five years in a Hungarian prison in different cells in which he had between 2.76 and 3.15 square metres of personal space available. The ECtHR also noted that the Hungarian authorities had to rapidly take the necessary administrative and practical measures in order to improve the conditions in which detainees were kept in Hungarian prisons. Further applications regarding the same issue are pending.

Despite the CPT's recommendations after the last visit to Hungary, prison overcrowding remains to be one of the most serious issues in terms of the penitentiary system.[4] The trend of decrease welcomed by the CPT in 2009 changed and the number of prison population is in the rise since then, as indicated by the table below:[5]

Date	Prison population	Overcrowding rate
31 December 2009	15,432	128%
31 December 2010	16,328	132%
31 December 2011	17,210	137%
31 December 2012	17,179	137%

The data reveal that the number of detainees increased by 11% in only two years, while – as noticed by the Head of the National Penitentiary Headquarters – the infrastructure basically remained the same.[6] This is due to the shift towards a stricter criminal policy that results in prisons facilities being impossible to manage, as stated by the Commissioner for Fundamental Rights at a conference.[7] Moreover, a new Criminal Code was adopted in line with the new, stricter penal policy in 2012, which was heavily criticized by – among others – the HHC, and which would place additional burdens on the penitentiary institutions.[8] Overcrowding also results that penitentiary staff members become even more overburdened: it is not uncommon that one educator is responsible for 100 inmates.

The overall rate of overcrowding of penitentiaries was 137% in Hungary on 31 December 2012. The prisons with more than 150% of overcrowding in 2011 were the following:

[4] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16, § 54.
[5] Data available at: www. bvop.hu.
[6] The data was provided by the National Penitentiary Headquarters.
[7] See: http://www.jogiforum.hu/hirek/28461.
[8] See: http://helsinki.hu/uj-btk-velemeny.

Penitentiary institution	Capacity of the institution as of 31 December 2011	Rate of overcrowding (%) in 2011
Szabolcs-Szatmár-Bereg County Penitentiary Institution	142	185
Metropolitan Penitentiary Institution, I. building	1,018	175
Metropolitan Penitentiary Institution, II. building		
Metropolitan Penitentiary Institution, III. building		
Borsod-Abaúj-Zemplén County Penitentiary Institution	220	172
Baranya County Penitentiary Institution	97	172
Jász-Nagykun-Szolnok County Penitentiary Institution	140	167
Hajdú-Bihar County Penitentiary Institution	177	163
Kalocsa High and Medium Security Prison	240	159
Somogy County Penitentiary Institution	129	156
Bács-Kiskun County Penitentiary Institution	173	151
Tolna County Penitentiary Institution	97	151
Békés County Penitentiary Institution	86	150

1.1.3. Nutrition

A worrying development has to be mentioned pertaining to general conditions in penitentiary institutions. Due to a change in legislation as of 1 January 2012 the amount spent on nutrition has been cut down in the case of working inmates or those on a special diet, while the basic amount/day/capita remained less than 1.5 EUR.[9] Some of the changes are indicated in the chart below.

[9] Appendix no. 2 of Measure no. 1-1/3/2012. (I.16.) OP of the Head of the National Penitentiary Headquarters

Nutrition	Amount/day/capita After 1 January 2012 (HUF)	Amount/day/capita Before 1 January 2012 (HUF)
Basic amount	400	400
Convalescent diet	basic + 61	basic + 168
Inmates doing medium-hard physical work	basic + 76	basic + 90

(1 EUR = 304.5 HUF)

These amounts are considered to be unacceptably low by the HHC particularly if we take into consideration that the basic amount/day/capita remained unaltered since 2007 while the rate of inflation was 5% on average in every year.[10]

1.1.4. Contact with the outside world; access to lawyer

Despite the long-lasting recommendations made by the CPT, the minimum visit entitlement has still not been increased and remains at half an hour per month.[11] However, for an increasing number of detainees even this opportunity remains only a theoretical one.

The general rule is that whenever possible, the convicted person shall be kept detained in the penitentiary institution nearest to his permanent address.[12] Unfortunately, due to the overcrowding of some institutions this requirement becomes more and more often unobserved. The inmates are sometimes place hundreds of kilometers away from their homes which puts a heavy financial burden on relatives if they want to visit the inmate regularly. Exceptionally, if the governors of both prison facilities permit, the inmate may be temporarily transferred to the penitentiary institution nearest to his home for several hours to ensure he or she meets their relatives.[13]

However, some information suggests that in case of some institutions this remains only a theoretical possibility. HHC's Human Rights Legal Counseling Program received three individual complaints from inmates kept in various penitentiaries. All three requested approximately once in every three months in the previous years to be temporarily transferred to the Somogy County Penitentiary Institution for a few hours to meet their families personally. However, permission was never granted by the governor of the Somogy County Penitentiary Institution, claiming that the penitentiary is overcrowded. Consequently, the inmates could not see their minor children for several months, in one case even for more than a year. Upon HHC's inquiry letter the governor replied that the institution is not obliged to permit temporary transfers for the sake of ensuring contact with the relatives and suggested that the inmates should choose other forms for keeping in touch: letters, phone calls and sending packages.

Furthermore, as established also by the Commissioner for Fundamental Rights, the penitentiary system sets unreasonably high prices for telephone calls that further limit the right to family life of the inmates. Additionally, in at least one institution there was only one phone available for making calls per 100 inmates.[14]

Between procedural acts, contact of detainees with defense counsels may be subject to a special restriction, namely that the number and duration of phone calls by the defendant can be seriously restricted by the internal regulations of the penitentiary institution. Article 92 of Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Executing Imprisonment and Pre-trial Detention provides that detainees may use the phone in accordance with the internal rules of the prison in which they are

[10] Official data by the Office of National Statistics: http://www.ksh.hu/docs/hun/eurostat_tablak/tabl/tsieb060.html.
[11] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16, § 107.
[12] Law Decree 11 of 1979 on the on the Execution of Punishments and Measures, Article 24
[13] Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Executing Imprisonment and Pre-trial Detention, Article 89
[14] See: http://www.ajbh.hu/kozlemenyek-archiv/-/content/10180/30/a-fogvatartottak-panaszairol.

detained. As a consequence, particular penitentiary institutions seriously limit the time that may be used for telephone consultation with the lawyer.

1.1.5. Ill-treatment

Frequency and seriousness of complaints regarding ill-treatment varies greatly among penitentiary institutions. The observers and the HHC's Human Rights Legal Counseling Program received a notably high number of complaints from the Budapest High and Medium Security Prison (e.g. about a guard having a swastika tattoo openly being racist). Coherent, repetitious complaints have received also regarding the Metropolitan Penitentiary Institution on the ill-treatment of several detainees. Serious allegations had been made concerning the Kalocsa High and Medium Security Prison where a male detainee was ill-treated and humiliated by the guards; and regarding the Szeged High and Medium Security Prison where a detainee of Roma origin was ill-treated by the guards because of his ethnicity.

There is also a case to be reported in which the alleged perpetrator has been sentenced by the court. On 20 July 2009, in the Budapest High and Medium Security Prison a detainee was seriously ill-treated by a prison guard in his cell. The prison guard kicked him several times in his both tights. When the detainee collapsed and laid on the floor the officer trampled upon him. Subsequently, the prison guard kicked his ribs and left shoulder several times. The case was reported by the head of the penitentiary upon the complaint of the detainee affected. The prison guard was convicted by the Budapest Metropolitan Court for maltreatment in official proceedings for one year imprisonment. The Budapest Regional Court of Appeal reached a final decision regarding the case on 30 March 2011, amending only the supplementary punishment. The detainee was represented in the proceedings by the attorney of the HHC.[15]

1.2. Pre-trial detention

The excessive use of pre-trial detention continues to be one of the most serious problems of the Hungarian criminal justice system. Since 2005 pre-trial detainees are detained in penitentiary institutions, leading to problems deriving from the critical overcrowding in prison facilities already referred to. Reflecting the general trend of stricter criminal policy the number of pre-trial detainees is also rising, as demonstrated by the table below:[16]

Year	Number of pre-trial detainees	% of pre-trial detainees as compared to the total prison population	Total prison population
2009	4,502	29.31%	15,432
2010	4,803	29.42%	16,328
2011	4,875	28.33%	17,210
2012	4,888	28.45%	17,179

As the data indicate, the average number of people held in pre-trial detention increased by more than 7% in only two years after 2009 and currently almost 30% of the prison population consists of persons who were not convicted by any court for any crime.

Obviously, if alternatives to pre-trial detention were not as underused as are today, the general problem of overcrowding could be at least partly solved. However, courts continue to approve motions of the prosecution to order or upheld pre-trial almost as an automatic routine, failing to examine the individual circumstances of the suspect in many cases. In 2011, for example, the number of prosecutorial motions for ordering pre-trial detention was 6,245 out of which 5,712 were approved by

[15] See: http://helsinki.hu/en/prison-guard-ill-treating-detainee-deemed-guilty-the-detainee-was-represented-by-the-hhc
[16] Data available at: www.bvop.hu.

a competent judge, which means a success rate of more than 91%. In 2010 this rate was 92.6%, while in 2009 it was 93.8%, so the trend is at least a decreasing one.[17]

The other serious problem with PTD is its excessive length in a considerable number of cases: suspects often remain in detention for several months, even for years. The number of cases where the pre-trial detention exceeded the length of one year was 172, 243 and 274 in 2009, 2010 and 2011 respectively.[18]

The following individual cases centered on issues related to pre-trial detention and the rights violation caused by its excessive use and the way it as ordered.

