



Hungarian Helsinki Committee

**RECOMMENDATIONS
BY THE HUNGARIAN HELSINKI COMMITTEE
TO THE UN HUMAN RIGHTS COMMITTEE
IN RELATION TO THE SIXTH PERIODIC REPORT OF HUNGARY**

122ND SESSION, MARCH 2018

In order to ensure compliance with the International Covenant on Civil and Political Rights (ICCPR), and to ensure that the Government of Hungary meets the recommendations of the Human Rights Committee (HRC) outlined in the HRC's Concluding Observations on Hungary of 2010, the Hungarian Helsinki Committee (HHC) respectfully proposes to the distinguished members of the Human Rights Committee to consider putting forth the following recommendations to the Government of Hungary:

1. That the powers of **Constitutional Court** are fully restored and rules on electing its members are amended to ensure its independence from the governing parliamentary majority; and that the position of the President of the National Judicial Office is either abolished or its powers are cut back to ensure the independence of the **judiciary** [§2 of the List of Issues Prior to Submission of the sixth periodic report, in order to ensure compliance with Article 2 of the ICCPR. See also HHC's submission regarding the sixth periodic report of Hungary,¹ pp. 1-2];
2. That the Commissioner for Fundamental Rights as the **OPCAT National Preventive Mechanism** (NPM) is provided more resources and that the NPM improves its monitoring methods, puts more emphasis on follow-up activities, and involves legal and medical experts from the members of its Civil Consultative Body in monitoring visits [§3 of the List of Issues, in order to ensure compliance with Articles 2, 7 and 10 of the ICCPR. See also HHC's submission, pp. 2-3];
3. That measures are taken to combat **ethnic profiling** by the police affecting the Roma, for example in terms of ID checks and petty offence procedures launched [§5 of the List of Issues, in order to ensure compliance with Articles 2 and 26 of the ICCPR and with §18 of HRC's Concluding Observations of 2010. See also HHC's submission, pp. 5-6];
4. That the **minimum age of criminal responsibility** is increased to 14 years, or at least it is ensured that children between 12-14 years of age are not deprived of their liberty [§13 of the List of Issues, in order to ensure compliance with Articles 9, 14 and 24 of the ICCPR. See also HHC's submission, p. 3];
5. That the quality of the performance of ex officio (**legal aid**) **defence counsels** is enhanced and a quality assurance system is put in place; that information is provided to defendants on their rights in an accessible format; and that the State provides for free **video-recording of interrogations** so that indigent suspects are not deprived of their rights by virtue of their economic status [§14 of the List of Issues, in order to ensure compliance with Articles 9 and 14 of the ICCPR and with §13 of HRC's Concluding Observations of 2010. See also HHC's submission, p. 4];
6. That allegations of **ill-treatment by official persons** are effectively investigated, that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; and that the legal provisions allowing the Minister of Interior to decide upon the eligibility of police officers sentenced to suspended imprisonment for ill-treatment be revoked [§16 of the List of Issues, in order to ensure compliance with Articles 7 and 10 of the ICCPR, and with §14 of HRC's Concluding Observations of 2010. See also HHC's submission, pp. 5-6];
7. That law enforcement personnel are not present at **medical examinations of detainees making allegations of ill-treatment** when such presence is not requested by the examining medical personnel, and that Hungary considers establishing an independent medical examination body mandated to examine alleged victims of torture [§17 of the List of Issues, in order to ensure compliance with

¹ Available at: https://www.helsinki.hu/wp-content/uploads/HHC_submission_to_HRC_12022018.pdf

Articles 7 and 10 of the ICCPR, and with §14 of HRC's Concluding Observations of 2010. See also HHC's submission, pp. 5-6];

8. That the investigative rights of the **Independent Law Enforcement Complaints Board** are extended and its budget and staff are increased [§17 of the List of Issues, in order to ensure compliance with Article 7 of the ICCPR. See also HHC's submission, p. 6];
9. That **petty offence** confinement of juveniles is abolished; that laws criminalizing homelessness are withdrawn; that juveniles committing the petty offence of "illegal prostitution" are treated as victims of child prostitution and not as offenders; and that the use of non-custodial sanctions for petty offences is enhanced [§§15 and 19 of the List of Issues, in order to ensure compliance with Articles 9 and 12 of the ICCPR. See also HHC's submission, pp. 4-5];
10. That the possibility of "unlimited" **pre-trial detention** pending a first instance judgment in certain cases is abolished; and that the deficiencies of the practice of pre-trial detention decision-making as highlighted by European Court of Human Rights judgments is addressed [§18 of the List of Issues, in order to ensure compliance with Article 9 of the ICCPR, and with §13 of HRC's Concluding Observations of 2010. See also HHC's submission, p. 7];
11. That **life imprisonment** without the possibility of parole is abolished [§21 of the List of Issues, in order to ensure compliance with Article 10 of the ICCPR. See also HHC's submission, p. 7];
12. That the number of **detainees in penitentiaries** is decreased by the wider application of alternative, non-custodial sentences and coercive measures and less harsh criminal policy; and that the State ensures that prison conditions (moving space, sanitary conditions, contact with the outside world) comply with international standards [§22 of the List of Issues, in order to ensure compliance with Articles 7 and 9 of the ICCPR, and with §16 of HRC's Concluding Observations of 2010. See also HHC's submission, p. 3];
13. That the national legislation which foresees the automatic and immediate **collective expulsion** of irregularly staying third country nationals to the external side of the border fence without any procedural safeguards or available effective legal remedies be revoked [§26 of the List of Issues, in order to ensure compliance with Articles 2, 6, 7, 9 and 13 of the ICCPR, and with §15 of HRC's Concluding Observations of 2010. See also HHC's submission, pp. 9 and 15-16];
14. That the national legislation which foresees the automatic and arbitrary **detention of all asylum-seekers** with the sole exception of unaccompanied children under the age of 14, without any procedural safeguards or available effective legal remedies be revoked [§§23-24 and 25 of the List of Issues, in order to ensure compliance with Articles 2, 9 and 10 of the ICCPR, and with §15 of HRC's Concluding Observations of 2010. See also HHC's submission, pp. 10-12 and 14-15];
15. To ensure that **access to territory and to the asylum procedure**, at least at the transit zones, is unhindered by arbitrary and infinitesimal admittance caps [§26 of the List of Issues, in order to ensure compliance with Article 7 of the ICCPR. See also HHC's submission, pp. 9 and 15-16];
16. That the national legislation is amended so that a scientifically sound multi-disciplinary **age assessment** and formal procedures to determine the best interest of the child are established [§25 of the List of Issues, in order to ensure compliance with Articles 2, 7 and 24 of the ICCPR. See also HHC's submission, pp. 14-15];
17. That the Government of Hungary, in line with its adopted migration strategy, actively supports the **integration of beneficiaries of international protection** and refrains from xenophobic messaging as well as funding and organising such campaigns and from disseminating anti-refugee and anti-migrant messages and materials to the public [§24 of the List of Issues, in order to ensure compliance with Articles 2, 14 and 20 of the ICCPR, and with §§18 and 20 of HRC's Concluding Observations of 2010. See also HHC's submission, p. 13];
18. That the 2017 law aimed at registering and labelling NGOs "receiving foreign funding" is revoked, along with the "Stop Soros" package of Bills of 2018, further stigmatizing certain civil society organisations and their clients; and that the Government refrains in the future from **harassing and intimidating human rights defenders** [§29 of the List of Issues, in order to ensure compliance with Articles 19 and 22 of the ICCPR. See also HHC's submission, pp. 16-17].