- *Darvas v. Hungary (Application no. 19547/07, Judgment of 11 January 2011)*

  Mr. Darvas was arrested on 5 December 2004 on charges of drug abuse. His was placed in pre-trial detention and released on 13 April 2005. On 20 May 2005, he was arrested in another case, on charges of aggravated drug trafficking, essentially because substantial amounts of various drugs and packaging material had been found in a garage of which he had been the tenant. On 22 May 2005, his pre-trial detention was ordered in the case on the ground of the risk of collusion with the presumed drug network's other members. Afterwards, his detention was subsequently prolonged at the statutory intervals in decisions which included rather stereotypical references to the risks of absconding and collusion with no detailed reasoning as to his individual circumstances or the evidence obtained against him. The investigation in the case was terminated on 12 June 2006, and on 10 August 2006 a bill of indictment was filed, that combined the facts of the two criminal proceedings outlined above. His pre-trial detention was prolonged, and he remained there until 30 November 2006, when he was released on bail and was placed under house arrest. In April 2008, the court found Mr. Darvas guilty of the charge relating to the offence for which he had been arrested on 5 December 2004, but was acquitted in respect of all the remaining charges. He spent altogether 18 months in pre-trial detention.

  Mr. Darvas – represented by the HHC's attorney – turned to the European Court of Human Rights regarding his pre-trial detention. As regards his detention subsequent to the termination of the investigation and in particular to the indictment, the ECtHR ruled that the manner in which the question of prolongation of the detention was dealt with by the courts – which had little or no regard to the particular elements of the case and the personal circumstances of the applicant, and did not consider less intrusive means of intervention or provide convincing reasons for the assumption that the applicant would abscond – effectively deprived this period of the applicant's detention of the justification required for the purposes of Article 5(1)(c) of the European Convention on Human Rights. Thus, Hungary violated the Convention, and the applicant was awarded a just satisfaction of 5,000 EUR.

- *X.Y. v. Hungary (Application no. 43888/08, Judgment of 19 March 2013)*

  On 15 November 2007 Mr. X. was arrested on charges of a series of car thefts. In the prosecution's ensuing motion to have him detained on remand, the dangers of absconding, collusion and repetition of crime were referred to. The defense argued that there was no reasonable suspicion that the applicant had indeed committed an offence. Moreover, since he had a settled life in Hungary, the applicant – who was the father of a minor child and had regular income out of which he was supporting his parents and was paying a mortgage – was unlikely to abscond. In another criminal case conducted against him, he had attended all the hearings and had never attempted to frustrate the procedure. Despite the reasoning, the Pest Central District Court ordered the applicant's detention on remand, reiterating in essence the reasons in the prosecution's motion. The applicant's pre-trial detention was subsequently repeatedly prolonged at the statutory intervals. In these proceedings, the arguments of the defense remained largely the same, and so did the findings of the courts. Meanwhile, on 8

[17] Data provided by the National Penitentiary Headquarters.
[18] The data was kindly provided by the National Penitentiary Headquarters.

February 2008 the applicant submitted to the authorities a psychiatric opinion, according to which he suffered from a personality disorder. A further expert opinion issued on 16 March 2008 specified that the applicant had suffered a sexual assault from fellow inmates while in detention.

Finally, on 26 June 2008 the applicant's house arrest was lifted and replaced with a restriction on leaving Budapest. In November 2009 all restrictions on the applicant's personal liberty were lifted. Mr. X.Y. turned to the European Court of Human Rights with the help of the HHC's attorney alleging that his pre-trial detention violated his rights under Article 5 of the European Convention on Human Rights. The ECtHR found it particularly troubling that the detention continued for months after the authorities became aware of the applicant's psychological problems and the sexual assault committed against him. The ECtHR also found it is regrettable that the domestic authorities paid no heed to the fact that with the passage of time it became more and more acutely obvious that keeping him in detention no longer served the interests of ensuring his presence at the trial. Accordingly, the ECtHR found Hungary to be in breach of Article 5 and awarded 18,000 EUR to Mr. X.

- On 29 July 2012 the HHC submitted an application to the European Court of Human Rights in a case of a 50-year old truck driver's pre-trial detention, who had a clear criminal record.

  In 2011 the driver was assigned to carry some goods from a place to another by truck. The goods were transported and the route of the truck was registered as required by the law. However, the goods disappeared from the depot and the police started an investigation into case. In the document proving that the goods for handed over in the depot the HHC's client wrote two characters of his name and one character of the number of his ID wrongly. After a one-year long investigation the HHC's client was identified as suspect as the police assumed that it was an intentional act to provide false personal data on the mentioned document. When the police went to the place where the client had been living for 40 years with his old parents and ill brother, the client was abroad, therefore, he could not be taken to the police station for interrogation. The police then issued an arrest warrant on account of the fact that the suspect was fleeing. Upon his arrival back to Hungary the client immediately went to the police station, made a statement and handed over all the documentation he had in relation with the investigated case. Nevertheless, the prosecution initiated ordering his pre-trial detention which was ordered by the court. The appeal against this decision was rejected. The only reason of the decision was that the suspect was caught upon an arrest warrant and he was abroad, there the danger of his fleeing is well-founded. The facts – that the suspect voluntarily went to police and was abroad before because he was working there – were not taken into account by the court.

  The driver was detained for months before he was released by the court. As from the very first moment the detention was unlawful, and the HHC decided to take the case to the ECtHR.[19]

1.3. Life-long and actual life-long imprisonment

1.3.1. Legal situation regarding actual life-long imprisonment

In the report on its visit to Hungary in 2007,[20] the CPT expressed "serious reservations" about the very concept of actual life-long imprisonment, i.e. imprisonment without the possibility of parole, and argued that the law should make conditional release available to all sentenced prisoners, including life-sentenced prisoners. The CPT invited the Hungarian authorities to introduce a regular review of the threat to society posed by "actual lifers", on the basis of an individual risk assessment, with a view

[19] For the press release of the HHC, see: http://helsinki.hu/elozetes.
[20] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 January to 1 February 2007, Strasbourg, 28 June 2007, CPT/Inf (2007) 24, § 33.

to establishing whether they can serve the remainder of their sentence in the community and under what conditions and supervision measures. However, despite the concerns and suggestions expressed above, **actual life-long imprisonment continues to exist** in Hungary, and no regular review possibility regarding actual lifers has been introduced.

Currently, actual life sentences are imposed on the basis of Article 47/A (1) of Act IV of 1978 on the Criminal Code (hereafter referred to as "Criminal Code"), which sets out that in case of sentencing a defendant to life imprisonment, the judge in the court decision may exclude the possibility of a parole. The HHC challenged the latter provision of the Criminal Code in force before the Constitutional Court in March 2009.[21] However, the Constitutional Court failed to deliver a decision in the case until 31 December 2011, and the HHC's request was struck out of the list in January 2012 due to procedural reasons emerging under the Fundamental Law (the new constitution of Hungary, in force since 1 January 2012), similarly to other ongoing actio popularis review cases.

Furthermore, **the possibility of imposing actual life sentence is now enshrined in the Fundamental Law**, Article IV (2) of which goes as follows: „No person shall be deprived of his or her liberty except for statutory reasons or as a result of a statutory procedure. Life imprisonment without parole shall only be imposed in relation to the commission of wilful and violent offences."[22] Including the actual life sentence into the constitution results that related provisions of the Criminal Code and court decisions setting out and imposing actual life sentence may not be challenged before the Constitutional Court of Hungary anymore and the Constitutional Court cannot examine the constitutionality of the provisions allowing actual life sentence. The new Criminal Code (Act C of 2012), which will enter into force on 1 July 2013, also provides for actual life-long imprisonment, setting out under Article 38 (1) that the possibility of a parole may be excluded in case of lifers.

It has to be added that there is an ongoing case before the European Court of Human Rights, the case László Magyar v. Hungary (Application no. 73593/10), in which the applicant sentenced to actual life sentence claims that his rights under the European Convention on Human Rights have been violated.

1.3.2. Mandatory life sentence due to the three strikes rule

Amendments to the Criminal Code in force as of 23 July 2010[23] has made it **mandatory for judges to sentence defendants** committing violent offences against the person for the third time **to life imprisonment** if certain conditions are met – this is the Hungarian **"three strikes" rule**.

This provision infringes the constitutional principle established by the Hungarian Constitutional Court in its Decision 13/2002. (III. 20.) ruling that criminal sanctions shall be individualized in accordance with the specific circumstances of the case and the perpetrator, because this is the only way in which the requirement of the sanction's proportionality can be guaranteed. Furthermore, the conditions for imposing mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face this same sanction. For instance, due to the regulation set out in Article 85 (4) of the Criminal Code, a person who commits two instances of light bodily harm and a group robbery (involving at least three perpetrators) with the aim of taking more than HUF 2 million (EUR 7,000) will fall under the scope of mandatory life sentence just like someone who is convicted for murdering three people with a base motivation and with outstanding cruelty.

It may be added that the respective amendment of the Criminal Code was not justified by criminal statistics (which showed a decreasing tendency in violent offences) and was lacking in well-established rational justification. Even the Members of Parliament proposing the amendment justified the introduction of the "three strikes" rule with the electoral will and societal expectation for a stricter legal environment instead of facts of criminology.

[21] The actio popularis request of the HHC is available at: http://helsinki.hu/wp-content/uploads/MHB_ABinditvany_tesz.pdf.
[22] Official translation, see:
http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf.
[23] Act LVI of 2010 on Amending Act IV of 1978 on the Criminal Code

The "three strikes law" was widely criticized by key legal professionals, judges and NGOs, and was also challenged before the Constitutional Court by the HHC in November 2010. However, the Constitutional Court failed to deliver a decision in the case until 31 December 2011, and the HHC's request was struck out of the list in January 2012 due to procedural reasons emerging under the Fundamental Law, similarly to other ongoing actio popularis review cases. It shall be added that the new Criminal Code upholds the "three strikes" rule and the unconstitutional obligation to impose a life sentence under certain conditions.

1.3.3. Detention conditions of lifers and actual lifers

a) Placement

According to the a measure issued by the Head of the National Penitentiary Headquarters in December 2010,[24] women sentenced to life or actual life-long imprisonment shall be detained in the Kalocsa High and Medium Security Prison, while men sentenced to life or actual life-long imprisonment shall be detained in the Szeged High and Medium Security Prison. However, 10 years before the earliest possible date of their conditional release, male life term prisoners may be placed also to another penitentiary institution.

The table below shows the number of life and actual life term detainees, broken down by penitentiary institution, on the basis of the data provided by the National Penitentiary Headquarters on 9 November 2012.

Place of detention	Number of life-term prisoners	Number of actual life-term prisoners
Szeged High and Medium Security Prison	163	21
Sopronkőhida High and Medium Security Prison	12	
Márianosztra High and Medium Security Prison	5	
Kalocsa High and Medium Security Prison	9	
Szombathely National Penitentiary Institution	5	
Vác High and Medium Security Prison	4	1
Metropolitan Penitentiary Institution	9	2
Budapest High and Medium Security Prison	11	1
Tiszalök National Penitentiary Institution	6	
Balassagyarmat High and Medium Security Prison	3	
Juvenile Penitentiary Institution (Tököl)	1	
Tolna County Penitentiary Institution (Szekszárd)	2	
Central Hospital of the Penitentiary (Tököl)	1	
Békés County Penitentiary Institution (Gyula)	1	
Sátoraljaújhely High and Medium Security Prison	2	
Total number	**234**	**25**
Total number of men	225	25
Total number of women	9	0
Number of non-final judgments	16	3

b) Special HSR unit in the Szeged High and Medium Security Prison

After the visit of the CPT to the HSR Unit in Szeged in the framework of its ad-hoc visit between 30 January and 1 February 2007, as a result of which it concluded that "particular care should be taken to

[24] Measure 1-1/66/2010. (XII. 29.) OP of the Head of the National Penitentiary Headquarters on Executing Decree 21/1994. (XII. 30.) of the Minister of Justice on the Designation of Penitentiary Institutions, Sections 5 and 6. Available in Hungarian at: http://www.bvop.hu/hopi/2010/2010_66.html.

ensure that the HSR Unit never becomes a »prison within the prison«",[25] and requesting further measures related to the HSR Unit e.g. to ensure that only the minimum restrictions necessary for safe and orderly confinement are imposed on prisoners, Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Executing Imprisonment and Pre-trial Detention (hereafter referred to as: "Penitentiary Rules") was amended, **establishing a legal basis for operating the so-called HSR Unit in the Szeged High and Medium Security Prison**.[26] The amendment entered into force on 28 December 2007.

The amended Penitentiary Rules sets out that detainees serving long-term imprisonment, exceeding 15 years, and those sentenced to life term imprisonment may be placed to a special unit, designed specifically for those serving long-term sentences, provided that their special treatment and placement is justified by their behaviour, their skill for cooperation showed in the course of the execution of the imprisonment and on the basis of an individual security assessment. The Head of the National Penitentiary Headquarters shall appoint the penitentiary in which this special unit shall be established. The unit shall consist of so-called special security cells (*különleges biztonságú zárka*) and related areas, and shall be separated from the rest of the penitentiary institution. Detainees may be placed to this special unit for a maximum of six months upon the decision of the committee within the penitentiary dealing with admission, placement and working issues. This period may be extended with six months upon the request of the detainee. (There is no limit for the number of such requests.) If the preconditions of placing the detainee in the unit cease to prevail, the placement of the detainee in the unit shall be terminated. After the termination of the placement, one year shall pass before the detainee may be placed in the unit again.[27]

To some extent, rules on the rights of detainees placed in this special unit are the same as the rules for those detainees who are placed to special security cells or units. Namely:

- detainees are under constant supervision;
- cells shall be closed during the whole day and detainees may move within the penitentiary only with permission and under supervision; and
- detainees may carry out work only within the special unit or at a place determined by the head of the penitentiary institution.[28]

Furthermore, the Penitentiary Rules provides for the following restrictions and rights concerning the inmates placed in the special unit for long-term prisoners:

- the participation of detainees in the organisations of inmates may be restricted;
- inmates detained in the unit may participate in cultural, sporting and free time group activities only with a separate permission issued by the head of the penitentiary institution or only within the special unit;
- the objects which may be kept in the cell of the detainees may be subject to limitation;
- the frequency of having visitors and receiving and sending packages may be increased.[29]

According to the law, further detailed rules shall be included in the house rules of the penitentiary.[30]

The special unit of the Szeged High and Medium Security Prison for long-term prisoners (the HSR Unit) is designed to accommodate 13 detainees. According to data provided by the National Penitentiary Headquarters, on 9 November 2012, 12 prisoners were detained in the HSR Unit, all of them being actual life-term prisoners. According to the information provided by the National Penitentiary Headquarters, there are altogether four psychologists in the Szeged High and Medium Security Prison: a separate, special psychologist deals with the 12 detainees (actual life-term prisoners) placed in the HSR Unit, and there are two special psychologists who deal with life-term

[25] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 January to 1 February 2007, Strasbourg, 28 June 2007, CPT/Inf (2007) 24, § 32.
[26] The Penitentiary Rules were amended by Decree 61/2007. (XII. 23.) of the Minister of Justice and Law Enforcement.
[27] Penitentiary Rules, Article 47/A (1)-(2) and (5)-(6)
[28] See: Penitentiary Rules, Article 47 (3) a)-c).
[29] According to Article 36 (1) c) and Article 36 (3) of Law Decree 11 of 1979 on the Execution of Punishments and Measures, detainees may have visitors at least once a month and may receive and send packages also at least once a month as a main rule.
[30] Penitentiary Rules, Article 47/A (3)-(4)

prisoners in Building I. (This presumably means that there are only two psychologists available for the 163 life-term prisoners.)

1.4. Placement in a special security unit or cell

1.4.1. Legal changes regarding placement in a special security unit or cell

In its report on its visit to Hungary in 2009, the CPT raised concerns regarding certain aspects of the procedure of placing detainees in special security units (*különleges biztonságú körlet, kbk*), and suggested e.g. that detainees should be informed about the reasons of their placement in a special security unit in writing and should have to be entitled to appeal to an independent authority against the placement decision.[31]

The concerns above were echoed by the European Court of Human Rights in its decision delivered on 7 June 2011 in the Csüllög v. Hungary case (Application no. 30042/08). The applicant, who was represented by the HHC, was detained for the majority of his prison term (for approximately 2 years) in the special security unit of the Sátoraljaújhely High and Medium Security Prison. The ECtHR deemed it problematic that the Hungarian legal provisions had made it possible to place a detainee into a special security cell or unit in an arbitrary manner (i.e. without giving any reasons for the measure and not ensuring the right to appeal), causing feelings of total dependence, powerlessness and humiliation, and emphasized that such solitary placement would only be appropriate as an exceptional and temporary measure. The ECtHR concluded that the cumulative effects of the strict security regime (i.e. his placement in the special security unit) in which the applicant had been kept for a long time and the inadequate material conditions in his cell had resulted in inhuman and degrading treatment, in violation of Article 3 of the European Convention on Human Rights and that there also has been a violation of Article 13 read in conjunction with Article 3.

As a response to the decision, the Ministry of Internal Affairs and the National Penitentiary Headquarters issued a statement saying that the detention of the applicant was "lawful and professional". However, the case finally had an important impact in terms of domestic legislation: in November 2011 the Parliament adopted an amendment[32] to Law Decree 11 of 1979 on the Execution of Punishments and Measures, ensuring the **right to appeal against decisions on placement to a special security cell or unit to the penitentiary judge** and setting out the **obligation to provide reasons for the placement decisions**.[33] (The amendment entered into force on 1 January 2012.) It may be added however that the Hungarian Parliament only remedied the problems raised under Article 13 of the European Convention on Human Rights, thus no steps have been taken to improve the material conditions and security practices that also played an important role in the ECtHR's decision that a violation under Article 3 occurred in the said case.

1.4.2. Detainees in special security units

On 18-20 June 2012, the HHC visited the Sopronkőhida High and Medium Security Prison in the framework of a research project, and found that no detainee was placed in the special security unit of the penitentiary. The Commissioner for Fundamental Rights visited the Sátoraljaújhely High and Medium Security Prison on 24 September 2012, and found that no detainee was placed in the special security unit of that penitentiary either – however, they began to renovate it.[34]

[31] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16, §§ 69-70.
[32] Act CL of 2011 on Amending Certain Acts of Punitive Relevance
[33] Law Decree 11 of 1979 on the Execution of Punishments and Measures, Articles 7/C and 33 (4a)
[34] Report no. AJB-6943/2012. of the Commissioner for Fundamental Rights, October 2012

1.5. Judicial and Observation Psychiatric Institute

The Judicial and Observational Psychiatric Institution (hereafter referred to as: "IME") was visited by the CPT in 2005[35] and 2009.[36] In both reports the CPT's delegation expressed its concerns regarding the location of the IMEI. The CPT declared that "it would be highly desirable for the IMEI to be re-located; this would help to ensure that a medical, rather than a penal, ethos prevails. The Committee urges the Hungarian authorities to find a solution as a matter of priority".[37]

According to a recent Government Resolution[38] the IMEI shall be **placed in another building,** in a former hospital, which is according to NGOs a clear indication of the growing prospects to remodel this institution as a treatment centre, not merely a prison. As prescribed by the Government Resolution the ownership of the buildings of the Szent László Hospital shall be transferred to the National Penitentiary Service until 31 December 2013.

The Commissioner for Fundamental Rights also paid a visit to the IMEI; his concerns were articulated in a report dated 11 October 2012.[39] Beyond observing the bad physical conditions the Commissioner requested the Minister of Public Administration and Justice to resolve the hiring freeze of employees in order to increase the number of healthcare staff at the institution. The Commissioner also criticized the **placement of patients**; found highly problematic that 10-19 patients with different psychiatric disorders are squeezed into one hospital room.

Compulsory psychiatric treatment is the involuntary psychiatric treatment of mentally ill offenders, ordered and supervised by the criminal system, which is executed in the IMEI. According to the new Criminal Code, as of 1 July 2013 the **length of the treatment will be indefinite**, possibly sustained life-long.[40] The time of the eventual release is not prescribed by law, it is a subject to periodical judicial review, as opposed to people sentenced to prison who have their release dates set by a sentencing court. After the new Criminal Code comes into effect, detainees in psychiatric institutions may remain institutionalized for a longer period of time than the prison term they would serve were they to be so sentenced.[41]

Detainees in the IMEI are **forced to take psychiatric medication,** and the medication – as unofficial sources and NGO-monitoring experiences suggest — is claimed to be old-fashioned medication which has more severe side effects than more modern medications. The HHC brought a lawsuit on behalf of a detainee who was unlawfully medicated. In June 2012 the first instance court established the violation of the detainee's inherent personal rights and obliged the IMEI to pay HUF 5 million as non-pecuniary damages because the IMEI staff subjected him to the so called "**chemical straitjacket**": the indiscriminate usage of multiple anti-psychotic drugs.[42]

The unofficial responses received from prison staff and psychologists only reinforce the HHC's experiences in interacting with detainees with psycho-social disabilities who were placed in other

[35] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 8 April 2005, Strasbourg, 29 June 2006, CPT/Inf (2006) 20

[36] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16

[37] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16, p. 75.

[38] Government Resolution 1060/2012. (III. 12.) on the integration of the Judicial and Observation Psychiatric Institute (Budapest), the Central Hospital of the National Prison Service (Tököl) and the Mental Institution and the Chronic Aftercare Unit of the Szeged Strict and Medium regime Prison (Algyő-Nagyfa)

[39] Available in Hungarian at: http://www.ajbh.hu/jelentesek-inditvanyok-allasfoglalasok.

[40] Act C of 2012 on the Criminal Code, Article 78 (2)

[41] A person detained in such a manner has the right to a court review of the lawfulness of detention within six months from the date of the initial detention.

[42] For the press release of the HHC, see: http://helsinki.hu/borton-pszichiatrian-sem-alkalmazhato-kemiai-kenyszerzubbony.

detention facilities after their medication was determined in the IMEI. The HHC has experienced numerous times that detainees arriving from the IMEI, where they supposed to receive the appropriate medication or their medication was supervised, cannot communicate, fall asleep during discussion and are addicted to medication.

1.6. Confinement for misdemeanours

The range of misdemeanours (petty offences) punishable with confinement has been widened in general already in 2010 by Act LXXXVI of 2010 on Amendments Necessary in Order to Improve Public Security, extending the possibility of confinement to misdemeanours against the property. (The same law allowed for the confinement of juveniles.) Act II of 2012 on Misdemeanours, the Misdemeanour Procedure, and the Misdemeanour Registry System (hereafter referred to as: "Law on Misdemeanours") upheld the extended list of offences punishable with confinement, and made it possible to apply confinement for the third misdemeanour within a 6-month period to any petty offence, thus even if none of the misdemeanours committed would be otherwise punishable by confinement.[43] Furthermore, the Law on Misdemeanours allows for automatically changing a fine or community service to confinement without hearing the offender in case he/she fails to pay the fine or carry out the work,[44] which violates the European Convention on Human Rights.

According to data published by the National Judicial Office the number of those whose fine or community service decision was automatically changed to confinement has drastically increased in the second half of 2012:

Month (2012)	**April**	**May**	**June**	**July**	**August**	**Sept.**	**Oct.**	**Nov.**	**Dec.**
Recorded cases	3,504	4,021	4,268	9,720	15,454	18,822	23,896	23,291	20,341
Closed cases	3,775	4,072	4,034	3,933	5,781	11,728	17,952	18,992	15,108
Ongoing cases	5,210	5,159	5,393	11,180	20,853	27,947	33,891	38,190	43,423

Confinement shall be carried out in a penitentiary institution.[45]

It may be added that the above Law on Misdemeanours also **criminalized homelessness**: it set out that living on public premises and storing related personal property on public premises constituted a petty offence, and those living in public premises may have been punished with a fine or with confinement. "Anti-homeless" rules were also criticized by UN experts on extreme poverty and on housing who called on Hungary to reconsider the legislation on criminalizing homelessness.[46] In its Decision 38/2012. (XI. 14.) the Constitutional Court abolished, among others, the respective provisions of the Law on Misdemeanours, stating that criminalizing the status of homelessness is unconstitutional, since it violates human dignity. However, the **Fourth Amendment** to the Fundamental Law of Hungary (adopted on 11 March 2013) does not take into consideration the arguments of the Constitutional Court cited above and **enables the Parliament or local governments to criminalize homelessness** by including the following provision into the Fundamental Law under Article XXII (3): "An Act of Parliament or local government decree may outlaw the use of certain public space for habitation in order to preserve the public order, public safety, public health and cultural values." The amendment not only goes against the decision of the Constitutional Court, but on the other hand it only sets out that the State and local governments shall "strive" to guarantee housing for every homeless person, which does not mean an obligation on the authorities.

[43] Act II of 2012 on Misdemeanours, the Misdemeanour Procedure, and the Misdemeanour Registry System, Article 23
[44] Act II of 2012 on Misdemeanours, the Misdemeanour Procedure, and the Misdemeanour Registry System, Articles 12 and 15
[45] Act II of 2012 on Misdemeanours, the Misdemeanour Procedure, and the Misdemeanour Registry System, Article 139
[46] See: Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing, 15 February 2012, http://www.europe.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9994&LangID=E.

2. Detention of juveniles

2.1. Confinement for misdemeanours

The new Law on Misdemeanours regarding juveniles results in an absurd and unacceptable situation. With regards to juvenile offenders, Article 105 (3) of the (new) Criminal Code states that a measure or punishment involving the withdrawal of freedom may only be applied if the aim of the measure or punishment cannot otherwise be achieved.[47] Thus, even in case of the perpetration of a criminal act, withdrawal of freedom can only be a last resort. The law, however, still doesn't change the rule that it is possible to use withdrawal of freedom for juvenile offenders in the case of less serious, less dangerous activities. According to the Law on Misdemeanours, there is still a possibility of **confinement for juvenile offenders**, as well as for the transfer of fine into confinement in case the fine is not paid. According to the Law on Misdemeanours juvenile offenders over 16 years of age can be sanctioned with community service.

Imprisonment for juvenile offenders is unacceptable for the following reasons: (i) The Law on Misdemeanours completely disregards the international legal obligations of Hungary by maintaining the possibility for confinement and also by not making any alternative sanctions available for juvenile offenders. Juvenile offenders should only be confined as a last resort, and in their case, the central focus of the criminal justice system should be education and reintegration. According to international legal rules, individuals under 18 are considered children, and this should be the primary perspective through which all legal solutions relating to them are evaluated. Article 37 of the Convention on the Rights of the Child, adopted in New York on 20 November 20 1989, clearly requires that the arrest, detention or imprisonment of a child should only be applied as a measure of the last resort, and only for the shortest possible period of time. Moreover, amongst others, Recommendation Rec (2003) 20 of the Committee of Ministers of the Council of the European Union, adopted on 12 September 2003, concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, and the Beijing Rules (the UN 3 Standard Minimum Rules for the Administration of Juvenile Justice) also state: in the case of juvenile offenders, the criminal justice system needs to avoid a retributive approach.
The objective of the sanction according to these documents is the correction and education of the juveniles, and not punishment. The Law on Misdemeanours goes against these international rules.

According to the Law on Misdemeanours, confinement of juveniles is executed in a penitentiary institution; the possibility of carrying out the confinement in a juvenile correctional facility is excluded. Therefore the Law on Misdemeanours still goes contrary to Article 19 of the Beijing Rules, the commentary of which explicitly states that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, and giving priority to correctional or educational institutions. The former Parliamentary Commissioner for Civil Rights established that even for juveniles in pre-trial detention, thus for juveniles who have committed rather more serious activities than misdemeanours, it is an abuse of the juveniles' right to satisfactory physical, mental and moral development if their confinement does not take place in a juvenile correctional facility or a juvenile penal institution.[48]

2.2. Lowering the age of criminal responsibility

According to the new Criminal Code[49] as of 1 July 2013 **the minimum age of criminal responsibility** will be lowered in case of certain offenses. Children above 12 and under 14 can be charged for homicide, voluntary manslaughter, bodily harm, robbery and plunder, if the child can judge the consequences of his/her actions. Children under 14 cannot be sent to penitentiaries, in case committing the crimes indicated above their special education in juvenile reformatories can be ordered. The lowering of the age of criminal was criticized by NGOs mainly because Hungary's current youth justice system fails to meet the special needs of children.

[47] Similarly to the current Criminal Code of Hungary which is in effect until 30 June 2013.
[48] See Case no. OBH 4841/2007.
[49] Act C of 2012 on the Criminal Code

2.3. Special homes for children

The Commissioner for Fundamental Rights paid a visit to Károlyi Isván Special Home for Children at Risk [*speciális gyermekotthon*, hereafter referred to as "special home"], opened in January 2011.

Children in temporary placement, short term or long term foster care, who are older than 10 years and display severe psychic or dissocial symptoms or suffer in psychoactive drug addiction, are placed in the so called special homes.[50] The special homes are part of the child protection system, aiming at the socialization and re-socialization of children, their habilitation and rehabilitation, if the special care cannot be provided in other institution, or the separation of these children from those not in need of such special care.

In his Report no. AJB 3012/2012. the Commissioner for Fundamental Rights summarized his findings of the visit paid to the special home:

- The institution completely resembles a penitentiary. Each unit of the building is kept closed separately, the windows are equipped with bars, children may enter their own room only after 6 p.m., they may be deprived of their right to receive visitors as a result of a disciplinary sanction (which in itself is contrary to the law), they may eat in the canteen only on special occasions, they may walk alone within the institution only in exceptional cases, the sports court and one side of the building is equipped with barbed wires. Some of the employees are former police officers, other law enforcement agents and security guards.
- The staffing is insufficient; some of the staff members do not have the qualification required by the law.
- The hall appointed for receiving visitors is not suitable for this purpose – no intimate and personal conversation can take place there.
- The house rules are not available in the institution at an easily visible place.
- The institution was not monitored since it was established although according to the law at least once a year such supervision should take place by the organ issuing the permission for operation or the one maintaining it.
- The guardians of the children either do no visit them regularly or are not even available via phone.

3. Police establishments

3.1. General observations

Due to adopting an amendment to Act XIX of 1998 on the Code of Criminal Procedure (hereafter referred to as: "CCP"),[51] pre-trial detention shall be executed in penitentiary institutions since 2005. Though the law still allows executing pre-trial detention in police cells in exceptional circumstances despite the recommendations made by the CPT on their last visit to Hungary,[52] this is used in very limited number of cases. Accordingly, the number of detainees held in police holding facilities has continually and significantly decreased since 2005, as observed by the CPT during its previous visit to Hungary in 2009.[53]

[50] Article 126 (1) of Decree 15/1998. (IV. 30.) NM
[51] Article 135 (1)-(2) of Act XIX of 1998 on the Code of Criminal Procedure
[52] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16, § 9
[53] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16

The tendency continued, as even more establishments had been closed since then: according to a statement by a high ranking official of the National Police Headquarters from 2006, before 2005 67 such establishments were operating, while at the end of 2006 the number dropped to 33.[54] As indicated by the table below, as of today there are only 22 police holding facilities left in the country – by and large, one establishment per every county. The overall capacity of these institutions is altogether 706 persons, while the total prison population is above 17,000. Moreover, according to an official statement by the police, even the existing 22 police detention facilities operate with the annual average utilization rate of only around 25 percent in these buildings.[55]

	Institution	Capacity (2011)
1.	National Police Headquarters Investigation Office	36
2.	Budapest Police Headquarters Central Jail	89
3.	Baranya County Police Headquarters	28
4.	Bács-Kiskun County Police Headquarters	19
5.	Békés County Police Headquarters	20
6.	Borsod-Abaúj-Zemplén County Police Headquarters	60
7.	Csongrád County Police Headquarters	53
8.	Fejér County Police Headquarters	38
9.	Győr-Moson-Sopron County Police Headquarters (Győr)	19
10.	Győr-Moson-Sopron County Police Headquarters (Sopron)	20
11.	Hajdú-Bihar County Police Headquarters	26
12.	Heves County Police Headquarters	30
13.	Jász-Nagykun-Szolnok County Police Headquarters	26
14.	Komárom-Esztergom County Police Headquarters	20
15.	Nógrád County Police Headquarters	51
16.	Pest County Police Headquarters	47
17.	Somogy County Police Headquarters	20
18.	Szabolcs-Szatmár-Bereg County Police Headquarters	20
19.	Tolna County Police Headquarters	10
20.	Vas County Police Headquarters	28
21.	Veszprém County Police Headquarters	18
22.	Zala County Police Headquarters	28
	Total:	**706**

3.2. Ill-treatment

Ill-treatment by the police in police detention facilities or during the transport thereto gives rise to concerns, as demonstrated by the following individual cases.

- *Gubacsi v. Hungary (Application no. 44686/07, Judgment of 28 June 2011)*

  In the evening of 19 August 2006 the applicant was involved in a minor car accident at a parking lot in the town of Siófok. In response to an alert at around 10.40 p.m. the Siófok Police Station sent two patrolling officers to the scene of the accident. When the applicant was informed that, after the pictures had been taken, he would be taken to the police station to fill in certain papers, he attempted to escape. While running past the officers, he knocked over one of them, who suffered superficial abrasions. The other officer chased the applicant and finally managed to bring him to the ground and to handcuff him. The applicant was ill-treated both during the transfer in the police car and subsequently during his custody. In the corridor of the custodial unit he was made to stand with his face against the wall, and was

[54] See: http://www.jogiforum.hu/hirek/15008.
[55] The list of police detention facilities was provided by the National Police Headquarters upon the request of the HHC.

kicked and/or hit by several police officers all over his body. He fell to the ground, where the ill-treatment continued. The beating ended only after he collapsed.

On 26 August 2006 Mr. Gubacsi's legal representative filed a complaint with the Siófok Police Station and requested that the part of the complaint relating to the applicant's ill-treatment be forwarded to the competent prosecutorial investigation office. Based on the forwarded complaint, the Kaposvár Prosecutorial Investigation Office launched an investigation. In spite of the fact that the applicant claimed to have recognized two of the four police officers who were present during his ill-treatment in the custodial unit, the Office terminated the investigation on 20 February 2007. On 14 March 2007 the applicant's counsel submitted a complaint against the decision to terminate the investigation which was subsequently rejected. Mr. Gubacsi, represented by the attorney of the HHC, finally turned to the European Court of Human Rights. In its judgment delivered on 28 June 2011 the ECtHR found Hungary to be in breach of Article 3 and awarded 10,500 EUR as a just satisfaction to the applicant.

- *Case of Á. G.*

  Mr. Á. G. took part in an anti-government demonstration in autumn 2006. On the night of 19 September he was arrested by the police in Budapest. When taken into custody and subsequently escorted to the police car – interlocked, one police officers standing on his both sides – he was kicked several times and hit on his face by unidentified police officers.

  As the perpetrators of the ill-treatment remained unidentified, Mr. G. filed a complaint against the police officers taking him into custody for not protecting and failing to report the incident to their superiors. The court of first instance acquitted the two policemen due to lack of evidence. The court of second instance reversed this decision and in March 2012 convicted the officers though only as accomplices and not as perpetrators in the crime of maltreatment in official proceedings. The Curia acting as the court of third instance in its final judgment upheld the decision delivered by the court of second instance. However, the sentences of both police officers were suspended on probation. Mr. G. was represented by the attorney of the HHC.[56]

- *Case of seven-month pregnant Ms. H.*

  Seven-month pregnant Ms. H. was taken into short-term arrest by the police because she failed to appear on summons before the police officer investigating a case. (Ms. H. insists that she had received no summons to any hearing.) The police took her from her apartment at 12:30 a.m. and placed her in a cell without a bed. She had to wait on a wooden bench until 8:00 a.m. when a police officer started her interrogation. Because of the stress, she had painful contractions. She indicated this to the guards twice, requesting that the interrogation be held as soon as possible, but nothing happened, not even medical care was offered to her. On 16 June 2010 the International Police Complaints Board concluded in the case that the complainant's fundamental rights had been violated. On 15 October 2010, the National Chief of Police adopted a decision in the case, in which he found her complaint concerning the violation of the right to liberty well-founded, but rejected the rest of the complaint. The HHC requested judicial review of the decision. The administrative court repealed the decision based on procedural grounds, thus the procedure was repeated at the National Chief of Police's Office. In the repeated procedure, the National Chief of Police took the same decision, basically citing that apart from the disproportionally long period of short-term arrest, the contradictions in the statements of the parties could not be resolved.

  In the second judicial review procedure, conducted in 2012, the court brought a decision on the merits of the case (while maintaining concerns over some still-existing flaws of the procedure), ruling, among others, that the bodily search conducted in the corridor of the detention facility of the police department violated Ms. H.'s right to human dignity, and found

[56] For the press release of the HHC, see: http://helsinki.hu/ket-ujabb-rendort-itelt-el-a-2006-os-bantalmazasok-kapcsan-a-fovarosi-itelotabla.

also that a medical examination should have been performed prior to being placed in the hold-up facility, as considering her medical state it was a matter of objective necessity and not a measure subject to the request of the person held-up. Ms. H. was represented by the HHC in the course of the procedures above.

3.3. Short-term arrest

The most problematic issue pertaining police detentions remains to be the short-term arrest (*előállítás*). Under Article 33 of Act XXXIV of 1994 on the Police, a person may be taken into short-term arrest – inter alia – if he/she is caught in the act of committing a crime; is under an arrest warrant; is suspected of having committed a crime; cannot identify himself/herself or refuses to do so; who is required to give a blood or urine sample in order to prove a criminal or a petty offence; who fails to stop a petty offence when called to do so; etc.

A short-term arrest may last no longer than necessary, but shall not exceed eight hours. Only in exceptional cases may the leader of the police detention unit in question prolong this period with four additional hours.[57] However, according to HHC's experience police officers regularly disregard the necessity requirement and hold the person detained for eight hours anyway. Moreover, granting the additional four hours seems to be a wide-spread practice as well.

The legal framework regulating the status of persons under short-term arrest is unclear since this legal institution is not regulated in details. As an additional problem beyond legal uncertainty, the police officers do not pay enough attention to the supervision of these detainees, usually out of ignorance or due to a lack of human resources. In practice, this means that people may very easily end up in police jails without any bed linen or clothing for 8 or even 12 hours, with only a plank bed in the cell.

3.4. Access to a lawyer

3.4.1. Appointment of ex officio defence counsels

Surveys of various actors show that the system of the ex officio appointment of defence 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. The problem of ex officio counsels being absent from the interrogation of a detained person was also noted by the CPT in its report on its visit to Hungary in 2009, and it recommended that steps are taken „to further improve the system of legal aid for persons who are not in a position to pay for a lawyer, and to ensure that it is applicable from the very outset of police custody".[58]

In the HHC's view one of the central problems related to the ex officio defence counsel system is the way defence counsels are appointed, which has not been modified since the CPT's last visit in 2009. In the HHC's view the low quality of ex officio defence work is to a great extent also due to the fact that the **authorities** (including the investigative authorities, i.e. in most cases the police) **are completely free to choose the lawyer to be appointed** under Article 48 (1) of the CCP, thus the authorities are not obliged in any way to consider the wishes of the defendant. (Under Article 35 of Act XI of 1998 on Attorneys at Law, the competent bar association keeps a register of those attorneys who can be appointed as defence counsels, and the authority conducting the actual phase of the procedure chooses from this list.) The HHC's research results also show that some attorneys base their law practice principally on ex officio appointments, so **they may become financially**

[57] Act XXXIV of 1994 on the Police, Article 33(3)
[58] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, Strasbourg, 8 June 2010, CPT/Inf (2010) 16, § 24.

dependent on the member of the police who takes decisions on appointments. This situation as a whole poses a severe **threat to effective defence**, as the investigating authority is disinterested in efficient defence work.

In the framework of its latest research, the HHC requested data concerning the names of appointed counsels and the number of cases in which they were appointed in 2008 from police headquarters, as a result of which a database containing the related data of 36 local police headquarters, 7 Budapest district police headquarters and 6 county police headquarters was established. Data analysis clearly demonstrated that **the practice of having "in-house" ex officio defense counsels at police headquarters is widespread**, and that in-house lawyers deal with a **significant, sometimes irrational amount of cases**. At 19 police organs the same attorney at law was appointed in more than one third of all cases. One of the highest percentages in this regard was 82% at the Kiskőrös Police Headquarters, where 295 criminal cases were dealt with by the same defense counsel out of the total of 358 cases in 2008. At the Siófok Police Headquarters the most frequently appointed attorney at law defended clients in 276 cases, amounting to 70% of all ex officio criminal cases handled by the police unit in that year (393). When analyzing the data, the HHC has examined what percentage of the cases the three most frequently appointed attorneys take per unit, and revealed significantly disproportionate practices in this regard as well. At 34 police headquarters the three most frequently appointed defense counsels were chosen by the police in more than 50% of the cases, the percentage exceeding 70% at 19 police headquarters. The table below shows examples of the highest results in terms of appointments per year received by the same single attorney and the percentage of appointments the same attorney takes a year.[59]

Ex officio counsel's cases per year	Police headquarters	% as compared to the total number of appointments
453	Nyíregyháza Police Headquarters	23%
372	Kecskemét Police Headquarters	54%
295	Kiskőrös Police Headquarters	82%
289	Győr Police Headquarters	37%
276	Siófok Police Headquarters	70%
265	Miskolc Police Headquarters	29%
232	Tatabánya Police Headquarters	58%
207	Székesfehérvár Police Headquarters	31%
205	Gödöllő Police Headquarters	45%
200	Miskolc Police Headquarters	22%

3.4.2. Presence of attorneys in the investigative phase

Under the Hungarian law the defence is mandatory e.g. if the defendant is detained, thus in that case defendants either have to retain a lawyer, or an ex officio defence counsel shall be appointed. If the suspect's detention is ordered, it shall be guaranteed that he/she can retain a lawyer before the first interrogation.[60] However, the mandatory nature of defence does not require the presence of the defence counsel at individual procedural actions in the investigative phase of the criminal proceeding. (The situation is different is the judicial phase: if defense is mandatory, no hearings may be held without the defense counsel's presence.)

In terms of the legal provisions, with the exception of urgent investigative acts, the counsel shall be notified in due course, at least 24 hours beforehand about all the investigative acts that he/she may

[59] For the full research report, see: András Kristóf Kádár – Nóra Novoszádek – Adrienn Selei: *Ki rendelt itt védőt? – Egy alternatív védőkirendelési modell tesztelésének tapasztalatai*, Magyar Helsinki Bizottság, Budapest, 2012, available in Hungarian at: http://helsinki.hu/wp-content/uploads/MHB_Ki_rendelt_itt_vedot_2012.pdf.

[60] Joint Decree 23/2003. (VI. 24.) of the Minister of Interior and the Minister of Justice on the Detailed Rules of Investigation Conducted by Organisations under the Minister of Interior, Article 6

be present at.[61] This however still may not mean that the counsel actually has the chance to be present because there is no obligation on the investigating authority to actually wait for him/her. Practitioners also claim that the notice given is often very short, or sent in a way that the chances of the lawyer receiving the notification are practically non-existent (e.g. sending a fax to the lawyer's office during the night). Furthermore, while the CCP prescribes that the defence counsel should contact the defendant without delay and to use all lawful means and methods of defense at the appropriate times in the defendant's interests[62] (which of course include participation of the defense counsel at all investigative actions open to him/her), if the defense counsel fails to fulfill these obligations, he/she will commit an ethical misdemeanor at most, but this will not prevent the investigative authority from interrogating the defendant or confronting him/her with any witnesses testifying against him/her.

4. Ratification of the Optional Protocol to the CAT (OPCAT)

On 24 October 2011, Act CXLIII of 2011 on Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was finally adopted, which designated the Commissioner for Fundamental Rights (the Ombudsperson) to be the National Preventive Mechanism (NPM) in Hungary[63] and amended the law on Commissioner for Fundamental Rights in order to comply with the requirements of OPCAT.

It shall be recalled that the above law was adopted by the Parliament in an extremely short period: only four working days were provided for commenting on the draft Bill, it was submitted to Parliament even before the deadline for commenting was over, and was adopted on the next working day.

The HHC and the Mental Disability Advocacy Centre found that the law above was unsatisfactory and inadequate to fulfil all the requirements set by OPCAT, and claimed that (i) not all types of places of detention are covered by the law and the possibility for the NPM to consult whoever it deems necessary is not ensured; (ii) NGOs which already acquired significant experience in monitoring detention are excluded from the NPM; and that (iii) the NPM would start its operation only in 2015.[64]

5. Detention of migrants

5. 1. Detention of asylum-seekers

According to the Asylum Act effective as of 1 January 2008[65], alien-policing detention of asylum-seekers was limited to the first 15 days of the asylum procedure. According to the Asylum Act, in case the application – after completing the first, so-called eligibility stage – is admitted to the second (in-merit) stage, the asylum-seeker's detention must be terminated without exception, regardless of the reason of detention or whether the asylum-seeker applied for asylum before or after placed in detention.

Contrary to the clear provision of the law, the practice of the Office of Immigration and Nationality (OIN, responsible for immigration as well as asylum cases) showed that this „automatic" termination of detention had not been applied as a general rule, as in many asylum cases the OIN failed to initiate

[61] Joint Decree 23/2003. (VI. 24.) of the Minister of Interior and the Minister of Justice on the Detailed Rules of Investigation Conducted by Organisations under the Minister of Interior, Article 9 (2)
[62] CCP, Article 50 (1)
[63] Act CXLIII of 2011 on Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2 (6).
[64] Hungarian Helsinki Committee (21 October 2011) *A Magyar Helsinki Bizottság véleménye a kínzás és más kegyetlen, embertelen vagy megalázó bánásmód vagy büntetés elleni egyezmény fakultatív jegyzőkönyvének kihirdetéséről szóló törvény tervezetéről*, available at: http://helsinki.hu/dokumentum/Helsinki_Bizottsag_velemeny_OPCAT.pdf; Mental Disability Advocacy Centre (26. October 2011) *Hungary: NGOs call for monitoring of detention rights*, available at: http://mdac.info/hungary_NGOs_call_for_monitoring_of_detention_rights.
[65] Act LXXX of 2007 on asylum (Asylum Act)

the termination of the detention upon admitting the application to the in-merit stage, without providing any reasons for acting so. This resulted in the asylum seeker staying in detention for an indefinite term, until the end of the in-merit asylum procedure, or in several cases during the court appeal procedure as well -- the only limit being the maximum duration of this type of detention, which had been reduced to 6 months by the Act II of 2007 on the entry and residence of third country residence as of 1 July 2007.

Throughout 2009 and 2010, the HHC witnessed an unjustified increase in the number of asylum-seekers detained in immigration jails. In contrast to the legal provisions entered into force on 1 January 2008, whereby asylum-seekers whose claim is admitted to an in-merit assessment (the vast majority of cases until the 2010 December amendments) should be released from detention and accommodated in an open reception center, the OIN began not to order release in case of many asylum-seekers. Hence on 9 February 2009 the HHC turned to the Chief Prosecutor's Office to challenge the unlawful practice of the OIN. The response of the Chief Prosecutor's Office, dated 22 April 2009, fully concurred with the HHC's legal position.

The **Chief Prosecutor's intervention remained without effect and the HHC experienced an increasing number of asylum-seekers remaining in unlawful detention for several months in 2009 and 2010**. HHC lawyers representing detained asylum-seekers regularly challenged the detention in court procedures, but without success, as courts reviewing detention carry out a purely formal assessment of whether there is a legal basis for detention, without examining if detention is "lawful" in the sense of Article 5 of the European Court of Human Rights (ECtHR).

In February 2010, the HHC turned to the European Court of Human Rights (ECtHR) on behalf of two asylum-seekers from the Ivory Coast who had been unlawfully detained for almost 6 months in the Nyírbátor immigration jail. In the case of *Lokpo and Touré v. Hungary*, the ECtHR ruled on 20 September 2011 that the **asylum-seekers had been held in immigration detention unlawfully** for 5 months and granted 10.000 EUR in damages for each applicant.[66] The Court's judgment highlighted systemic problems concerning the detention of asylum-seekers in immigration jails in Hungary, against which the HHC had already been advocating for several years.

The entry into force of Act CXXXV of 2010 on the Amendment of Certain Acts Related to Migration on 24 December 2010 brought about significant changes regarding the Hungarian asylum system and alien policing detention. These amendments in many aspects aimed to lower key standards regarding the right to asylum and alien policing detention.

The most significant negative impacts of the above amendment were the following:

- the maximum period of alien policing detention increased from 6 months to **12 months**;
- the basis for detention of asylum seekers under "Dublin procedure", in order to secure their deportation, was now included in the law;
- **asylum-seekers could be lawfully kept detained for the entire asylum procedure** (both administrative and judicial review), resulting in routine-like detention for the majority of those seeking international protection;
- **families with children could now be held in immigration detention for a maximum period of 30 days** (a time period usually insufficient to carry out deportation measures and therefore resulting in unfounded and unreasonable detention[67]).

In February 2011, the HHC filed two other complaints to the ECtHR alleging unlawful detention of Iraqi and Palestinian asylum seekers who had been unlawfully detained for more than 5 months in the Nyírbátor immigration jail. On 23 October 2012, the Court delivered its judgments in both cases (*Hendrin Ali Said and Aras Ali Said v. Hungary, Al-Tayyar Abdelhakim v. Hungary*) ruling that **the**

[66] *Lokpo et Touré v. Hungary*, Application no. 10816/10, Council of Europe: European Court of Human Rights, 20 September 2011, available at: http://www.unhcr.org/refworld/docid/4e8ac6652.html [accessed 26 March 2013]
[67] Especially with regard to the case Popov and others v. France 39472/07 ; 39474/07 on 19 January 2012

detention of the applicants was in breach of article 5 of the Convention and awarded each of them 10 000 EUR.[68]

In the last quarter of 2012, the OIN and the police informed the HHC on several occasions about an envisaged **change in the country's immigration detention policy** due to vivid criticism from the HHC, the UNHCR and the European Commission as well as the above-mentioned judgments of the European Court of Human Rights. In November-December 2012, Parliament adopted the amendment of various laws on immigration and asylum, which entered into force on 1 January 2013. The amendment provided that asylum seekers who ask for asylum immediately upon being apprehended by the police will not be detained, instead, they will be accommodated in an open facility. The above modification of the provisions on immigration detention led to a dramatic decrease of migrants in detention. According to a letter from the Office of Immigration and Nationality to Ms Ágnes Ambrus, the head of the Hungary unit at the UNHCR Regional Representation for Central Europe, there were only 12 asylum seekers held in immigration detention on 4 January 2013, while one further person submitted an asylum application in detention during January 2013.

5.2. Conditions of detention in immigration detention facilities

5.2.1. Expansion of detention capacities due to restrictions in legislation 2010-2013

In 2013, five immigration detention facilities operate under the police in Hungary:

- Budapest Liszt Ferenc international airport,
- Győr,
- Kiskunhalas,
- Nyírbátor,
- Békéscsaba.

Between 2010 and 2013, the HHC witnessed a large-scale expansion of the capacity of the jails in Kiskunhalas and Nyírbátor, also in temporarily opened police lock-ups functioning as immigration jails in 2010. In 2010 the total capacity of immigration detention facilities was increased from 282 to 698.[69] This increase served well the purposes of the quasi-automatic detention of all migrants who had entered the country irregularly. The basis of this quasi-automatic detention was an expulsion order issued in each case, even if the person in consideration was an asylum seeker who had returned from another EU member state under the Dublin II Regulation (343/2003/EC regulation).[70] After closing all the "temporary jails", by 2011 the total capacity of immigration detention facilities in the entire country were set at approximately 600 places until November-December 2012 (when certain facilities were closed due to the modification of immigration and asylum laws).[71]

For the past four years, detainees in the majority of the detention facilities -- with the exception of Békéscsaba, which always fell under a different regime given the fact that families with children and women were held here -- were subject to **conditions equal to the maximum severity level of a prison sentence *(fegyház)***, as apart from the one-hour open-air exercise and meals, the detainees were kept closed in their cells, free movement was generally not allowed in the premises, minimal or no community and/or personal activities were available.

[68] http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113937
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113936

[69] For more information on the changes of the policy on immigration detention and the changes of detention facilities, please see the HHC report Stuck in Jail - Immigration Detention in Hungary (2010), p.5, available at: http://helsinki.hu/wp-content/uploads/HHC-immigration-detention_ENG_final.pdf

[70] For more information on the problems related to the implementation of the Dublin II Regulation in Hungary and the detention of asylum seekers please see: http://helsinki.hu/wp-content/uploads/HHC-Access-to-protection-jeopardised.pdf

[71] For exact figures on the capacities of places of detention in Hungary, including immigration detention please see the HHC1s annex shared with the CPT.

The situation changed with a joint project of the NGO Menedék - Hungarian Association for Migrants and the National Police Headquarters. The everyday presence of social workers in the framework of this project is funded by the national allocation of the European Return Fund, which according to the HHC's experience significantly contributed to reducing tension amongst detainees and to shedding more light on systemic abuses in the jails of Kiskunhalas and Nyírbátor. The improvement of detention conditions is largely due to the presence of the two social workers and one psychologist per facility as well as that sport equipment was purchased and UNHCR-donated computers enable detainees to have limited internet access. The use of the equipment and the computers is regulated by each facility's internal house rules.

Despite the gradually improving detention conditions, the UNHCR and the HHC, together with other stakeholders (the IOM, Hungarian NGOs present in the facilities) raised the issue of **widespread police brutality reported in immigration detention centres** to Mr József Hatala, the head of the National Police Headquarters in October-November 2011. Information obtained from the detainees at a visit on 26-27 September 2011 organized by the UNHCR corresponded to the experience of the HHC and its contracted attorneys who had been visiting the immigration jails on a regular basis.

The complaints were following:

1) Detainees complained that **ill-treatment and abuse occurred on a daily basis** and it seemed that certain guards (not only police officers but contracted armed civilian security guards) were more brutal than the rest. Still, the management of the facilities concerned could not (or did not) initiate criminal or disciplinary procedures against the guards that allegedly harassed and abused detainees.
2) It is alarming that anecdotal evidence from detainees themselves suggests that after ill-treatment by the guards, detainees could find themselves in **isolation cells** as a disciplinary measure (although such isolation cells should be used only for medical reasons). The rules of such placement are not regulated in the legal norms governing immigration detention regimes.
3) Despite the clear ban on the immigration detention of unaccompanied minors, both the HHC and the UNHCR found cases where **separated children had been detained due to incorrect age assessment examinations**. Only in 2012, the HHC (through its contracted lawyers) assisted more than a dozen unaccompanied minor detainees in their efforts to be released from immigration detention. The age assessment carried out by a police-employed doctor is generally a simplified examination – mostly a glance on the physical appearance of the person. Contrary to the UN Convention on the Right of the Child these children are treated as adults until their age is assessed with questionable methods.
4) Detainees' **access to the toilet** was often reported to be hindered, mostly by preventing them from going there during all evening and at night. According to both the police and the HHC's lawyers this problem has been resolved in the meantime -- it is nevertheless important to underline that in certain detention facilities toilets are not available within the cells, therefore access to the showers and restrooms will always depend on the good will and cooperation of the guards.
5) The HHC received reports from psychiatrists working with the Cordelia Foundation for Survivors of Torture[72] that previously detained asylum seekers showed signs of drug dependence, most probably due to the **forced medication and sedation** of detainees. This information could, however, not be officially confirmed by any on-sight investigations.

The HHC continued to conduct **monitoring visits to immigration jails** on a regular basis, visiting on 23-24 February 2012 Nyírbátor, on 12-13 March 2012 Kiskunhalas and on 8 May 2012 Győr. The monitors conducted in-depth interviews with the detainees and the management of each facility in order to gather information on detention conditions, allegations of verbal and physical abuse of the detainees. Together with other international and non-governmental organizations, such as the UNHCR, the IOM and the Menedék Association, the HHC is party to a working group established by the National Police Headquarters in order to elaborate and follow-up the implementation of an action

[72] http://www.cordelia.hu/index.php/en/

plan to address and prevent ill-treatment in immigration jails, incidents of which have been reported with increasing frequency since autumn 2011.

The working group assisted the police in elaborating an **action plan** to prevent further incidents of ill-treatment and create effective reporting mechanisms and procedures. The **implementation of the action plan, however, still remains unclear** for the HHC as no official information was shared with the working group afterwards.

As regards the complaints of ill-treatment, the HHC undertook the legal representation of three detainees in the Nyírbátor jail who had reported ill-treatment in 2011 and 2012. Two of these cases are still pending with the prosecutor's office in Nyírbátor and one was closed due to the forced return of the complainant to his country of origin (Nigeria).

Following the visits to Kiskunhalas and Győr (12-13 March and 8 May 2012), the HHC **submitted a complaint** regarding overcrowding in these facilities (in breach of legal provisions concerning minimum moving space) to the two competent public prosecutors' office. While the Győr-Moson-Sopron County Public Prosecutor's Office partly agreed with the HHC's concerns and took action in order to change the situation, the Bács-Kiskun County Public Prosecutor's Office rejected the complaint on erroneous grounds claiming that there are different requirements as regards moving space in immigration detention than in penitentiary institutions.

In March 2012, the **HHC published its *report*** on the two-day monitoring mission to the Kiskunhalas immigration jail (12-13 December 2011), together with the reactions of the police on the HHC's findings. The report focused on the alleged brutality of jail guards, the detention and expulsion of four (potentially underage) young Afghan boys and other detainees' individual complaints mostly related to medical assistance.

The **Commissioner for fundamental rights** examined the situation of detainees in the immigration jail in Nyírbátor between 16-17 July 2012 and found several instances of unlawful or worrisome practices that might amount to inhuman and degrading treatment or otherwise prevent detainees from exercising their fundamental rights. The Commissioner published his report 13 September 2012.[73]

- "*Given the lack of procedural safeguards to protect the victims of abuse, there is no guarantee that the launch of an investigation will lead to the identification of perpetrators and not to the intimidation of the victim and witnesses, which jeopardizes the effective implementation of the right to file a complaint guaranteed under Article XXV of the Fundamental Law.*"[74]
- Moreover the Commissioner found that "*the overwhelming majority of the staff of the Detention Facility do not, for all practical purposes, speak any foreign languages, thus they primarily communicate with detainees through gestures. The lack of verbal communication and differences in cultural backgrounds of detainees and guards lead to misunderstandings. These situations are interpreted by the guards as disobedience, and they try to solve the problem through aggression. The tense behaviour of some of the guards and their arrogant, condescending tone used towards detainees was also noticed by my co-workers at the time of the on-site inspection.*"[75]
- Also, "*Internal reviews of abuse of detainees by the guards were closed without results because the perpetrators were not identified. By failing to forward to the competent prosecutor's office complaints of abuse by the guards, and by instead dealing with detainees' complaints on their own, the management of the institution breaches its obligation prescribed under section 171(2) of the Code of Criminal Procedure regarding the prosecution of criminal offences of which it becomes aware and poses a threat to the fulfilment of the prohibition of inhumane and degrading treatment.*"[76]

[73] The report may be downloaded from the Commissioner's website: http://www.ajbh.hu/allam/eng/index.htm or please see the press release *"There is worse than prison":* http://www.obh.hu/allam/eng/aktual/20120913.htm
[74] Report of the Commissioner for Fundamental Rights in case number AJB-1953/2012, September 2012, p 24.
[75] Report of the Commissioner for Fundamental Rights in case number AJB-1953/2012, September 2012, p 26.
[76] Report of the Commissioner for Fundamental Rights in case number AJB-1953/2012, September 2012, p 27.

HHC's practice shows that contrary to the recommendation of the CPT in its latest report on Hungary, police officers and security guards working in the immigration detention facilities were not effectively provided with "the clear message that the ill-treatment of detained persons (whether of a physical or verbal nature) is not acceptable and will be the subject of severe sanctions."[77]

It should be noted that similarly to the situation at the time of the two previous CPT visits, the police staff working in the immigration detention facilities continue to carry truncheons, handcuffs and pepper spray in a visible manner while performing their duties. This practice has already been criticized by the CPT in its report on the 2005 and 2009 visits.

5.2.2. Changes in immigration detention policy as of 1 January 2013

Due to the recent change of the detention policy regarding irregular migrants as mentioned above (see section 5.1.) and the decreased number of detainees, immigration detention facilities now operate with reduced capacities. The building "B" within the jail in Nyírbátor was closed at the end of 2012. According to the police, the jail in Békéscsaba has recently partially changed its profile: the number of places for immigration detention of families and women has been reduced from 132 to 50 (and the rest serves the purpose of accommodating asylum seekers until their first interview takes place).

Recent improvements in detention conditions were reported from the Nyírbátor detention facility. By the end of 2012 the most criticized building „B" was closed due to the significantly reduced number of detainees. Improvements of detention conditions essentially led to more humane treatment of detainees and a less restrictive and rigin atmosphere in the facility. The main objective of the change is to reduce idleness among detainees to prevent conflicts.

In March 2013 the police and the Office of Immigration and Nationality (OIN) reported that due to the increasing number of asylum seekers in 2013 new accommodation facilities need to be opened (or re-opened). Until the end of March 2013, around 1400 new asylum claims have been registered and these asylum seekers are entitled to reception conditions as set forth by EU the Reception Conditions Directive[78]. The reception centre in Debrecen runs at full capacity therefore authorities are planning to open two more buildings as reception centres that have previously been used as detention centres. (Békéscsaba and Debrecen have opened up and operate as reception centres allowing for free movement in and outside the facility.) Since this has been introduced as a temporary measure and was carried out during a short period of time, reconstruction could not take place. However, without major changes in the layout, furniture and access to free time activities, these old/new places cannot fulfill their function as genuine reception centres. Also, the daily routine and the role of the guards is still not clear at the moment.

5.3. Breach of Article 33 of the 1951 Geneva Convention – "non-refoulement"[79]

As a party to the 1951 Geneva Convention relating to the status of refugees, Hungary has to respect the principle of non-refoulement enshrined in Article 33 of the 1951 Convention.

[77] Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, p 22., available at: http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf

[78] 2003/9/EC Directive on laying down minimum standards for the reception of asylum seekers, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF

[79] Article 33 of the 1951 Geneva Convention foresees that "no Contracting State shall expel or return ("refouler") any refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

In light of the following cases it shall be noted that although the 1951 Geneva Convention only uses the term "refugee" Article 33 has to be also applied to asylum seekers who already expressed their intention to seek asylum in Hungary. The HHC became aware of several cases where underage Afghan (potentially asylum seeker) separated children had been forcibly returned from Hungary to Serbia by the Hungarian police. It appears that either these minors tried to submit their asylum applications in Hungary but the police did not consider their statements as such and did not let them access Hungarian territory and the asylum procedure, or they did not seek asylum in Hungary upon their interception; nevertheless, their rights as children were not fully respected by Hungarian authorities.

The above cases concern the OIN as well since the return was ordered by the police on the basis of the OIN's background information stating that the persons in question would not be exposed to torture or inhuman or degrading treatment or punishment or to any danger to their life or freedom (under Article 33 of the 1951 Geneva Convention).

5.3.1. Refoulement of unaccompanied minors

In the course of its border monitoring programme in 2011, the HHC identified 75 cases[80] where unaccompanied minors had been expelled and readmitted to Serbian authorities despite the Hungarian authorities' legal obligations in expulsion procedure to observe the care received upon their readmission -- contrary to Section 45 (5) of the Act II of 2007 on the entry and residence of third-country nationals.[81] In 2012, the HHC registered 34 cases of indirect *refoulement* of unaccompanied minors.

Most of these children remain unassisted in Serbia and have very limited access to international protection either as refugees or as migrant children. As part of its free legal assistance programme for asylum seekers, the HHC met with rejected asylum seekers who stated that after deportation from Hungary to Serbia, they had been subject to further removal to Macedonia. The pattern of deportations shows that there is no "favourable" treatment available to vulnerable persons, such as single mothers with minor children. [82]

Although the Hungarian police usually states that all expulsion decisions at the border are made in full compliance with Hungarian law, the HHC found cases of unaccompanied minors who had been expelled without having their individual situation duly examined by Hungarian officials."

Recommended immigration jails to be visited:

- **Immigration jail of the Bács-Kiskun County Police in Kiskunhalas (6401 Kiskunhalas, Mártírok útja 25.)**
- **Immigration jail of the Szabolcs-Szatmár-Bereg County Police in Nyírbátor (4300 Nyírbátor, Bocskai út 2.)**

[80] Hungarian Helsinki Committee, National Police Headquarters, UNHCR: Access to Territory and Asylum Procedure in Hungary (2011), p 14., available at: http://helsinki.hu/wp-content/uploads/final_border_monitoring_ENG.pdf

[81] Section 45 (5) of the Act II of 2007 foresees that "An unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by **means of reuniting him with other members of his family** or by state or other **institutional care**."

[82] Hungarian Helsinki Committee: Serbia as Safe Third Country Revisited (2012), p.9, available at: http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf