PRESUMPTION OF GUILT

Injurious Treatment and the Activity of Defense Counsels in Criminal Proceedings against Pre-trial Detainees

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INTRODUCTION: THE ACTUAL PROBLEMS OF PRE-TRIAL DETENTION

Pre-trial detention, which according to its statutory definition, is the "judicial deprivation of the defendant's[1] freedom before the delivery of the final and non-appealable sentence"[2] is one of the most problematic institutions of the criminal procedure. In terms of the presumption of innocence, no one may be considered guilty until their guilt is established by a final court sentence.[3] Furthermore, in accordance with the principle of the constitutional penal law, no one may be punished until their guilt is established in a fair procedure. Pre-trial detention is not a punishment (a legal sanction imposed for a breach of law), but a so-called coercive measure: an act restricting the defendant's rights for the sake of the undisturbed and successful accomplishment of the criminal procedure. However, in terms of its effective impact, pre-trial detention does not greatly differ from the most severe form of punishment known in Hungarian penal law, i.e., imprisonment. This is what makes the problems connected with pre-trial detention especially emphatic. From the subjective point of view of the defendant, whose guiltiness has not been established yet and who might be eventually acquitted, there is no significant difference between imprisonment and pre-trial detention. Both mean a deprivation of personal liberty, both are implemented in the same (or similar) institutions and under the same or similar circumstances. What is more, sometimes the circumstances may be less favorable for remand prisoners than for convicted detainees.

This makes the issue of pre-trial detention very sensitive. Although the coming into force of the new code of criminal procedure on 1 July 2003 has solved

[1] The term "defendant" (in Hungarian: terhelt) will be used to refer to the subject of the criminal procedure irrespective of the actual phase of the procedure: i.e. to both the suspect, the accused and the convict.

[2] Act XIX of 1998 on the Criminal Procedure (CCP), § 129 Par (1)

[3] Act XX of 1949 on the Constitution of the Republic of Hungary (hereinafter: Constitution), § 57Par (2); CCP, § 7

the most burning problems of the field through the reform of the appeal procedure and the limitation of the maximum length of pre-trial detention,[4] the present regulation and practice of this institution is still not fully satisfactory. Below, we briefly look into the most important shortcomings of the system.

1.
THE REASONS FOR ORDERING PRE-TRIAL DETENTION

Under § 129 CCP, "In the case of an offense punishable with imprisonment the defendant may be subjected to pre-trial detention if

a) he/she has escaped or hidden from the court, the prosecutor or the investigative authority; he/she has attempted to escape, or during the procedure another criminal procedure is launched against him/her for an offense punishable with imprisonment;

b) taking into account the risk of his/her escape or hiding, or for any other reason, there are well-founded grounds to presume that his/her presence at the procedures may not be secured otherwise;

c) there are well-founded grounds to presume that if not taken into pre-trial detention, he/she would – through influencing or intimidating the witnesses, eliminating, forging or hiding material evidence or documents – frustrate, hinder or threaten the procedure;

d) there are well-founded grounds to presume that if not taken into pre-trial detention, he/she would accomplish the attempted or prepared offense or would commit another offense punishable with imprisonment."

In the view of the Hungarian Helsinki Committee (HHC), the provision according to which someone may be taken into pre-trial detention if it may be presumed that he/she would commit another offense punishable with imprisonment if he/she was not taken into custody, raises severe constitutional concerns. It bases pre-trial detention on a factor that is not in any way related to the procedure in the framework of which the detention is ordered, and therefore it may not be regarded as an instrument aimed at securing the success of that given procedure.

In connection with a similar provision of the old code of criminal procedure[5] (which made it possible for the court to order the pre-trial detention of a de-

[4] With certain exceptions, the maximum length of pre-trial detention is three years; in the case of juveniles, two years. See: CCP, § 132 Par (3); § 455

[5] Act I of 1973 on the Criminal Procedure

fendant if it could be presumed that he/she would commit another offense if not taken into custody[6]) the Constitutional Court declared in its Decision 26/1999 (IX. 8.) the following: "in the interest of the state's penal monopoly, the defense of society and public interest, it is constitutionally necessary and justified to authorize the state to temporarily deprive from his/her personal liberty a person charged with a criminal offense *in order to prevent him/her from frustrating the criminal procedure*. [...] The defendant may only be deprived of his/her personal liberty before the court sentence becomes absolute *if the objectives of this measure – i.e., to guarantee the defendant's presence and the success of the procedure – cannot be realized in any other way*." [Emphasis added by the author.] The Constitutional Court emphasizes here that the objective of pre-trial detention is to secure the success of the procedure, to make sure that the defendant appears if summoned, to prevent him/her from hiding evidence, intimidating witnesses, and so on. In other words, the institution is bound by a well-defined objective.

In contrast, the abstract danger of committing another criminal offense punishable with imprisonment is not related to the on-going procedure and its success as a constitutionally acceptable goal, but rather serves some general crime-prevention aspirations. Along the same lines, a multiple recidivist about to be released from prison could also be kept in custody, as it may – with reasonable grounds – be supposed that he/she will commit another offense punishable with imprisonment. Unfortunately, in a subsequent part of its decision, the Constitutional Court claims that pre-trial detention based on general crime prevention considerations and not related to the success of the actual procedure may also be in line with the rule of law,[7] thus somewhat illogically breaking from its previous statement, according to which only pre-trial detention aimed to prevent the frustration of the procedure may be regarded as constitutional.

Taking into account general crime prevention objectives may make the threat serving as the basis for pre-trial detention very abstract. The possibility of frustrating a given criminal procedure is much more concrete and therefore

[6] I.e. it was not a precondition that the "new" offense be punishable with imprisonment.

[7] According to the Constitutional Court's view, due to the principle of the penal power of the state, it is the state's legal obligation to protect the constitutional order, the person and rights of its citizens from criminality. Therefore, it may be a constitutionally acceptable objective of pre-trial detention to prevent the defendant from accomplishing the attempted or prepared offense or committing another offense punishable with imprisonment.

easier to review than the danger of committing one of the Penal Code's[8] hundreds of offenses punishable with imprisonment, which of course raises the possibility of arbitrary law enforcement in this very sensitive field. The Constitutional Court's somewhat self-contradictory decision failed to eliminate this danger.

2.
THE PRACTICE OF ORDERING PRE-TRIAL DETENTION

In terms of the CCP, only the court is entitled to order and prolong pre-trial detention. Until the submission of the bill of indictment, the court is bound by the prosecutor's motion.[9] Once the bill of indictment is submitted however, it is fully up to the court to decide on detention. In accordance with the logic of the procedure, the necessity to order or prolong pre-trial detention emerges in the course of the investigation, the preparatory phase of the court hearing (when, after the submission of the bill of indictment, the court looks into the

[8] Act IV of 1978 on the Penal Code

[9] CCP, § 130 Par (1)

case and takes the preparatory measures for the hearing), simultaneously with the delivery of the first instance sentence (if the severity of the sentence entails the danger of the defendant's escape or hiding), or – in certain cases – during the procedure of the court of second instance.

From the point of view of the ordering and prolonging of pre-trial detention, the investigation is the most problematic phase of the procedure, as after the submission of the bill of indictment, all the case files are at the disposal of the court. The court is therefore capable of thoroughly scrutinizing whether the conditions for pre-trial detention prevail, whereas the investigative judge (who makes a decision based on the prosecutor's motion in the investigative phase) will only be informed about those facts which are submitted by the prosecutor. Under the CCP, the investigative judge "examines whether the statutory conditions of the motion prevail, whether there are any obstacles in the way of the procedure and whether or not reasonable doubts can be raised as to the motion being well-founded." Before the investigative judge makes a decision about ordering pre-trial detention, he/she "shall also look into the defendant's personal circumstances."[10] Furthermore, in the proceeding of the investigative judge, the defendant and the defense counsel have only a restricted right to be acquainted with the evidence put forth by the prosecutor submitting the motion for pre-trial detention.[11] Therefore, we focus on how pre-trial detention is ordered in the investigative phase.

If during the investigation stage the investigative authority comes to the conclusion that the defendant ought to be placed in pre-trial detention, it notifies the prosecutor. Under the CCP, the prosecutor is, as a rule, in charge of the investigation, and the independent investigation conducted by the investigative authority is a possibility only as an exception.[12] In practice, the investigative

[10] CCP, § 211 Par (4)

[11] CCP, § 211 Par (3): At the hearing the person submitting the motion presents the evidence constituting the basis of the motion orally or in writing. The persons present at the hearing shall have the right to be acquainted with the evidence provided by the person submitting the motion within the limits set forth in § 186. The aforesaid § 186 runs as follows: Par (1) If one is entitled to be present at an investigative act, he/she shall be authorized to examine the protocol made thereof. (2) In the course of the investigation, the defendant, the defense counsel and the aggrieved party may examine the expert opinion. *This right shall extend to other documents only if that does not violate the interests of the investigation*.

[12] CCP, § 35 and § 165

authority has continued to be in charge of the cases,[13] so prosecutors still do not always follow the investigation closely. The solution based on the prosecutor's right to put forth a motion for pre-trial detention, is aimed at guaranteeing that the prosecutor must look into the case if the possibility of pre-trial detention emerges.

However, according to attorneys, the general practice is that prosecutors almost automatically forward the investigative authority's suggestion to the competent court, and courts in many instances often consider ordering pre-trial detention a "mere formality". This statement seems to be supported by the annual statistics of the Chief Public Prosecutor's Office. In the first half of 2003 investigative authorities suggested pre-trial detention in 3,851 cases. Prosecutors submitted a motion on 3,305 instances, i.e., in 85.8 percent of the cases, and the courts ordered pre-trial detention upon the prosecutor's motion in 90.6 percent of the cases. In a number of cases they applied milder measures (e.g., a curfew), and only in 7 percent of the cases did they decide that – contrary to the opinion of the investigative authority and the prosecutor – no coercive measure was necessary.[14] A study dealing with the question[15] explains the frequency of pre-trial detention, *inter alia*, by the fact that "neither the prosecutors nor the courts pay enough attention to thoroughly scrutinizing the grounds for ordering pre-trial detention or the possible counter-arguments: on the basis of the investigative authority's motion they tend to initiate and order pre-trial detention sometimes even in doubtful cases."[16]

Others regard the fact that prosecutors decided against filing a motion for pre-trial detention in 14 percent of the cases as proof of strict professional con-

[13] "[Due to the solutions applied by the new Code of Criminal Procedure], the prosecutor has never stood a real chance of taking a real investigative role, being in real control of the investigation and putting an end to its formal function of supervising the lawfulness of investigation." – says Erzsébet Kadlót. See: A jogbizonytalanság múzeuma, avagy barangolások az új büntetőeljárási törvény útvesztőiben (The Museum of Legal Uncertainty, or: wandering in the labyrinth of the new code of criminal procedure) In: *Magyar Jog* (Journal of Hungarian Law), 2004/1., p. 22. (hereinafter: Kadlót)

[14] Source: Department of Computer Application and Information of the Chief Public Prosecutor's Office.

[15] Erika Róth: *Az elítélés előtti fogvatartás dilemmái* (Dilemmas of pre-trial detention). Budapest, Osiris kiadó 2000, Doktori mestermunkák sorozat ('Doctoral Masterpieces' series), pp. 120–131

[16] Ibid, p. 130

trol. According to this view, it must be taken into consideration that there is a long-standing practice known to courts, prosecutors and police officers as to who are the "usual" suspects to be taken into pre-trial detention. This means that there is a range outside which the question of detention does not even arise but within which the number of disputable cases is very low. In such cases the investigating authority usually contacts the prosecutor directly (mostly via telephone) and if it becomes clear that the prosecutor does not support the idea of pre-trial detention, the authority does not put forth a suggestion.[17]

Although the above data are from the first half of 2003, i.e., the period preceding the coming into force of the new code of criminal procedure, it may be supposed that the procedure of the investigative judge – an institution that did not exist before 1 July 2003 – will not significantly change the picture, as the "investigative judge is still only entitled to get acquainted with the evidence supporting the motion (instead of the complete file). As the lack of reasonable doubt does not mean that the motion is necessarily well-grounded, the judge's decision will still not tell us whether the measure should inevitably be taken. It will only establish whether it may be taken, based on the consideration of the prosecutor submitting the motion. Thus, the investigative judge will make a decision about possibility instead of necessity."[18]

The above quote refers to the CCP's provision,[19] according to which at the hearing held by the investigative judge before deciding on ordering or prolonging pre-trial detention, the prosecutor setting forth the motion is only obliged to refer to evidence substantiating the necessity of the measure. Representatives of the judiciary refute that this provision would restrict the investigative judge to deciding on the basis and within the framework of pre-selected documentation, and emphasize that the investigative judge makes his/her decisions on the basis of the complete case file. If the judge notices that the material is selective, he/she may demand that the investigating authority or the prosecutor hand over all the exiting documents.[20]

In contrast, practicing attorneys claim that this possibility is a theoretical one, as the prosecutor usually arrives at the hearing just (sometimes only 10-15

[17] Comment of Endre Bócz, Ministerial Advisor, former Chief Prosecutor of Budapest to the draft report serving as the basis of this publication (hereafter: Draft Report).

[18] Kadlót, p. 23

[19] CCP, § 211 Par (3)

[20] Comment of Irén Gaál, judge of the Metropolitan Court at the 16 April 2004 round table organized for the discussion of the Draft Report (hereafter: Round Table).

minutes) before its commencement, and in practice only then gets the judge acquainted with the file, so he/she has to hear the defendant after a very short period of preparation. Therefore, the judge is compelled by the circumstances to rely on the material pre-selected by the prosecutor.[21]

Some practitioners believe that different requirements ought to be set with regard to the extent to which the motion for the defendant's pre-trial detention shall be substantiated in the beginning and the subsequent phases of the procedure. In the first phase of the investigation it is difficult to provide exhaustive and convincing evidence as to the defendant's guilt. Therefore, less evidence should be accepted as the basis of ordering pre-trial detention at this stage. If, however, after the first month of the detention ordered on the basis of such preliminary data, still no progress has been made with regard to the collection of evidence, the possibility of prolonging the detention should be much more restricted than it is at present.[22]

According to other experts, the duration of pre-trial detention based on preliminary data in the first phase of the investigation ought to be much shorter than the 30 days allowed by the CCP. The investigating authority should have no more than a week to collect evidence substantiating the continued incarceration of the defendant taken into detention at the beginning of the procedure. Thus, the prolonging decisions would be more solidly based, as opposed to the existing practice, where courts tend to prolong the detention by relying on the previous decisions. This is due to the fact that in the first six months of the detention the investigative judge may deliver a decision on prolongation without hearing the defendant in person. Furthermore, judges usually fail to consider whether it is justified to maintain the deprivation of liberty in the interest of the criminal procedure if the investigation still has not progressed after long months. Courts tend to take the stance that if nothing has changed in the circumstances prevailing at the time of ordering the pre-trial detention, maintaining the measure is justifiable.[23]

[21] Comment of János Bánáti, Vice President of the Hungarian Bar Association, President of the Budapest Bar Association at the Round Table.

[22] Comment of attorney at law István Diczig at the Round Table.

[23] János Bánáti's comment at the Round Table.

3.
THE LENGTH OF PRE-TRIAL DETENTION

In terms of § 136 Par (1) of the CCP, it is the authorities' duty to make efforts to minimize the duration of pre-trial detention, and to accord a fast-track treatment if the defendant is in pre-trial detention. These provisions look good on paper, but the reality is different. According to the figures provided by the annual statistical bulletin of the Chief Public Prosecutor's Office, out of the 3,279 pre-trial detentions registered in the first half of 2003, 800 (24 percent) lasted longer than 6 months (including 194 cases in which the duration of the detention exceeded one year) and 570 (17 percent) were terminated within one month. Comparing these numbers with those of the first half of 2002, one can establish that the number and ratio of pre-trial detentions has increased (in the first half of 2002, out of more – 3,340 – pre-trial detentions, less – 700 – lasted for longer than 6 months, which means approximately 20 percent), and the number of detentions lasting longer than one year has doubled. (In the first half of 2002 it was "only" 91.) Between 1999 and 2001, the half-yearly number of pre-trial detentions lasting for more than a year was between 60 and

70, whereas in 1998 it was only 47.[24] Thus, it seems that in spite of the relevant legal provisions, the pace of conducting procedures against defendants in pre-trial detention is decreasing.

The above data concern the activity of prosecutors (i.e., pre-trial detentions motioned by the prosecutor), so inferences relating to those phases of the procedure that follow the submission of the bill of indictment may only cautiously be drawn from them. From this point of view the data provided by the prison administration (see Table 1 below) are more interesting. These data also show that there is no significant decrease in the number of long-term pre-trial detentions, and that the proportion of detentions lasting for longer than two years has been on the rise (increasing by one percentage point every year since 2001).

Table 1:
Distribution of pre-trial detainees by the length of detention, 2001–2003

	31 December 2001		*31 December 2002*		*31 December 2003*	
Lenght	*persons*	*%*	*persons*	*%*	*persons*	*%*
Less than 6 months	1,802	42	1,691	39	1687	44
6–12 months	1,265	29	1,275	30	996	27
1–1.5 years	591	14	629	15	514	13
1.5–2 years	331	8	373	8	283	7
More than 2 years	274	7	361	8	296	9
Total	4,263	100	4,329	100	3776	100

Source: National Prison Administration, Department of Detention Matters[25]

According to the latest data,[26] some improvement may be detected. On 1 January 2004, out of the 4,567 persons in pre-trial detention, 1,951 (42.7 percent) had been incarcerated for more than six months (261 and 1,690 cases were in

[24] Source: Department of Computer Application and Information of the Chief Public Prosecutor's Office.

[25] 31 December 2002 data are also available at: http://www.im.hu/bvop/images/350.jpg

[26] Information provided by György Vókó, Head of the Department for Legal Review and

the investigative and in the trial phases, respectively). A year earlier on 31 December 2002, 5,064 persons were in pre-trial detention, whereas the number of cases in which the duration of the detention exceeded six months was 2,435. This equals 48 percent, so there was a five percentage point decrease in the number of pre-trial detentions exceeding half a year. Hopefully, this positive tendency will continue.

4. PRE-TRIAL DETENTION IMPLEMENTED IN POLICE JAILS

Under the current regulation, pre-trial detention should, as a rule, be implemented in penitentiary institutions, however, until the end of the investigation it may also be enforced in a police jail.[27] This solution gives rise to serious concerns, as pre-trial detention implemented in police jails may increase the threat of ill-treatment, forced interrogation and psychological pressure, since the defendant is detained by the organ that is, due to its role in the criminal procedure, interested in acquiring a confession.[28] On 31 December 2002, out of the 5,965 remand prisoners, still 1,627 (i.e., more than a quarter of pre-trial detainees) were incarcerated in police premises.[29]

Under Article 135 Par (1) and Par (2) of the New Code (these two provisions have not yet come into force), pre-trial detention shall be implemented in a penitentiary institution and only in exceptional cases and for a limited period of

Rights Protection at the Chief Public Prosecutor's Office. The data provided by György Vókó in connection with the numbers as of 31 December 2002 differ slightly from the ones that we obtained by adding up the numbers provided separately by the National Prison Administration (NPA) and the police and that served as the basis of our calculations when planning the research (see below), but from the point of view of the tendency itself, this discrepancy is not significant.

[27] § 116 Par (1) and Par (3) of Law Decree 11/1979 on the Implementation of Sanctions and Measures (hereinafter: Penitentiary Code)

[28] In his written comments set forth in connection with the material, József Hatala, Deputy Chief of the National Police Headquarters questions this statement. In his view, the efforts made by the police and the regular monitoring of the prosecutors provide adequate safeguards for the respect of the defendants' fundamental rights.

[29] Source: http://www.im.hu/bvop/images/350.jpg and the Press Department of the National Police Headquarters.

time (altogether for a maximum of 60 days) may it be executed in a police jail.[30] Act I of 2002 postponed the entry into force of this very important safeguard until 1 January 2005, whereas already in its 1999 report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended "that the Hungarian authorities explore the possibility of accelerating the entry into force of section 135 of [the CCP and] that appropriate measures be taken to ensure that the possibility offered by paragraph 2 of that section, to have remand prisoners kept on police premises for a certain period, is only resorted to in exceptional cases."[31]

Although – for the reasons outlined above – the HHC's stance coincides with that of the CPT, the prison monitoring program's experiences in the Balassagyarmat Prison[32] underline doubts about the prison system's capacity to cope with the extra burden. In this prison, accomplices cannot be separated during community activities, such as sports, the daily open air exercise, visits to the library, etc., due to overcrowding. Therefore the rights of remand prisoners are in practice restricted to a greater extent than the rights of inmates placed in the maximum security regime: remand prisoners are not allowed to participate in sports activities, during the open air exercise they are not allowed to talk to each other and are obliged to walk around in circles in a row, and they cannot visit the library (although they may request books). This means that – although they are not yet convicted – their situation is worse than that of those who serve their prison sentence and are – for example – allowed to participate in sports activities.

This proves that the transfer of pre-trial detainees to the penitentiary system requires more extensive preparation and may only be implemented if, along with the detainees, the police hand over premises and the state budget provides the penitentiary administration with the necessary additional sources of funding. It is however noteworthy that the total number of pre-trial deten-

[30] Before the submission of the bill of indictment, in exceptional cases, and upon the decision of the court, pre-trial detainees may be held in police establishments for a maximum of 30 days. Furthermore, based on the prosecutor's decision they may be sent back twice to police establishments, each time for a maximum of 15 days, in exceptional circumstances justified by the investigation.

[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 5 to 16 December 1999 (hereinafter: 1999 CPT Report), § 44

[32] 8–9 October 2002. See: www.helsinki.hu

tions as well as the number of pre-trial detentions implemented in police jails has decreased in the past year. Whereas on 31 December 2002 the number of pre-trial detainees was 5,965, a year later only 4,565 persons were in remand custody. Of these 789 were detained in police jails, which means 17 percent, i.e., a 10 percentage point decrease compared to the situation on 31 December 2002.

5.
THE GROUNDS FOR THE LIMITATION OF THE RIGHTS OF REMAND PRISONERS AND RECENT CHANGES IN THE REGULATIONS CONCERNING POLICE JAILS

As it was pointed out above, the purpose of pre-trial detention is to ensure the success of the criminal procedure. Accordingly, in terms of the CCP, only those limitations of the pre-trial detainee's rights are allowed that are implied by the criminal procedure,[33] though the law also allows for those restrictions which are made necessary by the order of the institution implementing the detention.[34] Theoretically, however, not even this should prevent the pre-trial detainee from being allowed to order food from a nearby restaurant, subscribe to a daily paper or see his/her 2-3 year old child as often as he/she wants to, as the exercise of these rights bears no relevance to the success of the criminal procedure, and might make life more difficult for the personnel of the detaining institution but would not disturb its order.

Although HHC does not believe that all this can be made possible, the organization must call attention to the sometimes completely contrary approach of the Hungarian authorities, which is clearly illustrated by the 2001 amendments of the provisions pertaining to the rules of pre-trial detention implemented in police jails.

The rules of pre-trial detention implemented in penitentiary institutions are found in the Penitentiary Code and Decree 6/1996 of the Minister of Justice on the Rules of the Implementation of Imprisonment and Pre-trial Detention (hereafter: Penitentiary Rules), whereas pre-trial detention enforced in police premises is regulated by Decree 19/1995 of the Minister of the Interior on the Regulation of Police Jails (hereafter: Police Jail Regulation). The rights of

[33] CCP, § 135 Par (3)

[34] CCP, § 135 Par (3)

remand prisoners were for a long time regulated differently in the two decrees – a solution criticized on several occasions by experts, attorneys and human rights activists. To mitigate the adversarial consequences of the lack of a unified regulation, decision makers took a measure (Decree 23 of 2001 of the Minister of the Interior) to harmonize – to the farthest possible extent – the provisions of the two decrees. Although this brought about positive changes as well, in a number of instances the stricter solution was chosen instead of the option offering more rights for the detainees.

Before its amendment (coming into effect on 26 October 2001) the Police Jail Regulation guaranteed at least two visits per month and two packages per week for remand prisoners held in police facilities.[35] Under the Penitentiary Code, inmates detained in penitentiary institutions can have at least one visit and receive at least one package per month,[36] so the above quoted provision of the Police Jail regulation was amended accordingly: since October 2001 at least one visit and one package per month must be guaranteed for remand prisoners detained in police jails.

Although the text says "at least", in a number of police jails not more than that is allowed (in others the old rule has been maintained). Thus, while before October 2001 a remand prisoner could receive at least eight packages per month (two per week) in a police jail, after that date this number decreased to one. Interestingly, this harmonization was not paralleled by a harmonization of the provisions concerning the possible maximum weight of the package. Under the Penitentiary Rules, the maximum weight of the package a remand prisoner held in a penitentiary institution can receive is five kilograms,[37] whereas in terms of the Police Jail Regulation, the weight of the package may not exceed three kilograms.[38] This provision however was not amended in October 2001.

As such restrictions have nothing to do with the success of the criminal procedure, the HHC believes that they are not in line with the purpose of the institution of pre-trial detention, and are therefore illegitimate. If police jails had until the amendments of October 2001 been able to handle two packages per week and two visits per month, no argument can be found for the reduction of these numbers. Harmonization should therefore have been performed the other

[35] Police Jail Regulation, § 2 Par (1) (c)

[36] Penitentiary Code, § 118 Par (1)

[37] Penitentiary Rules, § 91 Par (3)

[38] Police Jail Regulation, § 7 Par (2)

way round: by bringing the rules pertaining to pre-trial detention implemented in penitentiary institutions in line with the Police Jail Regulations.[39]

6. THE ROLE OF DEFENSE COUNSELS IN PROCEEDINGS AGAINST PRE-TRIAL DETAINEES[40]

Although the CCP explicitly states that the defendant taken into pre-trial detention may not be restricted in exercising his/her procedural rights and that his/her contact with his/her defense counsel shall be guaranteed,[41] it is obvious that the remand prisoner fully deprived of his/her freedom of movement and partly deprived of other important rights (such as the right to make phone calls) is in a disadvantaged position in the course of the criminal procedure. Therefore, the defense counsel plays a very important role in procedures wherein the subjects are in pre-trial detention. Criminal defense may be provided by an attorney at law retained by the defendant (or his/her relative) or ex officio appointed by the competent authority in the event that defense is mandatory but the defendant does not retain a counsel.

Experience shows that the participation of remand prisoners' defense counsels is not entirely unproblematic. There are a number of difficulties that are common in the case of retained and ex officio appointed lawyers, and some specific ones exist in connection with the latter group. First, there will be a discussion of the common problems and then a description of the special issues emerging with regard to ex officio appointed counsels.

Presence at the first interrogation: The formal criminal procedure launched against a given person starts with the communication of the suspicion. This is

[39] In his comments attached to the Draft Report, Endre Bócz calls attention to the problems of the practice of using handcuffs when transporting pre-trial detainees irrespective of the actual risk the given defendant poses or the type of offense he/she committed: "the rationality of the implementing institution's order would require less restrictions […] – and still, the existing regulation is perceived as self-evident."

[40] In the discussion of this issue we largely rely on: *Access to Justice in Central and Eastern Europe: Country Reports*. Public Interest Law Initiative/Columbia University Kht., INTERIGHTS, Bulgarian Helsinki Committee, Polish Helsinki Foundation for Human Rights; 2003 Budapest.

[41] CCP, § 135 Par (3)

limited to a brief description of the facts constituting the accusation and information on the relevant sections of the criminal code.[42] If the person who is to become the accused is not detained he/she is summoned to appear before the investigating authority, which will then communicate the suspicion. In such cases (and if the notification informs the addressee that he/she is summoned as a suspect, which is not always the case) the accused – provided that he/she can afford a lawyer – has the opportunity to arrange his/her defense.

However, this opportunity may be missed if the accused (or the person to be accused) is deprived of his/her liberty. This is the case, for instance, if the person to be accused is taken into short-term arrest.[43] Although in practice the temporal limits of the different procedural acts are often blurred, it is possible to distinguish here that during the short-term arrest the communication of the suspicion takes place, which means that the arrested person formally becomes a defendant. According to the law, only after becoming a defendant can the arrested person be taken into a 72-hour detention. In the criminal procedure this is the longest deprivation of liberty possible without a judicial decision (ordered by either the investigative authority or the prosecutor). A 72-hour detention may be ordered if there is a well-founded suspicion of an offense punishable by imprisonment, provided that the subsequent pre-trial detention of the defendant is likely. If the court does not order a pre-trial detention within 72 hours, the person taken into a 72-hour detention shall be released.[44]

The defendant has to be informed of his/her right to choose a defense counsel or to ask for the appointment of counsel by the investigating authority. If defense is mandatory, the defendant shall be informed that if he/she fails to authorize a lawyer within three days, appointment will be made ex officio. If the defendant claims that he/she does not wish to retain a defense counsel, the prosecutor or the investigative authority shall immediately appoint a counsel.[45]

The first interrogation of the defendant usually takes place immediately after

[42] CCP, § 179 Par (2)

[43] This restriction of freedom – which is not formally a phase of the criminal procedure, but often precedes the criminal process – can be applied if one is caught in the act of committing a crime or if someone is "suspected of having committed a crime" (a strongly founded suspicion is not required). A short-term arrest may not last longer than "necessary", but not longer than eight or (in exceptional cases) twelve hours. [Act XXXIV of 1994 on the Police, § 33 Par (1) (a) and Par (2) (b)].

[44] CCP, § 126

[45] CCP, § 179 Par (3)

the communication of the suspicion. If the defendant is detained, the first interrogation after the communication of the suspicion shall take place within 24 hours from the time when the defendant appeared before the investigative authority.[46] Although defense is mandatory if the defendant is detained,[47] and – unlike under the old code of criminal procedure – a defense counsel shall be appointed at the latest before the first interrogation,[48] in practice it is still questionable whether this new provision really guarantees the presence of the defense counsel at the first interrogation. If, for instance, the authority appoints the counsel an hour before the time of the interrogation, in spite of the formal fulfillment of the provision, the defense counsel is not likely to be able to appear at the procedural act. Mandatory defense does not mean that the first (or any subsequent) interrogation may not be conducted in the absence of the defense counsel. Although under § 117 Par (2) of the CCP the defendant shall be warned in the beginning of the interrogation that he/she is not obliged to make a statement (and if this warning is not made, the defendant's testimony may not be taken into consideration as a piece of evidence), it often happens that the defendant is not "experienced" enough to refuse to testify until he/she can consult with a defense counsel.[49]

The above is also true for the participation of retained counsels. If, for example, the suspicion is communicated to a previously detained defendant (e.g., someone

[46] CCP, § 179 Par (1)

[47] CCP, § 46 (a)

[48] CCP, § 48 (1)

[49] Both judges and attorneys called attention to the importance of the defense counsel's presence at the first interrogation. In his written comments to the Draft Report, trainee attorney Tamás Fazekas points out that detailed confessions made at the first interrogation held in the absence of a lawyer are not uncommon, and these confessions are very difficult to withdraw with an acceptable reason after the defendant has a chance to consult the defense counsel, even if the minutes do not fully reflect what the defendant actually said. If the defendant makes such a confession, the court often bases its decision on this first statement, even if the defendant attempts to withdraw or modify it later. In her comments made at the Round table, Supreme Court Judge Éva Lányi partly supported and partly refuted this stance. She believes that the first interrogation constitutes a psychologically stressful situation which may inspire the defendant to make his/her most valuable statement in the whole procedure. At the same time, in her view, judges are often unable to take it into consideration, because defendants often withdraw their first confession on the basis of alleged ill-treatment or other influences (such as drunkenness). The presence of the defense counsel could eliminate both problems.

who was taken into short-term arrest), he/she cannot arrange for his/her counsel to be present at the first interrogation even if he/she could afford to retain a lawyer.

Presence at other investigative acts: According to experts of the criminal procedure "the reason for the absence of defense counsels from investigative activities is that the authorities fail to notify them, or they send the notification so late that the defense counsels are not able attend the given procedural act. The law prescribes no obligation for the authorities concerning when the notification ought to be sent."[50] As a result, the actual participation of defense counsels in the investigative phase is far from satisfactory. This is supported by empirical data provided by a 1998–99 study on the issue (based on the analysis of 1,273 case files and interviews with judges, prosecutors, defense counsels, police officers, pre-trial detainees and convicted inmates):

Table 2:
The participation of defense counsels in the investigative phase of the criminal procedure

Investigative activity	*Was the defense counsel present? If yes, on how many occasions ? (With percentages)*	
	Town courts (327 cases)	*County courts (165 cases)*
Inspection	No	Yes (1 occasion = 0.6%)
Evidentiary experiment	No	Yes (2 occasions = 1.2%)
Presentation for recognition	No	No
On-site survey	No	Yes (2 occasions = 1.2%)
Hearing of witness	Yes (40 occasions = 12.2%)	Yes (36 occasions = 21.8%)
Interrogation of defendant	Yes (94 occasions = 28.7%)	Yes (44 occasions = 27%)
Confrontation	Yes (44 occasions = 13.4%)	Yes (32 occasions = 20%)
Presentation of expert opinion	Yes (11 occasions = 3.36%)	Yes (18 occasions = 19%)
Presentation of the files	Yes (88 occasions = 26.9%)	Yes (74 occasions = 45%)

Source: Fenyvesi

[50] Csaba Fenyvesi: *A védőügyvéd: a védő büntetőeljárási szerepéről és jogállásáról* (The defense counsel: about the defense counsel's role and status in the criminal procedure) Dialóg Campus Kiadó, 2002, Budapest–Pécs, (hereafter: Fenyvesi), p.182

Contact between the detained person and the counsel is far from perfect in practice in Hungary. Two main forms of contact may be distinguished: personal contact and contact via telephone. Both the accused/defendants and lawyers are reluctant to resort to written correspondence due to a lack of trust *vis a vis* the investigative authorities.[51] Practicing attorneys raise concerns with regard to both forms. As pointed out above, there are still differences between the rules regulating pre-trial detention enforced and those concerning pre-trial detention implemented in penitentiary institutions. Experts agree that contact with defense counsel is generally worse when pre-trial detention is implemented in police jails. The police dispute this, saying that "persons detained in police jails can not only personally, but […] also through the investigators, maintain contact with their defense counsel – either during or outside investigative acts."[52]

Personal contact: The first encounter between the defense counsel and the detainee is also often problematic. Under § 55 of the Penitentiary Rules, if a de-

[51] Fenyvesi, p. 190

[52] József Hatala's written comments.

fense counsel wishes to enter the penitentiary institution, he/she must present his/her retainer or the decision about his/her ex officio appointment. Entry may also be permitted if the defense counsel visits the penitentiary institution for the purpose of having the retainer signed by the detainee. However, until this happens he/she may only communicate with the detainee under supervision. In contrast, the Police Jail Regulation contains no provision allowing the defense counsel to enter the premises for the purpose of obtaining a retainer. This creates an obvious problem: "[t]he officers want to see the authorization given by the detainee to the lawyer, but obtaining such an authorization is hardly possible without a personal meeting first."[53]

The police's attempts to solve this problem often have an adverse effect. According to the relevant order of the deputy head of the Budapest Police Headquarters, if the defense counsel tries to contact the defendant without a retainer (e.g., in order to have the retainer signed) or in possession of a retainer signed by a relative of the defendant, "the case officer shall have the defendant escorted before him/her, and shall inform the defendant of the defense counsel's appearance and that the defendant may withdraw the retainer [given by the relative], or [if the counsel appeared in order to have the retainer signed by the relative] that the defendant may sign or refuse to sign the retainer."[54] Furthermore, "if the detained defendant does not withdraw the retainer given by his/her relative, or signs the retainer, the defense counsel's authorization to act on the defendant's behalf shall be accepted."[55] In practice, this means that the police authority implementing the detention only allows the defense counsel to meet his/her client, if the defendant signs the retainer or declares that he/she accepts the relative's retainer in the presence of the case officer (i.e. the police officer in charge of the given case).[56] Thus, the lawyer must agree on the time of the visit with the officer. This may cause a significant delay in the establishment of contact between the defendant and the counsel, especially if the defendant is detained in a police headquarters different from the one where the case officer is stationed. The defendant may be interrogated

[53] Ferenc Kőszeg – Ágnes Kövér – Zsolt Zádori (ed.): *Punished before Sentence: Detention and Police Cells is Hungary*. Constitutional and Legal Policy Institute – Hungarian Helsinki Committee, Budapest, 1998. (hereafter: Punished before Sentence), p. 93

[54] Order 3/2001, Art. 2. a)

[55] Order 3/2001, Art. 2. b)

[56] The Hungarian Helsinki Committee has complained to a number of forums in order to have this regulation changed – to no avail.

several times before he/she is able to meet the counsel in person.[57] Furthermore, making the validity of a retainer given by a relative conditional on such a declaration by the defendant is in contradiction with the CCP, which makes no distinction between the retainer given by the defendant and that given by a relative of the defendant.[58]

Another problem is that in certain places of detention there are not enough visiting rooms for lawyers, which means that a defense counsel sometimes has to wait for hours before consulting with the client. Inadequate staffing causes similar difficulties, since even if the visiting rooms are unoccupied, only guards are authorized to escort the defendants to the consultation.

Entry of trainee attorneys is not always easy either. According to Act XI of 1998 on Attorneys (hereafter: Attorneys Act) the attorney may as a rule perform his/her tasks through the trainee attorney.[59] The CCP prescribes that until the bill of indictment is submitted, the trainee attorney may substitute for the defense counsel.[60] Consequently, the trainee attorney whose identity card proves that he/she is employed by the defense counsel retained by the defendant (or appointed for the defendant's defense by the authorities) ought to be allowed to enter the place of detention without any further constraints. However, the institutions implementing detention often claim that a retainer including not only the defense counsel's but also the trainee attorney's name be presented to them. This requirement is not only unlawful but unrealistic as well, since it is possible that the retainer was given at a time when the particular trainee

[57] Both attorney at law Zoltán Somos and János Bánáti raised concerns about this practice at the Round Table. At the same time Györgyi Mendege, Commander of the Gyorskocsi Street jail of the Budapest Police Headquarters pointed out that she could not take the risk that someone with a forged attorney's card would be allowed to talk to the detained defendant. This fear seems somewhat unfounded if we take into consideration the fact that defense counsels may enter penitentiary institutions after presenting their retainers provided by relatives and that they also have the chance to have the retainer signed by the defendant in the presence of a prison guard.

[58] CCP, § 47 Par (1). The defense counsel is primarily retained by the defendant. A retainer may be given by the defendant's statutory representative, adult relative or the consular representative of his/her country. The defendant shall be notified about the giving of such a retainer.

[59] Attorneys Act, § 23 Par (5)

[60] CCP, § 44 Par (5)

attorney was not employed by the lawyer, and it may not be expected from attorneys to have new retainers signed by all their clients when they employ a new trainee attorney.[61]

Contact via telephone: Here again, there is a difference between the situation of pre-trial detainees in police jails and those in penitentiaries. According to an empirical study, in penitentiary institutions significantly fewer detainees claimed that they had been hindered by some obstacle when trying to contact their defense counsel by phone than in police jails. [62]

With respect to contact via telephone, several practicing defense counsels call attention to the fact that even in institutions where making phone calls is more or less unproblematic, contact is guaranteed only in one direction. For the defense counsel it is completely impossible to phone an incarcerated client. If he/she wishes to talk to the defendant, he/she must visit the client at the place of detention, which – in certain cases – may require a lengthy journey. If the matter is of lesser gravity, this – especially in combination with the prospect of longer waiting (see above) – may deter the defense counsel from contacting the defendant, which in turn negatively influences the efficacy of defense.[63]

Access to the evidence substantiating the necessity of pre-trial detention: In the investigation phase access to documents is limited. The defendant and the defense counsel have guaranteed access to the expert opinion and the minutes of those investigative acts where they can be present. They may be granted access to other documents only if this does not infringe on the interests of the investigation.[64] Since the new code of criminal procedure practically restricts the defense counsel's presence to the hearing of those witnesses whose interrogation was initiated by either him/her or the defendant,[65] this provision may severely limit the defense counsel's right to inspect documents or may make

[61] János Bánáti's comment at the Round Table.

[62] Csongor Herke – Iván Péter.: A rendőrségi fogdákban fogva tartottak helyzete a Magyar Helsinki Bizottság tapasztalatai alapján (The situation of accused persons detained in police jails, based on the Hungarian Helsinki Committee's experiences) In: *Belügyi Szemle* (Review of the Ministry of Interior) 2000/2–3., p. 41

[63] István Diczig's comment at the Round Table. In this respect, the institutions concerned call attention to the lack of proper financing (József Hatala's written comments).

[64] CCP, § 186 Par (1)

[65] CCP, § 184 Par (2)

the exercise of this right dependent on the potentially arbitrary decision of the investigating authority. This leads to a troubling phenomenon. In the course of the court session regarding the ordering of pre-trial detention, the defense counsel is in most cases prevented from gaining access to the evidence serving as the basis for the prosecutor's motion. According to practitioners, they refer in vain to the fact that if the interests of the investigation are not threatened, the CCP allows the inspection of the files, but the investigative judges do not take the risk of forming an opinion on this issue and usually deny access to the evidence substantiating the ordering of pre-trial detention.[66] The judiciary emphasizes that the new code of criminal procedure does not authorize the investigative judge to grant access, since in the investigation phase, the investigating authority is in charge of the case.[67] Whoever is right, it is undeniably very difficult for the defense counsel to find arguments against the necessity of pre-trial detention without knowing the basis for the court's decision.

Special problems regarding ex officio appointed defense counsels: It is not compulsory for the defense counsel to appear at any pre-trial stage of the procedure, but retained counsels usually participate in the investigative actions as their clients pay a fee for that. In contrast, since appointed defense counsels' fees are very low compared to market prices (even after the increase in January 2004),[68] there is little incentive for them to appear unless required. Thus, in the case of ex officio appointed counsels, participation in the investigative phase is significantly less frequent. In 1996, the Parliamentary Commissioner for Civil Rights (Ombudsman) conducted an extensive survey concerning the implementation of the right to defense of detained persons having appointed counsels. The survey established that – for multiple reasons – appointed defense counsels often fail to provide their clients with effective legal assistance. In Zala county, for instance, appointed counsels appeared at only 18.7 percent of all witness hearings held in the surveyed cases. In Borsod-Abaúj-Zemplén county in only three out of the 18 examined cases did appointed counsels participate in any procedural

[66] János Bánáti's comment at the Round Table.

[67] Irén Gaál's comment at the Round Table.

[68] Under Decree 7/2002 of the Minister of Justice and Act CXVI of 1993 on the Year 2004 Budget of the Republic of Hungary and the Three-year Frameworks of the State Budget, the fee for presence at procedural acts is HUF 3,000 (EUR 12) per hour, while the fee for consultation with the detained defendant is HUF 1,500 (EUR 6) per occasion. If a procedural act is canceled, the defense counsel is entitled to a fee of HUF 1,500 (EUR 6).

activity. In Pest County five out of 12 detained defendant had no information whatsoever about their appointed counsels.[69]

Similar experiences were noted in the course of the Hungarian Helsinki Committee's Police Cell Monitoring Program in 1997. Out of the 340 detainees interviewed in the program, 198 (58.1 percent) had an appointed counsel. Only 15 percent of the detainees with appointed counsels were able to contact their lawyer before the first interrogation, as opposed to 45 percent of detainees with retained lawyers. Of detainees with appointed counsels, 43.7 percent claimed that they had never met their lawyer. This ratio was only 8.1 percent among defendants with a retained counsel.[70]

Experience shows that, besides low fees, the lack of effective sanctions against underperforming appointed counsels contributes to the problem. According to the CCP, the defense counsel shall be obliged to contact the defendant without delay,[71] while Section 8/4 of the Code of Conduct prescribes that following the receipt of the appointing decision, the counsel shall immediately report to the appointing authority, request information about the case and contact the client in pre-trial detention personally.[72] But, as noted above, appointed counsels often fail to abide by this obligation.

It is primarily the bar association's right and duty to call its members to account for not abiding by professional rules. Under the Attorneys Act, an attorney commits a disciplinary offense if he/she fails to perform his/her duties stemming from the law or the code of conduct. The possible sanctions include: a) warning; b) fine; c) exclusion from the bar.[73]

Experience shows that there are few disciplinary procedures related to ex officio appointment. According to information provided in 2002 by the High Commissioner of the Hungarian Bar Association in charge of Disciplinary Affairs, in the previous 6–7 years there had been no complaints against appointed defense counsels in Budapest (where the number of disciplinary cases is about

[69] *A kirendelt védővel rendelkező fogva tartott személyek védelemhez való jogának érvényesülése a büntetőeljárás nyomozási szakaszában* (The right to defense of defendants with an ex officio appointed counsel in the investigative phase of the criminal procedure). Report of the Parliamentary Commissioner for Civil Rights, 1996. Pp. 7, 17 and 22

[70] Punished before Sentence. p. 90

[71] CCP, § 50 Par (1) (a)

[72] Regulation 8/1999 (III. 22.) of the Hungarian Bar Association on the Ethical Rules and Principles of the Legal Profession

[73] Attorneys Act, § 37

180–200 per year). In addition, there had been one or two unfounded complaints submitted to the Hungarian Bar Association against the regional bar associations' decisions terminating disciplinary procedures initiated against defense counsels. The annual number of complaints against such terminating decisions is about 700. The high commissioner added that these were estimations, since no related statistics were available at the bar associations and no such records were kept.[74]

The discrepancy between the experiences of the aforementioned empirical studies (showing a wide-ranging dissatisfaction with the activities of appointed counsels) and the information on the (minimal) number of complaints only seems surprising. In the investigative phase, primarily the investigating authority and the defendant are in the position to judge the performance of the counsel. Neither the one nor the other can realistically be expected to file a complaint with the bar association. The former is not really interested in effective defense work, whereas the latter is in a very vulnerable situation (especially when detained).

Those defendants who cannot afford to retain a lawyer usually come from indigent, uneducated segments of society, with a limited capacity to assert their interests. Furthermore, they do not have a guaranteed right to request the appointment of a new defense counsel. According to the Attorneys Act, the authority may (but is not obliged to) withdraw the appointment if the defendant makes the request on reasonable grounds.[75] The CCP practically repeats this provision when it prescribes: "there is no remedy against the appointment of the defense counsel, but the defendant may – in a reasoned motion – request the appointment of another defense counsel. The request is decided upon by the court or prosecutor or investigating authority before which the procedure is in progress."[76] Thus, it may happen that the defendant requests a new defense counsel, the authority rejects the request, and the defendant is forced to continue the procedure with a counsel against whom he/she has filed a complaint. It is not surprising that practically no defendants risk this possibility.

In the court phase the lack of complaints has two main reasons. First, the presence of the counsel is mandatory at that stage; secondly, judges feel a kind of collegiality towards attorneys. As one of the judges said at the roundtable

[74] Interview with János Zimnic, High Commissioner of the Hungarian Bar Association in charge of Disciplinary Affairs, 11 September 2002.

[75] Attorneys Act, § 34 Par (3)

[76] CCP, § 48 Par (5)

organized by the Hungarian Helsinki Committee in October 2002 on the ex officio appointment system, it would feel awkward to "initiate a disciplinary procedure against a colleague. All I can do is to never ever appoint that particular attorney again."[77]

In 1996 Károly Bárd wrote that "the relatively mild disciplinary sanctions imposed [on defense counsels failing to perform their duties] also account in part for the problem of ex officio performance."[78] It seems that now there must be a discussion about the complete lack of disciplinary sanctions, as without complaints no sanctions may be imposed. This way however, the bar associations are unable to monitor the individual and general quality of the performance of ex officio appointed defense counsels.

If the appointed defense counsel fails to visit the detained defendant, the incarcerated person has to try to contact the lawyer. According to the observations of the Hungarian Helsinki Committee's Police Cell Monitoring Program in operation since 1996 (for more details, see Chapter II) in spite of the legal provisions it is often impossible for pre-trial detainees to obtain information from the authorities as to who their appointed defense counsel is and what his/her availability is.[79] Thus, if the appointed counsel fails to provide assistance to the detainee during the investigation phase (which often happens due to the above outlined reasons: presence is not obligatory, fees are low, etc.), the incarcerated person is often unable to contact him/her.

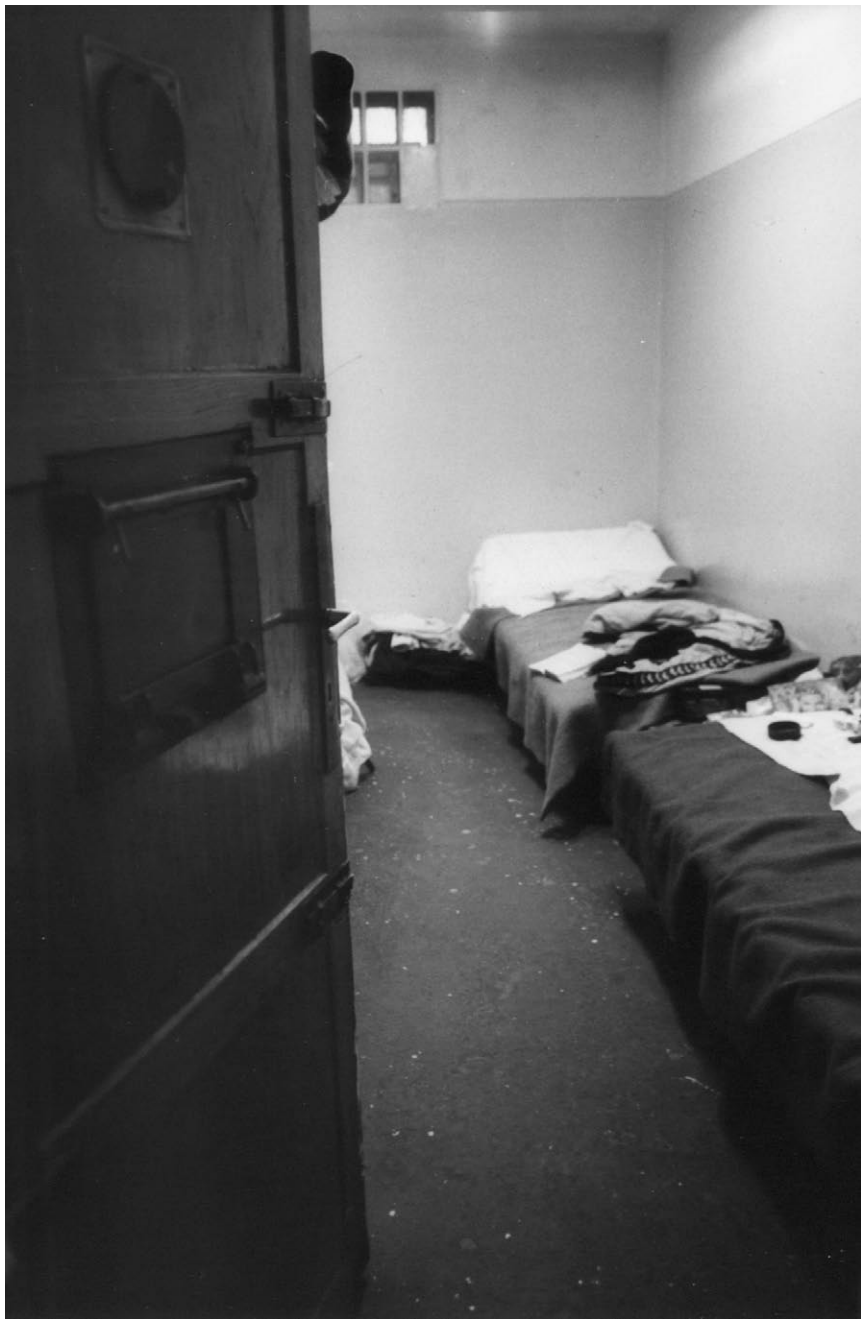
The observations concerning the difficulties detainees experience in contacting their appointed counsels are supported by the CPT's observations "that in many cases, lawyers appointed ex officio had no contacts with the detainee until the first court hearing."[80] With regard to this issue the CPT formulated the recommendation "that the system of legal aid to detainees be reviewed, in order to

[77] Comment by Zsolt Csák, Metropolitan Court judge at the Hungarian Helsinki Committee's round table on the system of ex officio appointment, held on 28-29 October 2002.

[78] Károly Bárd: Country report: Hungary. In: Access to Legal Aid for Indigent Criminal Defendants in Central and Eastern Europe. *Parker School of Law Journal of East European Law*. Vol. 5 1998, Nos. 1-2-

[79] In this regard there is a discrepancy between the Helsinki Committee's experience and the police's official standpoint, according to which "in each case the police case officer informs the detained defendant – as soon as the communication of the suspicion – about the person and contact details of the appointed counsel. This is also always recorded in the minutes of the interrogation." (József Hatala's written comments).

[80] 1999 CPT Report, § 32



ensure its effectiveness throughout the procedure, including at the initial stage of police custody."[81]

Another specific problem concerning the activity of appointed defense counsels is constituted by the lack of obligation for the authorities to provide interpreters for consultation between defendant and counsel. Although defense is mandatory if the defendant does not speak Hungarian (and he/she does not have a retained lawyer), language interpreters are provided only at procedural activities.[82] If the appointed defense counsel wishes to consult with the client, which is obviously a precondition of effective defense, he/she must bear the expenses of hiring an interpreter. According to the amendment to the provisions regulating the fees and expenses of appointed defense counsels, from 1 January 2003, appointed defense counsels may request the reimbursement of all their expenses arising in the course of the criminal procedure. The court settles this issue simultaneously with its final decision. In light of the average length of criminal cases in Hungary, this may mean that the appointed counsel will not be reimbursed for the advanced costs of language interpretation for years, which also severely hinders the practical implementation of the principle of the right to the use of the mother tongue in the criminal procedure. (It must also be mentioned here that the fee of interpreters significantly exceeds that of the appointed defense counsels, and this anomaly has not been remedied by the 2003 and 2004 increases either.)

At the level of legal regulation it is unclear how the interpreter escorting the defense counsel may enter the place of detention. The Police Jail Regulation does not touch upon this issue, whereas the Penitentiary Rules prescribe that "persons acting in an official or service capacity" may enter the penitentiary institution provided that they present the identity card, document, power of attorney or retainer justifying their identity and authorization to act and that they identify the purpose of their visit."[83] Under § 55 Par (1) of the Decree, those persons are regarded as acting in an official or service capacity, who enter the penitentiary institution in order to fulfill their tasks stemming from a legal statute or an agreement of cooperation concluded with the penitentiary ad-

[81] Ibid.

[82] József Hatala calls attention to the fact that due to the lack of resources, the police do not have a financial capacity to guarantee interpretation for the consultation between the detained defendant and the defense counsel. We would like to point out that this is not the police's rather the legislation's task.

[83] Penitentiary Rules, § 55 Par (3)

ministration. This definition could include the interpreter. However, Par (2) of the same Article significantly limits the definition by setting up a closed list of who may be regarded as a person acting in an official or service capacity. From among the participants of the criminal procedure, the prosecutor, the judge, members of the investigating authority, the defense counsel, the representative of the detained victim, private prosecutor and "other interested party", the lawyer acting on behalf of the detained supplementary private prosecutor and witness are included in the list, but the interpreter is not.[84]

To overcome this problem, the Head of the National Prison Administration issued a guideline in 1997 and a national order in 1999, in which it is established that the entry of the interpreter shall be allowed, unless he/she is among those persons who are explicitly excluded from maintaining contacts with the detained defendant.[85] Due to the new CCP's uncertainties concerning the permission of maintaining contacts (see under Chapter IV Point 5), this solution is not likely to remain sufficient in the future, so legislation will be required to settle the issue.

Finally, a fundamental structural problem of the system must be addressed. In terms of the CCP it is the authority (the investigating authority, the court or the prosecutor) before which the procedure is in progress that appoints the defense counsel for the defendant.[86] With regard to the investigating authority and – in certain cases – the prosecutor, this means that the organ deciding whom to appoint is – due to its procedural position and function – not essentially interested in effective defense work, which may be counterproductive.[87] In the HHC's view, through the involvement of the newly set up legal aid service system, it would be possible to devise a mechanism so that the investigating authority and the prosecution would only indicate the need to appoint a defense counsel and the actual appointment (the selection and notification of the counsel) would be performed by the legal aid service, which is strictly neutral as to the outcome of the given procedure.

[84] Penitentiary Rules, § 55 Par (2) (g)

[85] Comment made by Anikó Müller, Head of the NPA's Legal Department at the Round Table.

[86] CCP, § 48

[87] Attorney at law Elemér Magyar told a revealing story at the Round Table about a lawyer who was appointed in a murder case (later closed with an acquittal on a count of self-defense) although she had never dealt with criminal law previously.

II.
THE HUNGARIAN HELSINKI COMMITTEE AND THE MONITORING OF PRE-TRIAL DETENTION

1.
POLICE CELL MONITORING

For the reasons set forth above, pre-trial detention is one of the most problematic institutions of the criminal procedure, an area in which the threat of the infringement or excessive limitation of fundamental human rights emerges quite often. This problem inspired the Constitutional and Legislative Policy Institute (COLPI) and the Hungarian Helsinki Committee to launch their joint Police Cell Monitoring Program in February 1996.

The essence of the program, which has been in operation ever since, is that on the basis of an agreement concluded with the National Police Headquarters, three-member groups observe the circumstances of pre-trial detention implemented in police jails. The groups, which consist of attorneys, physicians, social workers and sociologists, are permitted to visit police facilities at any time without advance notice. They are also allowed to enter police jails, cells and facilities used for holding arrested persons on the condition that they observe the relevant security regulations. The groups may converse with the detainees under security guard but free of control concerning the content of the conversation. They may conduct interviews with the detainees and the physicians in the groups are allowed to examine consenting detainees.

Under point 12 of the agreement concluded with the National Police Headquarters, should the groups experience some sort of irregularity, the Hungarian Helsinki Committee shall be obliged to inform the police organ supervising the police jail, and lastly the National Police Headquarters immediately after the visit. If a member of a visiting group experiences any phenomenon which suggests unlawful practice or activity, in addition to the notification of the police, with the consent of the Hungarian Helsinki Committee and based on the authorization of the afflicted person, he or she shall be obliged to make a report for the public prosecutor's office. In connection with debates emerging in the course of the visits and with those restrictive measures of the police jail commanders which the groups regard as unnecessary, the Committee may contact the commander of the local Police Headquarters, if the jail belongs to a local

Police Headquarters, and the chief of the county or the metropolitan Police Headquarters if the police jail is a central one.

The findings of the program's first year are summarized in *Punished before Sentence* – a book published jointly by COLPI and the Hungarian Helsinki Committee. The book gives a detailed description of the shortcomings of the Hungarian system of police jails with special emphasis on the physical conditions of detention, the problems of health care, the implementation of the detainees' human rights and the question of physical and psychological duress.

A further analysis published by the monthly *Beszélő* in June 2001[88] illustrated the most problematic areas and the strategies police chiefs use when dealing with NGO's through the presentation of a characteristic element of the Police Cell Monitoring Program – namely, the correspondence between the Helsinki Committee and the Hungarian Police.

Summarizing the program that has been in operation for more than eight years, it may be concluded that the regular visits have numerous positive results. Police officers performing jail duties are more and more aware that the Committee's monitors may show up anytime and may witness possible abuses. This conclusion is supported by the fact that ill-treatment rarely takes place in the jails. Medical examinations preceding admission into the jail have become more thorough than before and, based on our experience, it seems that injured suspects are less likely to be received into the jails.

2.
PRISON MONITORING

The success of the Police Cell Monitoring program inspired the Hungarian Helsinki Committee's decision to launch its Prison Monitoring Program, aimed – in its first phase – at surveying the situation of convicted prisoners (so pretrial detainees were not included in the beginning). Based on the agreement of cooperation concluded between the National Prison Administration (NPA) and the Hungarian Helsinki Committee, the Committee's monitors visited nine penitentiary institutions between April 2000 and January 2001.

The 4- to 6-member monitoring teams consisting of attorneys, physicians,

[88] András Kádár: Ember a fogdán. Szemelvények a Magyar Helsinki Bizottság és a rendőrség levelezéséből (Jailed. Extracts from the correspondence between the Hungarian Helsinki Committee and the police). In: *Beszélő*, June 2001.

law students and sociologists conducted visits at times previously agreed upon with the warden of the given penitentiary institution. They were permitted to move inside the penitentiary institution with an escort, to enter and remain in the cells (from opening time to closure) and other rooms (without restriction), and to look in the cells at night. They were allowed to communicate with the inmates in the designated areas of the penitentiary institution (visiting rooms, the educators' offices, classrooms, etc.), under security control but in such a way that the guards providing security control could not hear the conversation of the monitor and the inmate.

Under the agreement of cooperation the monitoring activity included observing the physical state of the building or building-section, the ward and the cell, the treatment of the convicts, the conditions of their placement, the respect for their rights, the provisions concerning their physical and special – for example: medical, hygienic – needs, the quality of the relationship between the convicts and the individuals commissioned with their detainment, and the reintegration activities conducted in the penitentiary institutions. During the conversation with the inmate, monitors were not permitted to touch upon the criminal offense and procedure serving as the grounds for the conviction. On the other hand, the monitors were permitted to gather information about the inmates' social background, their circumstances preceding imprisonment, and the chances of their reintegration.

The monitoring activity was based on a 160-item questionnaire drafted by the Hungarian Helsinki Committee and approved by the NPA. On the basis of this questionnaire the monitors conducted anonymous interviews with those inmates who agreed to participate in the program. The monitoring teams conducted interviews with altogether 565 inmates, 12-14 percent of the interviewed inmates refused to answer.

The program also relied on sources of information other than the interviews: with the written permission of the inmate the monitors were allowed to inspect the administrative, medical, educational and labor records and data concerning the rights and obligations of the convict. The physicians on the teams were allowed to examine those inmates who requested so in writing (for this purpose the penitentiary institutions, following previous coordination, allowed for the physicians of the Committee to utilize the medical reception [examining] rooms) and look into the medical data and the "ambulatory diary". The monitors also conducted conversations with members of the penitentiary personnel, educators, guards, physicians, pastors and psychologists.

The Hungarian Helsinki Committee undertook to consult with the warden of the penitentiary institution concerning the experiences gained in the

penitentiary institution. The Agreement of Cooperation also declared that – if witness to a gross negligence or criminal offense – the Committee shall immediately notify the warden, and in case of the suspicion of a criminal offense the attorney as well. During the course of the program the Committee turned to the wardens on many occasions in connection with measures or practices it deemed objectionable. However, it filed only one criminal report – in a case of ill-treatment.

The most important observations of the Program were summarized in the volume *Double Standard: Prison Conditions in Hungary*.[89] Besides human rights concerns, the book dedicated separate chapters to the inmates' health care, social background and possibilities of reintegration as well as to the economic activities of the penitentiary system.

Based on the positive experiences of the program, the Helsinki Committee and the NPA decided to extend the program – in time, space and scope. The new agreement of cooperation concluded in June 2002 is for an indeterminate duration, it involves all the penitentiary institutions of the country and concerns all incarcerated persons, including convicts, pre-trial detainees and other prisoners, which enabled the Committee to monitor the situation of those people whose pre-trial detention is implemented in penitentiary institutions.

[89] András Kádár and Ferenc Kőszeg (eds.): *Double Standard: Prison Conditions in Hungary*. Hungarian Helsinki Committee, Budapest, 2002 (hereafter : Double Standard).

III.
RESEARCH PRINCIPLES AND METHODOLOGY

1.
THE QUESTIONNAIRE

Due to the legislative changes concerning pre-trial detention, six years after the first questionnaire-based survey conducted in police jails, it seemed justified to launch more research into the situation of pre-trial detainees. Since, as a result of the agreement of cooperation concluded with the NPA, the pool of potential interviewees had widened (as pre-trial detainees incarcerated in penitentiary institutions had also become accessible for the interviewers), the Helsinki Committee decided to somewhat limit the focus of the survey.

The Hungarian Helsinki Committee chose not to look into the physical conditions of detention, and – after consulting experts of the issue and on the basis of concerns outlined in Chapter I – selected two themes for detailed examination. The first is the activity of defense counsels in procedures involving pre-trial detention, with special regard to the problems concerning ex officio appointed defense counsels. Secondly, the questionnaire-based survey seemed to be a unique occasion to look into the issue of ill-treatment and other injurious treatment in the criminal procedure – a topic that due to its great degree of latency is very difficult to examine with other methods.

The HHC also wished to find out how the results are related to certain characteristics of the defendants (e.g. their sex, age, education, ethnic origin) and of the criminal procedure conducted against them (e.g. what is the charge, how the defendant first encountered the authority and so on).

These considerations served as the basis of drafting the 95-item questionnaire presented in Annex I.

2. SAMPLING DESIGN

When deciding about the method of sampling, the Committee relied on the data as of 31 December 2002, according to which out of 5,956 pre-trial detainees, 1627 (27,3 percent) were incarcerated in police detention facilities. This served as the basis of determining the number of questionnaires. The original

plan was to interview 150 and 341 detainees in police jails and penitentiary institutions respectively. Finally, 499 questionnaires were filled out – 350 in penitentiary institutions and 149 in police jails.

The Hungarian Helsinki Committee used a different sampling design for penitentiary institutions and police jails. Ten penitentiary institutions were selected on a partly random basis. There were five penitentiaries that were selected intentionally – some on the basis of their size (e.g. Unit III of the Budapest Penitentiary Institution), others on the basis of the detainees' specific characteristics (e.g. Kalocsa Penitentiary Institution – female detainees, Tököl Penitentiary Institution for Juvenile Delinquents). With regard to the other five, their geographical location was taken into account. Since all the penitentiaries that were not selected randomly are located in the Budapest region or Southern Hungary, one institution was randomly selected from each of the unrepresented regions. The number of questionnaires to be filled in a given institution and the distribution of pre-trial detainees to be interviewed were determined on the basis of the total number of pre-trial detainees incarcerated in that particular institution on 30 June 2003 (provided to us by the National Prison Administration).

Table 3.a:
Selected penitentiary institutions Intentional selection

Region	*Institution*	*Number of pre-trial detainees on 30 June 2003*	*Number of persons to be interviewed*	*Number of persons interviewed*	*Percentage of interviewed persons (%)*
South	Bács-Kiskun County Penitentiary Institution (Kecskemét)	110	28	28	25
Budapest area	Unit III of the Budapest Penitentiary Institution (Venyige street)	998	70	79	8
Budapest area	Tököl Penitentiary Institution for Juvenile Delinquents (Tököl)	77	26	24	31
South	Kalocsa Penitentiary Institution	35	18	15	43
South	Szeged Penitentiary Institution (Csillag Prison)	244	49	46	19
	Total:	1464	190	192	13

Table 3.b:
Selected penitentiary institutions
Random selection

Region	*Institution*	*Number of pre-trial detainees on 30 June 2003*	*Number of persons to be interviewed*	*Number of persons interviewed*	*Percentage of persons interviewed (%)*
Midwest	Veszprém County Penitentiary Institution (Veszprém)	74	25	25	34
West	Sopronkőhida Penitentiary Institution	51	26	26	51
South-west	Somogy County Penitentiary Institution (Kaposvár)	104	26	26	25
North	Borsod-Abaúj-Zemplén County Penitentiary Institution (Miskolc)	165	41	46	28
East	Hajdú-Bihar County Penitentiary Institution (Debrecen)	136	34	35	26
	Total:	530	151	158	30

Table 3.c:
Selected penitentiary institutions
Total

Number of detainees in the selected institutions on 30 June 2003	*Number of persons interviewed*	*Percentage (%)*
1994	350	18

The method of selection within the penitentiary institutions was the following. With regard to each institution, it was possible to determine how many places there shall be between the interviewed detainees in the list of all the persons detained in that particular institution. In a penitentiary where this number was – for example – ten (i.e. every tenth pre-trial detainee had to be interviewed), the interviewers randomly chose one out of the first ten names on the list of pre-trial detainees, and counting from him/her, they selected every tenth person on the list. The selected persons were interviewed. If the interview could not be conducted for some reason (the person was not available – because of having been escorted to a court hearing for instance –, or refused to answer the questions), the interviewers filled out a failure protocol, and moved on to ask the – previously unselected – person who followed the originally selected detainee in the list. If this detainee could not be interviewed for some reason, they approached the next person in the list, and so on.

According to the failure protocols, a new interviewee had to be approached in 19 cases (this means 5 percent of all – successful and unsuccessful – interview attempts). In six cases the reason was that the selected person was unavailable (because of taking a shower, transportation to another institution, etc.), while 13 detainees refused to answer the questions for various reasons (health problems, being totally satisfied with the circumstances, apathy, etc.).

In connection with police jails there was a new problem: we did not know the exact number of pre-trial detainees incarcerated in the selected police jails at a certain moment of time. The National Police Headquarters provided lists of the total number of pre-trial detainees in each county and of operating and non operating police jails, and the county police headquarters disclosed the number of places in the police jails we designated. This however, only enabled an estimate of the detainees' distribution between the police jails.

Therefore, within the county-groups formed on the basis of geographical distribution and the regional structure of the Hungarian Helsinki Committee's police cell monitoring program (one group was for instance constituted by Somogy and Baranya; Bács-Kiskun and Csongrád; Békés and Szolnok; Borsod-Abaúj-Zemplén and Szabolcs-Szatmár-Bereg; Vas and Zala; Veszprém and Komárom; Budapest and Pest County), the interviewers visited the police jails of the given county-group on a randomly determined basis. In the first visited jail they selected every second person from the list of detainees, and conducted an interview with the selected persons. If the selected detainee refused to answer, or the interview could not be conducted for any other reason, the interviewer moved on to ask the next selected defendant (so – unlike in the

penitentiary institutions – the interviewer did not try to substitute the selected detainee with the next – previously unselected – person in the list). When a research team had 20 questionnaires filled out, it stopped the survey. If less than 20 interviews could be performed in the police jail initially selected in a given county-group, the interviewers visited the next one on the list (this is why only one questionnaire was filled out in the Szombathely Police Jail holding 32 pre-trial detainees, and three in the Miskolc Police Jail capable of holding 60 persons). The Budapest-Pest County group was an exception, as in this area 40 interviews had to be conducted.

Table 4:
Selected police jails

Police jail	*Holding capacity*	*Sample*	*Selection ratio in proportion of holding capacity*
Jail of the Szabolcs-Szatmár-Bereg County Police Headquarters (Nyíregyháza)	50	15	30
Jail of the Borsod-Abaúj-Zemplén County Police Headquarters (Miskolc)	60	3	5
Jail of the Csongrád County Police Headquarters (Szeged)	63	21	33
Jail of the Zala County Police Headquarters (Zalaegerszeg)	42	15	36
Jail of the Vas County Police Headquarters (Sárvár)	18	5	28
Jail of the Somogy County Police Headquarters (Kaposvár)	40	8	20
Jail of the Békés County Police Headquarters (Békéscsaba)	38	11	29
Jail of the Baranya County Police Headquarters (Pécs)	72	10	14
Jail of the Vas County Police Headquarters (Szombathely)	32	1	3
Jail of the Veszprém County Police Headquarters (Veszprém)	36	3	8
Jail of the Budapest 10th District Police Headquarters	24	7	29
Jail of the Komárom-Esztergom County Police Headquarters (Tatabánya)	50	15	30
Jail of the Budapest 2nd District Police Headquarters	20	3	15
Jail of the Budapest 1st District Police Headquarters	24	7	29
Jail of the Criminal Unit of the National Police Headquarters(Aradi street)	23	4	17
Jail of the Budapest Police Headquarters(Gyorskocsi street)	208	21	10
Total:	800	149	19

As the tables above show, the "selection ratio" (i.e. the chance of individual defendants to fall within the sample) was different in the different jails and penitentiary institutions. Therefore, the various persons in the sample represent different multitudes depending on where they are detained. The 28 interviewees incarcerated in the Kecskemét penitentiary institution represent a multitude of 110 (25 percent), while the 70 people interviewed in the Venyige street remand prison represent 998 defendants (8 percent). This disproportionate sampling was motivated by the wish to represent smaller detention facilities and to prevent the big ones from dominating the sample. This however leads to the result that the sample is not "self-weighting", i.e. the different cases must be weighted in order to get a correct statistical analysis.

Throughout the study the authors disregarded this problem and worked with the presumption that each person in the sample represents a multitude of equal size. This is for the sake of more coherent interpretation and because in most cases one achieves the same (or very similar) results as if the sample was properly weighted.[90] In those cases where the lack of weighting has lead to significant difference, the weighted results are expressly noted.

3.
DEMOGRAPHIC CHARACTERISTICS AND OTHER DATA OF THE INTERVIEWEES

Distribution according to sex: Out of the 499 interviewed defendants 448 (90 percent) were men and 51 (10 percent) women, which means that in the sample the percentage of women was somewhat higher than their average ratio among pre-trial detainees, which is around 6-7 percent. [For instance, on 31 December 2003 out of the 3,776 pre-trial detainees held in penitentiary institutions, 251 were women (6,6 percent).][91] This is because the Kalocsa Penitentiary Institution for women is included in the sample, and the selection ratio in this prison was much higher (43 percent) than the average (18 percent). The properly weighted percentage is 6,7 percent, which exactly corresponds to women's proportion in the multitude. Thus, there are somewhat more women in the sample than in the multitude, but the difference is so insignificant that it does not influence the results.[92]

[90] Upon request the authors are ready to present the properly weighted results.

[91] Source: NPA Department of Detention Matters

[92] Upon request the authors are ready to present the properly weighted results.

Age: The average age of the interviewees was 31.4 years. For women it was 35, for men 31 years. The youngest detainee was 15 years old, the oldest 65. The teams interviewed thirty juveniles (detainees younger than 18), which constitutes six percent of the multitude and approximately coincides with the proportion of juveniles within the total population of pre-trial detainees. [On 31 December 2003, out of the 3776 pre-trial detainees held in penitentiary institutions, 203 were juveniles (5,3 percent).][93]

Education: The level of education in the sample was as follows.

Table 5:
The level of education of the interviewers and the culpable population

Level of education	*Sample*			*Culpable population (over 14 years)*
	persons	*%*		*%*
Less than 8 years of primary education	97	19.44		10.86
8 years (full primary education)	132	26.45		26.56
More than 8 primary years, but without completed secondary education	144	28.86		24.93
Vocational school	67	13.43		24.35
High school	28	5.61	19.04	
College / university education	31	6.21		13.30
Total	499	100.00		100.00

Source: http://www.nepszamlalas2001.hu/2_kotet/index.html

Ethnic affiliation: The ethnic distribution of those pre-trial detainees who chose to answer this question showed the following picture.

[93] Source: NPA Department of Detention Matters

Table 6:
The ethnic / national distribution of the interviewees

	Hungarian		*Gypsy / Roma*		*Foreigner*		*Other*	
	persons	*%*	*persons*	*%*	*persons*	*%*	*persons*	*%*
Yes	366	73.64	121	24.35	44	8.85	5	1.01
No	131	26.76	376	75.65	453	91.15	492	98.99
Total	497	100.00	497	100.00	497	100.00	497	100.00

The interviewees had the chance to choose more than one identity. Some of them regard themselves as Hungarian and Roma.

According to a research into the representation of Roma in penitentiary institutions, prisoners regarding themselves as Romani amounted to 30 and 40 percent of the prison population in 1995 and 1996 respectively. This result only slightly deviated from the data based on the identification of the interviewers (they regarded 44 percent of the interviewees to be of Roma origin), while differed greatly from the estimation of wardens, who thought 61 percent of the prison population to be Roma.[94]

In the Hungarian Helsinki Committee's 2000–2001 prison research, out of the 549 convicts choosing to answer the question on ethnic affiliation, 179 said that they were of Roma (81) or Hungarian and Roma (98) origin. This means 32,6 percent, which is close to the result of the 1995–96 survey. Interestingly, only 129 persons said that in their opinion their environment regarded them as Roma.

Although in the present research the proportion of Roma within the sample (24,4 percent) is below the data of the above surveys, it is still significantly higher than the ratio of Roma in the total population, which – according to reliable estimations – is between 4 and 7 percent.[95]

On 31 December 2003, the proportion of foreign detainees within the total prison population was 4,5 percent.[96] In the sample, the ratio of foreigners was somewhat higher.

[94] László Huszár: Az „ethnical issue" – romák a börtönben (The ethnical issue – Roma in prisons). In: *A büntetés-végrehajtás néhány problémája a kutatások tükrében*. (Some problems of the penitentiary system as reflected by research). BV. Szakkönyvtár – 1997/2. BVOP Módszertani Igazgatóság, Budapest.

[95] Kertesi–Kézdi: *A cigány népesség Magyarországon.* (The Roma population in Hungary) Socio-typo, Budapest, 1998.

[96] Source: NPA Department of Detention Matters.

The type of the offense: The interviewees were asked about the offense they were charged with. We used two types of categorizations: one based on the structure of the Penal Code and one based on the typology used by criminologists. The two do not always coincide. Robbery for instance is listed among crimes against property in the Hungarian Penal Code, whereas criminology regards this offense as a violent offense belonging to the same group as crimes against personal integrity, such as homicide, bodily harm and so on.

Table 7:
Penal Code based categorization of the offenses allegedly committed by the interviewees, in comparison to the distribution according to criminal offense of adults convicted in 2002 and taken into pre-trial detention during the procedure

Type of offense	*Interviewees charged with the given type of offense*		*Adults convicted in 2002 and taken into pre-trial detention during the procedure*
	Number	*%*	*%*
Offenses against personal integrity	81	16.23	8.65
Traffic offenses	2	0.40	0.99
Offenses against marriage, family, youth and sexual morals	24	4.81	4.27
Offenses against the purity of state administration, justice and public affairs	20	4.01	4.92
Offenses against public order	52	10.42	12.58
Economic offenses	11	2.21	2.76
Offenses against property	258	51.70	65.83
Not identifiable*	51	10.22	–
Total	499	100.00	100.00

Source: Ministry of Justice

** Those persons were placed in the "not identifiable" category who were taken into pre-trial detention in the framework of a procedure launched on a count of offenses belonging to different categories.*

Most offenses in the group of crimes against personal integrity were cases of homicide (57 cases, 70 percent). Most people falling into the group of offenses against marriage, family, youth and sexual morals were charged with rape (19 cases, 79 percent). In the category of offenses against the purity of state admin-

istration, justice and public affairs, the most frequent transgression was smuggling of human beings (16 cases, 80 percent), although crimes against officials belong to this group as well. Most of the offenses against public order were cases of drug abuse (44 cases, 85 percent), while among economic offenses, the ratio of counterfeiting was relatively high (4 cases, 36 percent). Among crimes against property, robbery was the most frequent (105 cases, 37 percent).

It is worth mentioning that several interviewees referred to offenses related to documents (forgery of official or private documents, abuse of documents), but since these often appear together with offenses falling into other categories (e.g. fraud, which is a crime against property), most of these cases were regarded as "not identifiable" in this system.

Table 8:
Criminological categorization of the offenses allegedly committed by the interviewees

Type of offense	*Interviewees charged with the given type of offense*	
	Number	*%*
Violent offenses	230	46.09
Offenses against property	138	27.66
Economic offenses	10	2.00
Corruption	2	0.40
Traffic offenses	2	0.40
Drug related offenses	44	8.82
Other	31	6.21
Not identifiable	42	8.42
Total	499	100.00

The high number of violent offenses *vis a vis* offenses against personal integrity (see previous table) is due to the fact that in the categorization used by criminology robbery as well as rape fall into this category, whereas these offenses belong to other groups in the structure of the Penal Code.

Criminal record of the interviewees: The interviewees' distribution based on criminal record showed the following picture.


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Table 9:
The interviewees' distribution based on criminal record in comparison to the distribution based on criminal record of adults sentenced to imprisonment in 2002[97]

	Interviewees		*Adults sentenced to imprisonment in 2002*
	Persons	*%*	*%*
Recidivist	72	14.42	3.96
Special recidivist	40	8.01	11.98
Multiple recidivist	57	11.42	29.07
Previously convicted	70	14.03	37.04
Clean criminal record	261	52.30	17.95
Total	499	100.00	100.00

Source: Criminality and its consequences 27. (IM/MKI/2003/57.)

It is interesting to observe that although the ratio of persons with a clean criminal record among offenders sentenced to imprisonment is significantly smaller than that of people with a previous criminal record (37 percent) or different types of recidivists (45 percent in total), in the sample the group of first offenders was by far the largest. As the sample did not greatly differ from the overall national data with regard to the types of offenses (see Table 7), it seems that the surprising difference related to the types of offenders is not a sampling problem. We might therefore say that the results cast doubts on how justified pre-trial detentions are from the point of view of the expected outcome of the procedure (i.e. the punishment effectively imposed).

[97] Penal Code, § 137 (points 14, 15 and 16): *Recidivist* is the perpetrator of an intentional crime, if he/she has been previously sentenced to effective imprisonment for an intentional crime, and less than three years have passed between the serving of the sentence or the termination of its executability and the perpetration of the new crime;
Special recidivist is a recidivist who on both occasions commits the same offense or an offense of similar character;
Multiple recidivist is a person, who has been sentenced to imprisonment as a recidivist prior to the perpetration of an intentional crime, and less than three years have passed between the serving of the sentence or the termination of its executability and the perpetration of the new crime punishable with imprisonment.
Previously convicted person: someone who has been convicted before but does not qualify as a recidivist, special recidivist or multiple recidivist.

Although it is not the expected sentence that serves as the basis of ordering the pre-trial detention but that the offense the defendant is charged with be punishable with imprisonment under the Penal Code, one must raise the question whether the existing system needs some reconsideration. There are few offenses in the Penal Code that are not punishable with imprisonment, so in those cases where – according to the judicial practice – no (effective or suspended) imprisonment is to be expected, coercive measures less restrictive than pre-trial detention might prove to be sufficient.

The length of pre-trial detentions: On average the interviewees had been in pre-trial detention for 281 days (i.e. approximately nine months) when they met the researchers. The longest detention was 1226 days, i.e. more than three years. According to the new regulation of the CCP such a long detention is only possible in a number of specific procedural situations, e.g. when the court of second instance obliges the court of first instance to restart the procedure but at the same time maintains the defendant's detention. [CCP, § 132 Par (3)]. More than half of the interviewed defendants had spent more than 179 days (i.e. almost six months) in pre-trial detention, which reinforces the view expressed in Chapter I, that although it is the authorities' duty to make efforts to minimize the duration of pre-trial detention, and to accord a fast-track treatment if the defendant is in pre-trial detention, in practice, long detentions are quite frequent.

On average, the defendants interviewed in penitentiary institutions had been transferred from police jails 220 days before the interview. The longest pre-trial detention spent in a penitentiary institution was 1055 days, i.e. almost three years. Those who are detained in penitentiary institutions spend on average 138.5 days in police jail before their transfer. It is a bit more promising that half of the pre-trial detainees incarcerated in penitentiary institutions had spent 67 days or even less time in police jail before being transferred.

IV.
ILL-TREATMENT, PSYCHOLOGICAL PRESSURE AND OTHER UNLAWFUL TREAMENT IN THE CRIMINAL PROCEDURE

1.
ILL-TREATMENT

The research tried to map the issue of ill-treatment by the authorities as accurately as possible. Besides trying to find out how many pre-trial detainees claim to have been ill-treated, we also wanted to know when the danger of ill-treatment is imminent, i.e., what types of offenses, what sort of perpetrators, and which phases of the procedure are the most likely to trigger unlawful physical reactions on the part of the authorities.

When researching ill-treatment, one has to sharply distinguish between the use of lawful coercive measures and illegitimate violence. The Police Act[98] enumerates the coercive measures the police are entitled to resort to. The following measures are the most relevant from the point of view of the topic: bodily coercion, handcuffing and the application of a truncheon.

Under the relevant provisions, the police officer may apply coercion by bodily force in order to compel a person to act or to refrain from action, if the aim of his/her action is to break resistance.[99] The police officer may handcuff a person to be limited or limited in his/her personal freedom in order to prevent him/her from harming himself/herself or from launching an attack or escaping, or to break his/her resistance.[100] A truncheon may be applied in order to avert an attack directly endangering the life or bodily integrity of others or the police officer, or threatening the security of property, or with the purpose of breaking resistance to a lawful action taken by the police.[101]

The Police Act sets forth very important principles with regard to the application of coercive measures. It prescribes, for instance, that a police measure shall not cause a detriment which is manifestly out of proportion with the lawful objective of the measure and that out of several possible and suitable options

[98] Act XXXIV of 1994 on the Police

[99] Police Act, § 47

[100] Police Act, § 48

[101] Police Act, § 49 Par (1)

for police measures or means of coercion, the one which is effective and causes the least restriction, injury or damage to the affected person shall be chosen.[102] Furthermore, the application of the coercive measure shall not be continued if the resistance breaks and the aim of the police measure can be achieved without it.[103] If a coercive measure is applied in the course of a police action, causing an injury or taking a life shall be avoided if possible.[104]

The Service Regulations of the Police[105] partly repeat the provisions of the Police Act (e.g., when they state that in the course of applying coercive measures, the police officer shall be obliged to respect the right to bodily integrity and may only risk bodily integrity to the strictly necessary extent[106]), and partly set forth further safeguards in connection with the application of coercive measures. It states, for example, that a more severe coercive measure shall only be applied if a milder measure has not achieved its aim or if, from the outset, it appears to have no hope of success. Therefore if bodily coercion is sufficient, no handcuffing is allowed, and if the success of the measure may be guaranteed through handcuffing the subject of the measure, the officer may not apply a truncheon.[107]

With regard to handcuffing, the Service Regulations claim that it is forbidden to use handcuffs in a manner that causes undue pain or injury, or is of a humiliating nature,[108] while in connection with the use of the truncheon they state that a strike shall, as far as possible, be aimed at the attacking limb; a strike on the head, waist, stomach or belly must be avoided. Furthermore, the truncheon shall not be used once the attack or resistance has ceased or has been broken.[109]

If the police officer applies a coercive measure without the lawful preconditions or disregarding the relevant rules of application, he/she commits a criminal offense. According to the Penal Code, "an official who during his/her proceedings mistreats another person commits a misdemeanor, and shall be punishable with imprisonment of up to two years" (ill-treatment).[110]

[102] Police Act, § 15

[103] Police Act, § 16 Par (1)

[104] Police Act, § 17 Par (2)

[105] Decree 3/1995. (III. 1.) of the Minister of the Interior on the Service Regulations of the Police (hereafter : Service Regulations)

[106] Service Regulations, § 51 Par (2)

[107] Service Regulations, § 52 Par (1)

[108] Service Regulations, § 54 Par (4)

[109] Service Regulations, § 55 Pars (5) and (7)

[110] Penal Code, § 226

The law prescribes an even stricter punishment with regard to that official who uses physical (or psychological) coercion purposefully: an official who – with the aim of extracting a confession or declaration – applies violence, threatens, or uses other similar methods, commits a felony, and shall be punishable with imprisonment of up to five years (forced interrogation).[111]

Out of the 491 persons answering the question concerning ill-treatment,[112] 83 (16.9 percent) claimed to have been ill-treated during the procedure. As the examples below show, accounts of cases of non-instrumental ill-treatment as well as instances of forced interrogation aimed at the extraction of confessions or other types of information are represented in the sample. Although doubts may be raised as to the credibility of the accounts, and we were not in the position to cross-check the allegations, it is a fact that the interviewees knew: we could have no impact on the criminal procedure in progress against them, and therefore, by telling the interviewers their stories, they could not improve their situation as suspects or defendants. The consistency of the statements on the circumstances and methods of ill-treatment is noteworthy. Interviewees detained in different regions of the country gave similar accounts of similar atrocities. This gives ground to the conclusion that unlawful police practice is certainly more widespread than could be inferred from the official statistics of criminal procedures launched on counts of ill-treatment and forced interrogation and leading to indictment. (For a more detailed analysis of this issue see the section on the chances of remedy.)

Ill-treatment in the initial phase of the criminal procedure: The answers given by the interviewed defendants show that ill-treatment most frequently occurs in the initial phase of the procedure, sometimes even before the formal commencement of the criminal proceedings (i.e., the communication of the suspicion).

Table 10:
In which phase of the procedure and where were you ill-treated?

Place and time of the ill-treatment	*Persons*
In the initial phase of the procedure: on the spot	34
In the initial phase of the procedure: in the police car	8
In the initial phase of the procedure: in the police building	37

The interviewees could choose more than one answer.

[111] Penal Code, § 227

[112] We use the term "ill-treatment" to cover both instrumental and non-instrumental instances of unlawful violence (i.e. both forced interrogation and ill-treatment).

It is not uncommon that the ill-treatment that is started on the scene of the crime or the arrest is continued in the police car and then at the police premises.

> One of the defendants claimed that in the police car he had been repeatedly hit in the stomach after his apprehension. At the Etyek Police Headquarters the same police officer who had participated in the beating that took place in the car, kept hitting him in the stomach and kicking his thighs (10.18.6).[113]

The majority of police brutality takes place in the course of or in relation to the apprehension. This is supported by the answers given to the question regarding who the perpetrator of the ill-treatment was.

Table 11:
Who ill-treated you?

Perpetrator of the ill-treatment	*Persons*	*%*
The police officer performing the apprehension	45	54.88
The investigator	21	25.61
The police jail guard	1	1.22
The prison guard	2	2.44
The educator[114]	–	–
Other[115]	13	15.85
Total	82	100.00

From the data related to the frequency and method of cases of ill-treatment in the initial phase of the procedure, it seems that no significant improvement in the attitude of police officers implementing apprehensions has taken place in the past eight years. The volume summarizing the experiences of the 1996 research concludes that "from the cases collected, it seems that the use of excessive physical violence is typical when a suspect is caught red-handed and immedi-

[113] The numbers in brackets indicate the code of the questionnaire.

[114] Educators are members of the penitentiary personnel, whose task is to promote the education of the detainee and to take care of all the administrative issues (such as monitoring correspondence, distributing incoming letters, permitting contacts with relatives, and so on) while he/she is in prison.

[115] According to the accounts, with the exception of one security guard, "other persons" were also officials, e.g. the investigators of the border guards, but mostly police officers differing from the ones implementing the apprehension or acting as investigators in charge of the case.

ately afterwards, both at the scene of the offense and later at the police station. Without any reason or purpose, police officers acting in such cases seem to feel particularly justified in abusing persons who have clearly committed criminal offenses, after they are handcuffed and are unable to defend themselves, as if it were an advance punishment."[116]

The unchanged validity of this conclusion is supported by the accounts heard during the present survey:

> One of the interviewed defendants was trying to break into a store when he spotted a police car. He wanted to run away but then he decided to stop. When the police officers caught up with him, they started to beat him with their fists and truncheons. He fainted. He was taken to the 18th district Police Headquarters. The police officers were also from that headquarters (1.3.2.).
> Another person was caught red-handed while trying to steal a car. The police officers pointed a gun at him and his accomplice. They got out of the car with their hand raised above their heads. They put up no resistance. Despite this fact, their arms were twisted back, and they were pushed to the ground with their faces in the mud. He had to lie in a puddle for 20 minutes. His nose was broken as he was pushed against the ground (8.6.12.).
> A thief caught red-handed was also beaten up on the spot by Balatonfüred police officers. His head was repeatedly hit. He fell to the ground. He was forced to stand up, his hands were shackled behind his back, and the police officers kicked his thighs repeatedly (20.29.3.).

Brutality does not only occur when someone is caught in the act (so not only those people who are undoubtedly guilty are exposed to it). It also happens if the apprehension does not go smoothly enough.

> An interviewee charged with car theft tried to hide from the police in the cellar. When members of the Eger Action Force finally found him, he was held at gunpoint and then one of the officers punched him. When he fell to the ground from the blow, the police officers started beating and kicking him. They were still beating him when he was escorted to the police car, although by this time he had been handcuffed (2.11.6).
> Another interviewee said that when the four police officers had arrived at the scene of the attempted homicide, they wanted to hold him down, but he resisted,

[116] Punished before Sentence, p. 31

which triggered merciless retaliation: "As they pushed me against the ground, I raised my head abruptly, so they brutally beat me up" (9.6.6.)

It also happens that police officers commit forced interrogation at the crime scene, i.e., they apply unlawful force in order to extract a confession or some other information from the apprehended defendant.

One of the interviewees was caught by a larger group consisting of the officers of the 9th District Police Headquarters on the basis of a description near the scene of a mugging. The policemen demanded that he give back the necklace that was torn from the neck of the victim. He denied having committed the crime, so they took him to the scene, where they started beating and kicking him (9.6.7).
Another – juvenile – defendant was visited by the police on the day of the crime (homicide). They thought that the paint on his overall was blood. One of the policemen slapped him and called him to admit the homicide. When he explained that the stain was only paint, he was heard as a witness and let go. He was arrested later (8.6.1).
An interviewee – caught in the act of theft – was slapped with medium force three or four times by one of the officers implementing his apprehension. While hitting him, the officer repeatedly told him to admit the theft and make a full confession. The officer allegedly also asked: "why do you come to steal in our district? Couldn't you go somewhere else?" (1.8.10)

The "motives" of ill-treatment committed in the initial phase of the procedure may be mixed. We have heard some cases in which the fury felt over the difficulty of the apprehension and the intention to extract some relevant information from the defendant may have equally played a role in the unlawful police action.

A defendant who tried to escape in a stolen car could only be stopped when the police intentionally crashed into his vehicle with a police car. He was dragged out of the wreck, hit in the stomach and handcuffed. Some police officers knelt on his back, pulled up his clothes and forced him to lie on the floor for two hours with a naked upper body. They pushed a pistol in his mouth and demanded that he tell them who drove the other (also stolen) car. Two ambulances arrived at the scene, but the doctors were not allowed to examine him (11.11.10).

When analyzing the results concerning ill-treatment in the initial phase of the procedure, we have to remember that (especially on the basis of the defendants'

subjective accounts) it is very difficult to establish the truth in those cases in which the police officers lawfully apply coercion to overcome the resistance of the person to be apprehended, but the coercion continues after the breaking of the resistance and thus turns into ill-treatment.

Such instances are greatly influenced by the situation, as the CPT pointed out as early as 1999: it is clear that continued exposure to highly stressful or violent situations can generate psychological reactions and disproportionate behavior. The CPT called upon the leadership of the police to take preventive measures with a view to providing support for police officers exposed to such situations.[117]

Ill-treatment during interrogation: According to the results, ill-treatment also occurs in the subsequent phases of the procedure, although somewhat less frequently.

Table 12:
In which phase of the procedure and where were you ill-treated??

Place and time of the ill-treatment	*Persons*
Later in the procedure: during the first interrogation	18
Later in the procedure: during a subsequent interrogation	2
Later in the procedure: at the police jail	3
Later in the procedure: in the penitentiary institution	3

From the accounts it seems that most of these cases amount to forced interrogation, i.e., the ill-treatment is not so much motivated by emotions as by the clear intention to obtain a confession. This is probably why ill-treatment becomes more "sophisticated": the perpetrators are more careful to cause pain without leaving marks. A number of defendants claimed that the investigators had beaten them with phone books (e.g., 6.17.9. and 1.4.4.).

> One of the interviewees said that from the countryside he had been transferred to the Budapest Police Headquarters, where altogether 4-5 police officers ill-treated him: they hit his stomach, slapped his ears, and so on. They applied techniques that leave no trace (1.6.5).
>
> Another person, whose interrogation took place at the Dorog Police Headquarters, complained that the officers had hit his head with their palms, pulled his hair, pinched his skin: "they did it so as not to leave traces" (8.6.6.).

[117] 1999 CPT Report, § 20

A defendant charged with robbery claimed that the investigator had pulled his ears, pushed him down to the floor and twisted his arms (19.14.13.).

Not all the police officers are so cautious, though. The accounts are quite consistent with regard to the basic methods of ill-treatment, but there are significant differences as to the severity of the complaints. Some defendants get away with a couple of slaps.

One of the interviewees said that the investigator had slapped him four times right at the beginning of the interrogation. His ears were plugged, he had to go to the doctor because of the injury (1.8.11).
Another pre-trial detainee was slapped by the investigator because he refused to sign the transcript of the interrogation (3.12.5.).
One of the interviewees was hit so hard by the investigator at the Várpalota Police Headquarters that his lips were ripped (2.9.5.).
Another interviewed defendant was slapped on the face and the neck at the 19th district Police Headquarters because his statement was not satisfactory (8.6.14.).

Others are not as "lucky". The survey shows that much more severe cases of ill-treatment also occur.

A person arrested for two counts of robbery claimed that during the first interrogation a few police officers had been beating and kicking him for 15-20 minutes. After that he spent four hours in a cell with his hands cuffed behind his back (1.7.4.).
Another defendant – also charged with robbery – complained that the investigator had already started ill-treating him in the elevator of the Szolnok Police Headquarters: he punched the back of his neck, back and stomach, and pulled his hair. During the interrogation his hand was shackled to the chair behind his back. The police officers repeatedly hit his stomach and the back of his neck (6.18.5.).
Ill-treatment combined with psychological threat was claimed by a man detained for theft, who said that he had been made to stand facing the wall during his interrogation. Regardless of whether he answered the questions or not, his head was bumped into the wall, his back was beaten and his thighs were kicked. He claims to have been threatened with a knife as well (6.18.4.).
Another interviewee – accused of robbery – said that he had been beaten so hard by the investigator that his teeth had been loosened (1.7.9.).
Robbery is also the charge against the interviewee who claimed that during his interrogation he had been shackled to the bars and beaten. The police officers alleg-

edly beat his kidney and sprayed tear gas into his face from a few inches. Later he was handcuffed to the bars in such a way that he could hardly reach the floor with the tips of his toes. He claims to have been held like this for hours (12.20.6).

In certain cases – when the first interrogation closely follows the apprehension – it may happen that the ill-treatment started in the course of the apprehension is continued throughout the interrogation.

The man who was escorted to the Etyek Police Headquarters – and claimed that he had been ill-treated both in the police car and in the police building – said that after he had been transferred to the Balmazújváros Police Headquarters, the officer who had repeatedly hit and kicked him in Etyek, continued the ill-treatment during the interrogation as well. Two uniformed policemen also "joined in": they kicked his shin-bone, beat his back and slapped him (10.18.6.).

Those who claimed to have been ill-treated were asked about why they think this had happened.

Table 13:
What was the purpose of the ill-treatment?

Purpose of the ill-treatment	*Persons*
Extorting a confession	26
Extorting the names of accomplices	4
Generating fear in the defendant	8
Causing pain without any particular purpose	4
Other	2

It can be seen that most instances of ill-treatment occurring during interrogations are "instrumental", i.e., purposeful. The two persons choosing the category "other" claimed that they had been ill-treated because their unwillingness to cooperate infuriated the policemen.

One of them was charged with forgery of official documents because he was found to have three passports – all of them containing different names and data. When the investigators interrogating him asked him which was his real identity, he answered: "you are the policemen, find it out!" That is when his ill-treatment started (1.6.2.).

According to Table 12 above, forced interrogation is most likely to happen during the first interrogation. Eighteen persons claimed to have been ill-treated in the course of the first interrogation, and only two people said that they had suffered such treatment at subsequent hearings as well.

> One of them said that at the Budapest Police Headquarters – where he was originally summoned as a witness (!) – an investigator had punched his face and head with his fists and palms. At the next interrogation – also at the Budapest Police Headquarters – two investigators beat him in a similar manner. They also kicked his stomach and sides with their knees, hit his head with a phone book, beat and poked his ribs with their truncheons (1.4.4.).
> The other interviewee – charged with a number of different crimes – claimed that he had been slapped and beaten during both the first and the subsequent interrogations. He also claimed that the investigators had pulled his hair (6.5.9.).

The significant difference between the first interrogation and the subsequent ones may be that if the confession is extorted at the first interrogation, no ill-treatment will be necessary later. Another important factor may be that the majority of first interrogations are conducted in the absence of the defense counsel, whereas later on the lawyers are more likely to be present at procedural acts (see this in more detail under Chapter V).

Ill-treatment in detention: As Table 12 shows, ill-treatment was reported in three cases both in police jails and penitentiary institutions.

> A person in detention for having committed a violent criminal offense claimed that once when he had been staying alone in his cell at the 18th district Police Headquarters, the guards had sprayed tear gas into the cell. The same person reported to have been ill-treated by three guards while being detained at the temporary detention cell of the Venyige street remand prison:[118] he had to stay in the corner of the cell, he was hit in the stomach, rib and neck. No trace of ill-treatment could be identified later (1.3.7.).
> Another detainee held at the Venyige street remand prison claimed to have been taken to the shower and given some slaps in the face by two guards, because they thought that he had been smoking during his daily walk. According to him, in the "Venyige Prison" ill-treatment is practiced in the elevator, the shower and the community premises, since these places are not equipped with cameras (1.6.1.).

[118] Unit 3 of the Budapest Penitentiary Institution

> Another person reported that while being held in police custody, he was hit in the stomach by a guard for knocking repeatedly on the cell door (11.7.15.).
> An interviewee reported that while he had been lying on a bench in the short-term arrest cell of the Nagykanizsa Police Headquarters, a policeman had come in and hit him in the back. The interviewee could not identify the reason for this act (13.21.7.).
> A person in pre-trial detention at the Esztergom Penitentiary Institution was repeatedly humiliated, tripped up, kicked and hit (8.6.6.).

We can therefore establish that ill-treatment is relatively rare in detention and it is less serious than at the beginning of the procedure and during interrogations, especially the first one. One of the reasons for this phenomenon is that the police jail guards and the penitentiary personnel are aware of the fact that they have to "coexist" and co-operate with the detainees in the long run. In addition, they do not meet the defendants in extreme and stressful situations, and it is not their task – as it is detectives' – to convince the defendants to provide information and to make different statements. It is therefore not in their interest to intimidate a detainee or to put pressure on him/her.

Thus it seems that guarantees aiming at putting a stop to ill-treatment by authorities should be incorporated into the procedure mainly as far as the apprehension, the short-term arrest and the interrogations are concerned. This goal can be achieved by ensuring that certain actions of the police are obligatorily recorded with a camera and that the first hearing can be held in the absence of the defense counsel in charge only in very specific cases.

The connection between ill-treatment and certain attributes of the defendant: The research carried out by HHC did not exclusively focus on the period of the procedure in which the likelihood of ill-treatment is the most significant, but it also aimed to identify the groups of defendants most exposed to the danger of ill-treatment by the authorities. CPT stated in its report prepared following a fact-finding visit in 1999 that the most endangered groups are foreign national, the Roma and juveniles.[119] The research of HHC therefore paid special attention to these specific groups.

The Roma: In response to the question concerning ethnic background – as mentioned above – out of 497 persons 121 (24.3 percent) identified themselves as Roma. Out of the 491 persons who responded to the question concerning ill-treatment 489 revealed his/her ethnic background, and 119 (24.3 percent) of them declared themselves to be Roma.

[119] 1999 CPT Report, § 14

Table 14:
Were you ill-treated during the procedure?

	Roma (persons)	*Percent of all Roma defendants*	*Non-Roma (persons)*	*Percent of all non-Roma defendants*	*Roma and non-Roma together (persons)*	*Percent of the total number of defendants*
Yes	26	21.85	56	15.14	82	16.77
No	93	78.15	314	84.86	407	83.23
Total	119	100.00	370	100.00	489	100.00

As the above table shows, 21.9 percent of the Roma persons reported ill-treatment, while the percentage of ill-treated persons among the non-Roma is "only" 15.1 percent. This difference is not statistically significant (6.8 percentage points). However, there is a rather important difference concerning the initial period of the procedure (the apprehension and the short-term arrest) if Table 11 is examined from the point of view of Roma origin. Of the 25 Roma persons claiming to have been ill-treated, 64 percent (16 persons) said that the perpetrator had been the police officer who carried out the short-term arrest/72-hour detention, while that percentage is 50.9 percent (29 out of 57) among the non-Roma defendants. The difference is 13.1 percentage points and is therefore statistically significant. Meanwhile, as far as ill-treatment committed by detectives is concerned, 20 percent of Roma and 28 percent of non-Roma defendants (5 and 16 persons, respectively) claimed that the officer used unlawful force on them. This difference is not statistically significant.

It seems from the above details – even if it is not undisputedly proven – that CPT might be right to suggest that Roma persons are generally more likely to become victims of abuse. Some reports also seem to suggest that anti-Roma feelings may be in the background of ill-treatment.

> A person in pre-trial detention for attempted robbery told that he had been taken to the 9th district Police Headquarters after being caught in the act. Two police officers sent the other two persons out from the short-term arrest cell and then started to beat his neck and ribs while saying "you bloody gypsy bastard, you don't know how to work, you only know how to steal" (1.3.10.).

Foreign citizens: As stated above, out of 497 persons 44 (8.9 percent) claimed to be foreign. Most of them (19 persons, 43.2 percent) were Romanians. Other groups included Serbs, Croats and Hungarians from Romania (4 persons, or

9.1 percent each). Two persons (4.5 percent) each identified themselves as Germans, Chinese and Syrians, while one person (2.3 percent) each as Moldovan, Vietnamese, English, Bulgarian, Italian, Algerian and Montenegrin.

Table 15:
Were you ill-treated during the procedure?

	Foreigners (persons)	*Percent of all foreigner defendants*	*Not foreigner (persons)*	*Percent of all non-foreigner defendants*	*Foreigner and non-foreigner combined (persons)*	*Percent of the total number of defendants*
Yes	13	30.23	70	15.63	83	16.90
No	30	69.77	378	84.38	408	83.10
Total	43	100.00	448	100.00	493	100.00

According to the numbers above, there is a significant difference (14.6 percentage points) between the probability that a foreigner or a non-foreigner becomes a victim of ill-treatment. These figures seem to support the above-mentioned statement of CPT. Some personal accounts refer to the same.

> An ethnic Hungarian citizen of Romania claimed to have been handcuffed to a chair, after which the chair was kicked over. When he tried to stand up, he was repeatedly kicked in the backbone. Meanwhile, he was called a "Romanian" several times (1.6.2.).
>
> Another ethnic Hungarian from Romania reported that upon his arrest, he had been kicked, his head had been beaten against a cupboard and he had been hit on his back. He was beaten on his side until he could not breathe. Afterwards, he was beaten until he signed a paper, the content of which is still unknown to him. Later, four or five policemen were beating and kicking him for one hour at the Nyíregyháza Police Headquarters (3.12.6.).
>
> Another person claiming to be a Romanian reported that after being caught in a robbery, he had been beaten, punched and kicked by policemen in the police station of the Keleti Railway Station. The beating started when the policemen realized that he did not understand what they were saying. According to his statement, he was ill-treated during the interrogation too. When he did not give the "right" answer, the officer beat and kicked him. When he complained about this treatment to the interpreter, he told him that "this is just the beginning. If you do not say what they want, it will get even worse" (1.8.12.).

Juvenile persons: As it has already been indicated, 30 juvenile persons were among the interviewees, which is approximately 6 percent of the sample. The data related to the ill-treatment of juvenile defendants are put forth in Table 16.

Table 16:
Were you ill-treated during the procedure?

	Juveniles (persons)	*Percent of all juvenile defendants*	*Non-juveniles (persons)*	*Percent of all non-juvenile defendants*	*Juveniles and non-juveniles together*	*Percent of the total number of defendants*
Yes	8	26.67	75	16.27	83	16.90
No	22	73.33	386	83.73	408	83.10
Total	30	100.00	461	100.00	491	100.00

The observations of CPT seem to have proved true again, since compared to adult defendants, a significantly higher proportion of juvenile defendants reported ill-treatment (the difference is 10.4 percentage points).

Gender: The sample contained 448 (90 percent) male and 51 (10 percent) female interviewees. The data obtained concerning ill-treatment are included in the following table.

Table 17:
Were you ill-treated during the procedure?

	Women (persons)	*Percent of female defendants*	*Men (persons)*	*Percent of male defendants*	*Women and men together (persons)*	*Percent of male and female defendants*
Yes	4	7.84	79	17.95	83	16.90
No	47	92.16	361	82.05	408	83.10
Total	51	100.00	440	100.00	491	100.00

7.8 percent of female defendants reported ill-treatment, while this proportion was 18 percent among male defendants. Men therefore seem more likely to be abused by authorities than women.

Educational background: Table 18 shows the relationship between the occurrence of ill-treatment and the educational background of the defendant. (For clarity, some groups indicated separately in the section on demographic data are aggregated here).

Table 18:
Were you ill-treated during the procedure?

Educational background	*Yes*	*No*	*Total*
Less than 8 years of primary education (persons)	25	70	95
Percentage of defendants having completed less than 8 years	26.32	73.68	100.00
8 years (persons)	21	110	131
Percentage of defendants having completed 8 years	16.03	83.97	100.00
More than 8 years but without a secondary school diploma* (persons)	29	178	207
Percentage of defendants who completed more than 8 years but did not acquire a secondary school diploma	14.00	86.00	100.00
Defendants with a secondary school diploma** (persons)	8	50	58
Percentage of defendants with a secondary school diploma	13.79	86.21	100.00
Total number of defendants (persons)	83	408	491
Percentage of total number of defendants	16.90	83.10	100.00

** Those defendants who completed vocational school or frequented a high school but did not or have not yet completed their secondary studies. (Secondary studies are completed when the student acquires the secondary school diploma, which is a precondition of moving into higher education studies.)*

*** Those defendants who acquired a secondary school diploma, plus those with a university degree.*

The results prove the Hungarian Helsinki Committee's preliminary hypothesis, according to which the least educated defendants are the most likely to be ill-treated. The proportion of defendants reporting ill-treatment (26.3 percent) is significantly or nearly significantly higher among those who finished less than 8 years than the same figure concerning other groups or the overall sample. It is interesting that the "caesura" is between those with and without completed primary studies, while the difference between groups with a higher level of education is rather insignificant.

The criminal offense committed: When examining the eventual relationship between the criminal offense committed and the occurrence of ill-treatment, HHC focused on the different categories of offenses from the viewpoint of criminology. When arresting a robber, for example, whether the committed offense was violent or not has a greater effect on the police officer's reaction than

whether the offense is enumerated among the crimes against property in the Criminal Code.

Table 19:
Were you ill-treated during the procedure?

Type of offense	*Total number of defendants*	*Number of ill-treated defendants*	*Proportion of ill-treated defendants among all the defendants having committed this type of offense*
Violent offenses	227	46	20.26
Offenses against property	136	23	16.91
Economic offenses	10	0	0
Corruption	2	0	0
Traffic offenses	2	0	0
Drug related offenses	43	5	11.63
Other	30	2	6.67

The offenses not fitting into any of the categories are not included in this table (see above)

The type of offense committed by a certain defendant seems to have some effect on the occurrence of ill-treatment during the procedure. The perpetrator of a violent criminal offense is somewhat more likely to be ill-treated than those having committed other types of crimes.

Solely on the basis of the above figures, it is difficult to establish the reason behind this phenomenon. It is a possible explanation that the perpetrators of such criminal offenses are more susceptible to violence, and are therefore more likely to behave in a violent and threatening way during the arrest or the interrogation, thus evoking a violent reaction in the police officers. Police officers might also feel that an eventual "forceful" treatment of these specific defendants is somehow more legitimate.

> An interviewee arrested for bodily harm causing a threat to life reported that a policeman wearing civilian clothes had slapped him two or three times and said that "a real man must also stand slaps, not only give them" (6.18.10.).

Meanwhile, the public attitude toward a certain criminal offense does not seem to affect the behavior of police officers. For example, only two persons (8.3 percent) reported ill-treatment among the 24 in pre-trial detention for having committed an "offense against marriage, family, youth and sexual

morals" (as categorized in the Penal Code), even if – as indicated earlier – in the majority of these cases (19 cases, 79 percent) the actual offense committed was rape.

2. PSYCHOLOGICAL PRESSURE

Means of psychological pressure: Within the framework of the research, HHC also tried to identify the means (not qualifying as means of ill-treatment) by which officers conducting the investigation tried to extract a confession or other sorts of information from defendants. Questions were formulated concerning methods thought to be most "common", while efforts were also made to identify other, more rarely used mechanisms and techniques.

Table 20.a:
Did the officer conducting the interrogation promise during the interrogation that you would be released, if you made a confession?

Response	*Persons*	*%*
Yes	172	35.91
No	304	63.46
Does not remember	3	0.63
Total	479	100.00

Table 20.b:
Were you threatened during the interrogation that if you refused to make a confession you would be put in pre-trial detention or your detention would be prolonged?

Response	*Persons*	*%*
Yes	133	27.88
No	341	71.49
Does not remember	3	0.63
Total	477	100.00

As the above tables show, these methods are quite often used by officers conducting an investigation. Some practitioners emphasize that denial or the refusal to confess may make the ordering of pre-trial detention necessary, so referring to this fact is not inevitably "psychological pressure", it may be

regarded as objective information. This is the case for instance if there is a person who may testify against the defendant, but whose identity is also known to him/her. In such cases, if not taken into custody, the defendant may contact and try to influence the potential witness, so it is logical on the part of the investigating authority to initiate the ordering of pre-trial detention, whereas this measure may become unnecessary if the defendant makes a confession.[120]

In this regard however, the question may be raised: whether the severe restriction of personal freedom may be accepted for the sake of investigation strategy. Where is the border between preventing the frustration of the procedure and the investigators' intention to "soften up" the defendant? The question emerges, to what extent the prosecutor and the court may identify itself with the strategic motivations of the case officer initiating the ordering of pre-trial detention.[121]

At the same time, the circumstances and tone of the warning given to the defendant about the possibility of pre-trial detention shall also be taken into account when we examine whether it should be regarded as providing objective information or a form of psychological pressure. Many defendants reported having been threatened by the case officer that if they did not co-operate they would grow old and "rot" in prison (e.g., 2.9.7., 15.24.4.). The interviewees also mentioned a similar method in which a police officer promises that if the defendant makes a confession they will help him/her to get a more lenient punishment (8.6.1., 8.6.7., 8.6.13.).

> According to an interviewee, the officers explained to him during the interrogation that if he did not prove to be helpful, his relationship with his partner would be spoiled, while if he did co-operate with the officers they promised to help him (1.6.9.).
>
> If proved to be true, the case of the following defendant is especially flagrant. The case officer said that he knew that the defendant had not committed the crime, but since he was sure that the defendant had information about the perpetrator, he threatened to make sure that the defendant would be imprisoned instead of the real perpetrator if he did not co-operate with the authorities (2.11.5.).
>
> Another interviewee said that when he had withdrawn his previous statement, the officer had "promised him plus 20 years in prison" (6.17.9.).

[120] Endre Bócz's written comments on the Draft Report.

[121] János Bánáti's comments on the Draft Report.

Other favors are more rarely offered in order to convince the defendants to make a confession. 36 persons (7.8 percent of those who responded to this question) claimed to have been offered the possibility to receive visitors more frequently if they made a confession. 44 persons (9.4 percent) were threatened with limiting the possibility of visits in order to make them confess. A more frequent opportunity to write letters was offered to 12 pre-trial detainees (2.7 percent), while more chances to use the telephone were promised to 14 (3.1 percent) of them, in exchange for a confession. Meanwhile, officers threatened 25 persons (5.4 percent) with limiting written correspondence with the outside world and 22 (4.8 percent) with limiting the use of the telephone.

According to the interviewees, contact with the outside world is indeed often limited, as the officers do not only use this as a threat against defendants. More interviewees claimed that their letters were regularly withheld (1.1.3., 5.15.7., 9.5.1., 10.1.1, 13.22.6., 19.5.7., 19.14.8.), their visiting hours were cancelled (9.6.5., 11.11.10.), or they were not permitted to use the telephone (1.8.2., 1.5.6.). Some interviewees thought that the police officers were simply being mean, while others reported that their contact with the outside world was limited in order to put pressure on them.

> According to an interviewee, the officer gave him a letter sent by his family only after he signed "an official document" (16.25.7.).
> Another person said that his allowances (visits, packages) had been limited by the case officer because he had refused to make a confession (26.1.6.).

According to the relevant regulation,[122] every person in pre-trial detention has the right to receive at least one visitor per month. The rights of a person who can only receive his/her first visitor on the fourth week of the detention (or even later) are therefore formally not violated. However, being deprived of the possibility of meeting one's family members for such a long time after being arrested (or, on the other hand, the promise of being able to meet them) can play an important role in breaking the defendant's resistance. For this reason, interviewees were asked about the time of their first visit.

[122] Police Jail Regulation, § 2 Par (1) and Penitentiary Code § 118 Par (1)

Table 21:
On which week were you allowed to receive your first visitor following your arrest?

Week	*Persons*	*%*
First week	46	12.01
Second week	109	28.46
Third week	81	21.15
Fourth week	69	18.02
Even later	78	20.37
Total	383	100.00

38.4 percent of the interviewees (more than a third of them) could only receive their first visitor on the fourth week of the detention or even later. HHC is of the position that the modification of the relevant regulation would be necessary in order to enable persons in pre-trial detention to receive their first visitor within, at most, one week following the arrest.

Nine interviewees in pre-trial detention (2 percent) were offered places in a better cell if they made a confession, while 12 of them (2.6 percent) were threatened with placement in a worse one, if they did not co-operate.

> An interviewee reported that the case officer had threatened to put him in the cell of "queers" if he was too stubborn. Another person claimed that the officer told him "you will see, your cellmates will make a pussy of you" (1.3.2.).

Many persons claimed that before or during their interrogation, the officers prevented them from satisfying their basic needs in order to put pressure on them.

Table 22.a:
Have you ever been kept waiting for a long time without food before (during) an interrogation?

Response	*Persons*	*%*
Yes	35	7.49
No	430	92.08
Does not remember	2	0.43
Total	467	100.00

Table 22.b:
Have you ever been kept waiting for a long time without anything to drink before (during) an interrogation?

Response	*Persons*	*%*
Yes	23	4.94
No	440	94.42
Does not remember	3	0.64
Total	466	100.00

Table 22.c:
Have you ever been kept waiting for a very long time before (during) an interrogation?

Response	*Persons*	*%*
Yes	102	21.61
No	367	77.75
Does not remember	3	0.64
Total	472	100.00

Quite a few defendants reported having been prevented from eating or drinking before and during the interrogation. Even more, 21.6 percent of the interviewees, complained about having been obliged to wait for a long time and about extremely lengthy interrogations during which the officers tried to "exhaust" them. In the framework of the research, it was revealed that defendants are often not allowed to go to the toilet. In the case of heavy smokers, preventing smoking can be an extremely efficient way to put pressure on the interrogated person. Three of the interviewees (5.16.8., 19.5.4., 1.3.2.) reported that this had happened to them, while another person claimed to have been told "you can smoke, if you tell us where your accomplice is hiding" (1.3.2.).

> An interviewee reported that he had been taken to the interrogation before breakfast and therefore he had been prevented from eating for 14 hours (1.3.7.).
> Another person claimed that he had been taken to the 9th district Police Headquarters around 3 PM, but his interrogation had started only late at night (around 0:30 AM). He spent this time in the short-term arrest cell. The first meal was given to him in the Gyorskocsi Street Police Jail only the next morning (1.3.10.).

A man in pre-trial detention for forging documents claimed to have been held for hours in the short-term arrest cell, where he had not been given any food or drink. Since he refused to sign the minutes of the interrogation, he was blackmailed by the officers: "you can only go to the toilet if you sign these papers" (1.6.2.).
Another defendant complained about having been interrogated for nearly a whole day (the interrogation started at 2 AM), while he had been permitted to go to the toilet only once (11.11.10.).
A person reported that his interrogation had started in the morning and continued throughout the whole day. Two officers took turns in questioning him (1.3.8.).
The case of a person interrogated by customs investigators is extremely blatant. The person was interrogated from 2 to 8 PM, while he was not allowed to go to the toilet, was not given any water, and was not allowed to have a break, although formally he was still a witness (12.11.1.).
A defendant allegedly suffering from a renal disease was arrested at 9:30 AM and was not allowed – despite his repeated requests – to go to the toilet before 7:15 PM (26.32.11.).
Significant physical suffering was reported by a person who claimed to have been taken at 5 AM to the police headquarters of Sátoraljaújhely, from where he was transferred to Miskolc around 1 PM. During this time, he was held handcuffed with his eyes covered and he was not given any food or drink, but was permitted to go to the toilet. The first time he was given something to drink, was at 4 PM. He could eat only in the evening, after his interrogation (12.11.5.).
Another interviewee reported having been left alone for hours in an interrogation room of the Teve street police headquarters (25.20.1.).
A detainee from the Venyige street remand prison was transported to the 21st district Police Headquarters to be interrogated and to receive a visitor, but finally neither happened. He had to wait for 16 hours before being retransferred to Venyige street (1.5.5.).

A relatively high proportion (84 persons, 19.2 percent) of the 437 interviewees responding to the relevant question claimed that during the interrogation the officers put pressure on them in a particular way not mentioned above.

Table 23:
Did the officers try to break your resistance in any other way during the interrogation?

Response	*Persons*	*%*
Yes	84	19.22
No	353	80.78
Total	437	100.00

During the interviews, HHC tried to identify these "other methods", which showed a great diversity even if some schemes were recognizable. For instance, it seems that officers often try to "soften up" the interrogated persons by reviling and humiliating them and by using a threatening tone. A more serious form of this method occurs when defendants are explicitly threatened with ill-treatment and physical aggression.

A detainee, who also claimed to have been prevented from going to the toilet, complained about the unpleasant tone the officers used when talking with and even shouting at him during the interrogation (10.1.4.).

An interviewee claimed that the officers of the 11th district Police Headquarters had been shouting at him and continuously reviling him (26.32.5.).

Another interviewee reported that the officers had been shouting and threatening to beat him throughout the interrogation (10.28.5.).

A person claimed that officers had spat at him and belched in his face during the interrogation. The officers opened the window saying that they would certify that he tried to escape, and "anything can happen to those who try to escape" (1.6.5.).

Another interviewee was threatened with being beaten by the "others" until he accepted responsibility for the crime committed, if he did not voluntarily do so (6.1.3.).

A defendant reported that one of the officers conducting the interrogation had pointed a pistol at him (8.5.6.).

According to another interviewee, one of the detectives walked around with a hammer in his hand during the interrogation. In addition, the defendant was reviled and threatened with being shot (19.5.3.).

In the case of another interviewee, the officer tried to break his resistance in a rather bizarre way: he walked up and down with a hypodermic needle in his hand, threatening to stick it into the defendant's chin (12.11.13.).

According to some interviewees, family relations are also used in order to put pressure on defendants during the interrogation.

A defendant was present when the officers called his family members on the telephone during his interrogation but did not allow him to talk to them (13.21.4.).
The case officer told another interviewee that his children would be taken into state care, if he did not make a confession (2.11.2.).
An interviewee claimed that his daughter had been put in pre-trial detention, and he had been told that if he stopped pleading not guilty his child would be released (13.22.5.).
Some police officers explained to another defendant that while he was in detention his wife would surely be cheating on him, but if he co-operated he would be released (13.22.6.).
A defendant was threatened by the case officer two weeks after his arrest that if he did not admit to committing the crime his five months pregnant partner would also be accused (12.11.7.).

The officers conducting the investigation often violate the relevant formal procedural regulations, aiming to create a situation that breaks the defendant's resistance.

An interviewee claimed that his formal interrogation had been preceded by an informal one, during which ten persons were "bombarding" him with questions (1.6.9.).
Another defendant reported that he had been interrogated three times a day. On the occasion of an on-the-spot survey, he was allegedly threatened with being tied to a tree and beaten up (2.10.10.).
The following case sheds light on the importance of the counsel's presence: a person in pre-trial detention reported that the case officer had summoned his legal representative to appear 15 minutes later than the actual beginning of the interrogation. During these 15 minutes, the officer tried to convince the defendant to make a confession (4.13.2.).

There are unique cases, too, which do not fit in any of the above categories.

An interviewee reported that before his interrogation he had been obliged to stand outside in the cold for five hours without a coat (6.17.9.).
A person, who also reported physical abuse, claimed that after he had been beaten up (which did not break his resistance) a female police officer had come into his

cell trying to convince him to sign the minutes. She complained that her shift was over and three children were waiting for her at home (the interrogation took place late at night) (1.6.2.).

In a highly special case, a man could only be stopped during a car chase with a head-on collision. Later, he was told that the two policemen driving the car had both died, therefore he had "killed" two persons. The truth – that the two policemen just had some fractures – was only found out later by his counsel, who could only visit and inform him three days later (11.11.10.).

A person interviewed in the Sárvár police jail said that his foot had been injured while trying to escape and the officers had told him after his apprehension that he would not be seen by a doctor while refusing to make a confession (14.22.1.).

The relationship between psychological pressure and certain characteristics of the defendant: As in the case of ill-treatment, HHC tried to find out whether there is a relationship between the general pattern of abuse committed by the authority and certain demographic characteristics of the defendant or the criminal offense he/she allegedly committed.

The Roma: As for the majority of the means of psychological pressure, no significant difference could be identified between defendants of Roma and non-Roma origin. For instance, 36.8 percent of Roma and 35.3 percent of non-Roma defendants were promised that they would be released if they confessed. 10.5 percent of Roma defendants were threatened with limited family contact if they refused to admit the offense, while 8.8 percent of non-Roma defendants heard the same threat. 20.4 percent of Roma and 18.9 percent of non-Roma defendants claimed that the authority had tried to break their resistance using a method not specified in the interviewers' preliminary list.

A more significant difference could be identified only in two cases. 34.5 percent of the Roma, but only 25.4 percent of the non-Roma, claimed to have been threatened with pre-trial detention or an extension of it if they did not make a confession. 29.2 percent of the Roma and 19.2 percent of the non-Roma defendants were allegedly kept waiting for a long time before their interrogations. As the respective proportions of interviewees reporting other methods of psychological pressure generally coincide among Roma and non-Roma defendants, these two specific differences do not seem to refer to discrimination.

Foreign nationality: There is only one method of psychological pressure with regard to which HHC found a significant difference between foreigners and non-foreigner defendants: 37.2 percent of Hungarians were promised release if they made a confession. The corresponding proportion among defendants

of foreign nationality was significantly lower (23.3 percent). It is interesting and somewhat surprising though that a lower proportion of foreigners claimed to have been threatened with limiting the different forms of communication with the outside world, or to have been offered supplementary possibilities of communication, provided that they made a confession. In all of these categories, the proportion of interviewees reporting a certain method of psychological pressure was higher among Hungarian defendants, even if the difference was not significant.

Juvenile persons: As for the different methods of psychological pressure not qualifying as ill-treatment, no significant difference could be identified between juvenile and adult defendants in any of the different categories. For instance, 27.9 percent of adult and 27.6 percent of juvenile interviewees claimed to have been threatened with ordering or prolonging their detention with the aim of convincing them to make a confession.

Gender: The findings of the study show that the gender of the defendant is not likely to play any role in determining whether the case officer will try to put psychological pressure on the defendant, and if he/she does, which means will be chosen. The respective proportions within the group of male and female defendants largely coincide: 36.1 percent of men and 34 percent of women reported having been promised release in exchange for an eventual confession. The percentage of female (22 percent) and male (21.6 percent) detainees allegedly kept waiting for a long time before interrogations is also practically identical.

Educational background: The educational background of the interviewee did not seem to significantly influence the occurrence of different forms of psychological pressure. However, defendants having obtained a relatively higher education are less likely to be threatened with limited contact with the outside world (fewer visits or phone calls, less correspondence). This may be because these rights are based on the provisions of the relevant law, which stipulates that the case officer can restrict these rights only with a well-founded reason, i.e., for the sake of a successful investigation. The authority might believe that a more educated person (who is therefore more conscious of his/her rights) is less likely to believe that his/her contacts with the outside world can be restricted without any reason.

3.
OTHER FORMS OF INJURIOUS TREATMENT IN THE CRIMINAL PROCEDURE

In addition to the different forms of ill-treatment committed by authorities and the methods of psychological pressure aimed at promoting the investigation, HHC also focused on the occurrence of degrading and abusive treatment – when defendants were somehow harassed during the criminal procedure. These acts are less serious and therefore do not qualify as ill-treatment. Besides, they do not have a specific aim, such as convincing the defendant to provide information, to make a confession or any other sort of declaration.

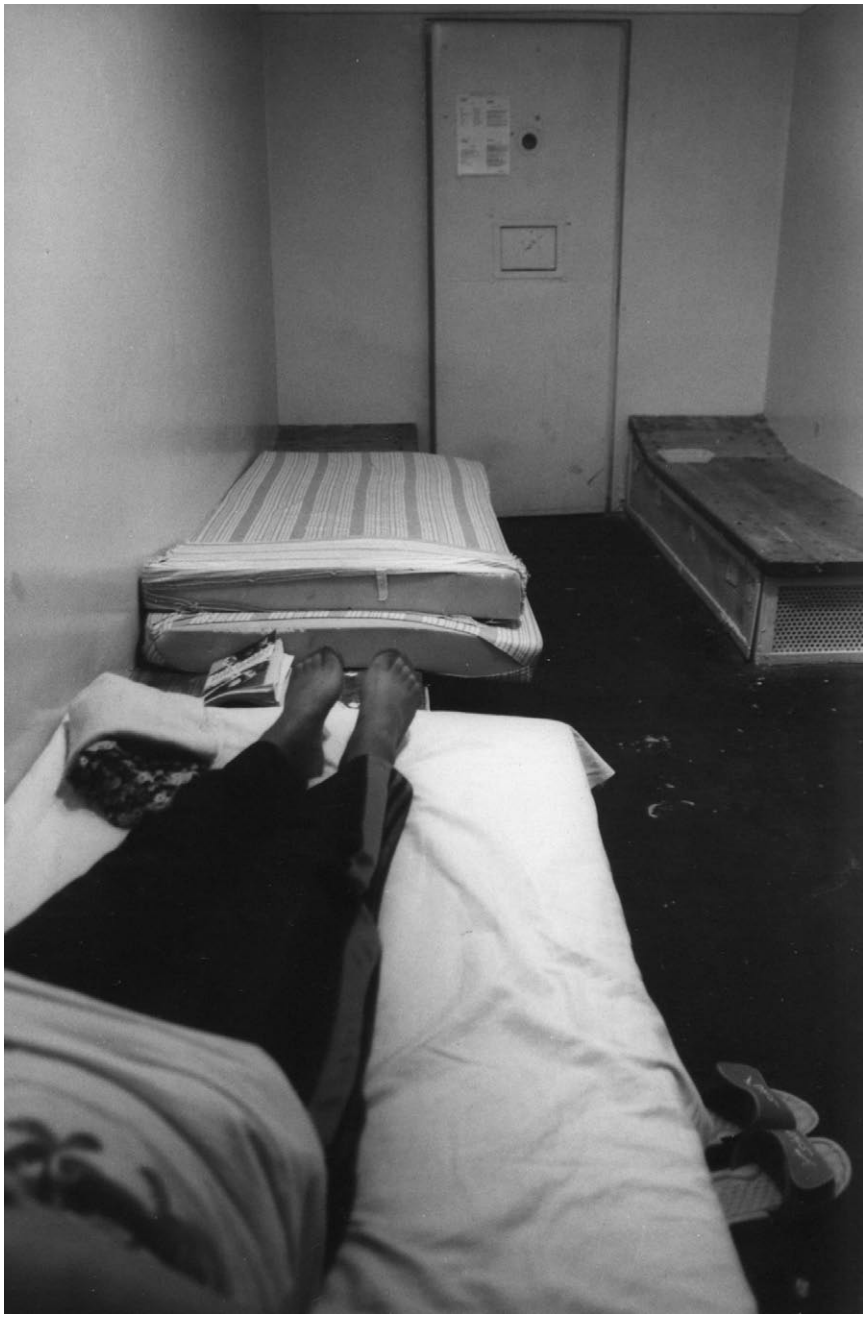
In addition to the above question, we also tried to identify occurrences of beatings and other injurious treatment committed by fellow detainees. This category also includes, as reported by detainees, a series of serious criminal offenses causing injuries. These cases are discussed under this category and not among the different forms of ill-treatment, since "ill-treatment" – in our terminology – refers to the use of unlawful force by officials.

Table 24:
Were you harassed during the procedure by...

	Yes		*No*		*Total*	
	Persons	*%*	*Persons*	*%*	*Persons*	*%*
...a cellmate	38	7.88	444	92.12	482	100.00
...the case officer	109	22.95	366	77.05	475	100.00
...a police jail guard	28	5.93	444	94.07	472	100.00
...a prison guard	39	8.25	434	91.75	473	100.00
...another person	20	4.42	432	95.58	452	100.00

Injurious treatment by cellmates: This topic proved to be rather sensitive. Many detainees were reluctant to speak about what was going on in their cells. Some of them reported rather minor incidents.

> An interviewee told that his cellmate had stolen his letter written to his girlfriend (with sexual content) and read it out loud in another cell for 20 other detainees (1.2.4.).
>
> Another interviewee reported that his fellow detainees had lodged a complaint against him claiming that he had beaten them up. In reality this was not true; they only did so because he had refused to give them cigarettes (10.28.6.).



A person complained about the fact that his cellmates were stealing his phone cards and cigarettes (6.17.4.).
Another detainee reported that his cellmates had poured water on him and put toothpaste on his bed (19.14.8.).

Several internal conflicts are allegedly settled with the use of physical force:

An interviewee quoted the following incident as harassment: he repeatedly asked his cellmate suffering from a fungus disease not to step on his bed and his belongings. Since his cellmate did not honor his request, he finally slapped him. The cellmate lodged a complaint against him and he was transferred to the Csillag prison in Szeged (6.17.8.).
A person in pre-trial detention said that other detainees had tried to take his belongings in the temporary detention cell. He hit one of them and thus "the conflict was settled". The same person expressed his opinion that several detainees request a transfer to another penitentiary institution only in order to be able to steal in the temporary detention cell (8.6.9.).
An interviewee reported that he had been beaten up by a fellow detainee (not a cellmate) following a dispute. He was taken to hospital since his injured eye needed to be stitched up (9.6.6.).

Some interviewees reported extremely serious cases of regular and systematic torture and humiliation (the question of whether detainees turn to any forum for legal remedy in these cases is dealt with later).

A defendant held in the Venyige street remand prison reported that his cellmates had been trying to "take away his more valuable belongings". When he did not let them do so, he was repeatedly beaten. He asked to be transferred to another cell and his request was immediately granted (1.3.9.).
A person detained in Veszprém was also transferred to another cell after being called a "damned Romanian" and being knocked down by a cellmate (2.11.4.).
Another detainee of the Veszprém Penitentiary Institution said that in the old – now closed – prison. (The so-called "Castle") his cellmates had forced him to drink 8 liters of water. When he threw it all up, they pushed his head into the vomit (2.10.4.).
An interviewee reported that in Kaposvár his cellmates had taken away his belongings and clothes, then he was obliged to clean up and wash: "if I did not do it, they beat me up" (6.17.9.).

A detainee of the penitentiary institute for juveniles in Tököl claimed to have been beaten and raped by his cellmates. A criminal case is currently pending against the perpetrators (9.5.5.).

Another person in pre-trial detention in Tököl also claimed to have been beaten. In response to the question concerning the reason for the aggression, he said, "they beat me because I was a newcomer" (9.5.8.).

A female detainee at the Debrecen Penitentiary Institution claimed that her cellmates wanted to force her to drink her own urine and tried to push up a plunger into her vagina. Furthermore, they cut her hair and shaved her eyebrows (10.1.4.).

A person reported that his cellmates splotched him with toothpaste and burned toilet paper between his toes. He did not lodge a complaint (19.5.2.).

An elderly detainee claimed that his cellmates were always mocking him because of his age. "Young guys, they never let me alone". He said that despite his illness, they were always giving him different tasks to carry out, making him clean up the cell and even threatening him. Besides, they once burned his towel (12.20.5.).

According to the statistics of the National Prison Administration, in 2003, penitentiary institutions conducted disciplinary procedures and/or filed reports with the police in 1,100 cases of unlawful acts committed by inmates against each other. The cases included blackmailing, maltreatment, rape, theft, defamation, and so on. The NPA emphasizes that although they take firm action against such abuses, the latency – especially in the case of minor offenses – is still very high.[123]

Injurious treatment by the officer: 109 (22.95 percent) out of the 475 persons responding to the relevant question claimed to have been harassed by the case officer in a way that does not qualify as ill-treatment or a form of psychological pressure.

Among the examples reported, there are some which cannot be objectively perceived as unlawful treatment or abuse committed by officials. For instance, an interviewee in pre-trial detention for having injured a woman complained about the fact that the officer in charge of his case was also a woman, who would therefore "take revenge on him" (26.32.6.). It is also difficult to agree with the defendant who reported that – out of malice – the case officer did not plea bargain with him but with his accomplice, who testified against him (2.10.3.), or with the one who complained about the fact that an informer had been placed in his cell in the Gyorskocsi street police jail (1.5.10.).

[123] Müller Anikó's comment at the Round Table.

However, most complaints did not refer to such problems, but to really severe cases concerning for example different forms of contact with the outside world. As it has already been touched upon in Section 2, many defendants think that the officers retain their incoming and outgoing letters out of malevolence.

> An interviewee reported a case in which the case officer decided not to send out his letter after inspecting it, but did not inform him of this decision (1.5.6.).
> Another interviewee claimed that the case officer had purposely failed to inform him that his wife had moved back to her mother's house, so that for a long time he had kept on sending her letters in vain (19.5.3.).

Taking into consideration the importance of maintaining contact with the family, it is not surprising that detainees can hardly tolerate any complication related to visits. In their defenseless situation it is easy to understand their resentment, if a very much expected meeting does not take place through no fault of their own.

> A detainee of the Venyige street remand prison claimed that the case officer was constantly modifying the time of visits (1.5.11.).
> Another interviewee was promised that he would be permitted to receive a visitor, but the case officer went on a holiday, therefore the visit could not take place (4.14.1.).
> A similar case was reported by a detainee in Szeged, whose "extra" visit could not take place either, for the same reason (6.5.9.).

Sending packages is also problematic (for example 6.5.8.).

> A defendant reported that the officer had not allowed him to receive packages, therefore – not being able to receive clothes from home – he had to wear the same T-shirt for nine months. The problem was resolved only when he was transferred to the Szeged Penitentiary Institute (6.17.8.).
> Another interviewee claimed that the officer had told his mother not to send cigarettes to his son, since smoking was prohibited in the police jail, which was not actually true. The reason for providing this false information was that the defendant had not been "co-operative" enough when making a statement (8.6.9.).

Many persons (for example 1.2.4.) defined lengthy investigations as abusive treatment, which seems to be quite understandable considering the psychologi-

cal pressure caused by pre-trial detention. Those detainees suffer the most from the pre-trial detention, who have already pled guilty and are therefore waiting to start serving their sentence.

> A person arrested for theft reported that the case officer had been "blocking" his procedure for three months, even though he had already admitted having committed the criminal offense. The interviewee was of the opinion that personal antipathy was behind the officer's actions (1.5.6.).
> Another detainee, interviewed in July, claimed that the investigator was lengthening the procedure, the only suspect of which was the interviewee. The procedure could have been terminated in December, but at the time of the interview, the investigation still had not been closed (1.1.1).

Besides the above, there are a series of further different complaints.

> A person in pre-trial detention felt aggrieved at the fact that the officer had registered in the interrogation records that the defendant had earned his living from delinquency. Meanwhile, the detainee allegedly reported that he had a temporary job and even disclosed the address of his workplace (3.12.2.).
> Another interviewee was not permitted to inform his parents of his detention for days following his arrest (6.5.2.).
> A defendant asked the prosecutor conducting the investigation in his case to allow his physician to visit him and carry out some medical examinations. His request was rejected without any reason (1.6.3.).
> A juvenile detainee claimed that the case officer had been mocking his parents when he told them to come and take their son home, while in reality he had not been released. The defendant lodged a complaint concerning this treatment and reported that the likely reason for the officer's behavior was that the juvenile detainee had previously refused to make a statement "to his taste" (9.5.7.).
> A defendant claimed that he had been put in solitary confinement while the case officer was aware that he could not tolerate solitude (he had already repeatedly tried to commit suicide). Furthermore, he was allegedly threatened with having his visits cancelled when the officer found out that he had sent a letter of complaint to the Hungarian Helsinki Committee (9.6.7.).
> Another detainee claimed that an investigator had called him a "gypsy" with a pejorative tone. He lodged a complaint with the public prosecutor, but only verbally (12.11.5.).

A person detained in the Gyorskocsi street police jail claimed that he had been harassed by the case officer, since he was always transferring him to another cell every 6-7 days (26.32.9.).

Injurious treatment by police jail guards: As Table 23 indicates, fewer complaints were formulated against police jail guards. The most frequent conflicts reported are in connection with the use of the toilet, since in contrast with penitentiary institutions, police jail cells generally do not contain a toilet, the detainees are therefore obliged to knock on the door and call the guards in cases of necessity. The guards perceive this as harassment and can therefore hardly tolerate it if a detainee wants to go to the toilet more often or out of the so-called "toilet periods". It is thus not surprising that most complaints referred to police jail guards' practice of keeping detainees waiting for long periods before letting them out to the toilet (1.1.4., 5.15.4., 11.11.3., 23.31.1., 26.32.12.), or not letting them out at all (12.11.3., 26.1.8.).

It seems that there has not been any significant improvement in this respect since the preparation of the 1996 report, which stated that "In the District [...] VI-VII jails, the guards responded offensively and aggressively to knockings and the detainees were compelled to urinate in empty milk or soft-drink containers."[124]

Seven years later, in 2003, an interviewee detained in the Venyige street remand prison still found it necessary to mention that in the police jail of the 6th and 7th district he had not been permitted to go out to the toilet when he had asked the guards (1.5.1.).

The lack of toilets in the cells enable the guards to use the denial of access to the toilet as a way of disciplining and punishing detainees.

A defendant reported that after they had been listening to the radio too loudly, they had not been permitted to go to the toilet for some time and they had always been the last to take showers (8.6.14.).

Poor jail conditions, most of all the insufficiency of ventilation, also led to conflicts.

[124] Punished before Sentence, p. 54

An interviewee complained about the fact that some guards do not allow them to open the windows, even during summer heat-waves (1.1.1.).
The director of the Gyorskocsi street police jail allegedly permitted the opening of the small window on the cell doors during summer heat-waves, but the guard in charge refused to do so (26.1.8.).
A detainee from Debrecen reported that once, during a summer heat-wave, he had begged the guard to open the small window on the cell door, but he had refused to do so. Finally, the detainee suffered a heart-attack and had to be taken to a hospital (10.1.9.).

Some defendants felt aggrieved about the derisive attitude of the guards and the degrading tone they regularly use with detainees (11.11.3., 19.14.8, 26.32.10.). Two persons claimed to be regularly called a "gypsy" in a pejorative tone (1.3.2., 1.3.7.). In addition, some further – and rather unusual – forms of degrading treatment were also reported.

A detainee of the Zalaegerszeg police jail claimed that the guard had taken a bite of his meal before giving it to him (13.22.1.).
A detainee from Szeged felt aggrieved at the fact that he had had to gather rubbish which he had not thrown out (5.15.7.).
An interviewee from the Gyorskocsi street police jail claimed that in Gödöllő, the jail personnel had always dispersed his belongings on the occasion of cell inspections (26.1.9..)

Some significantly more serious abuses were also reported.
An interviewee reported that a guard had slapped him on the head because he came down from his bed too slowly and did not stand at attention (12.20.5.).
A detainee from the Aradi street police jail claimed that in the Cegléd jail his medicines had not been dispensed to him, even though his illness had been well-known to the guards (25.20.1.).
A person detained in the Gyorskocsi street police jail claimed that once when the guards had accompanied him to use the telephone, the handcuffs had been put on his hands too tightly. When he asked one of the guards to loosen the handcuffs, the other one told him "just show him how tight they can be" and the handcuffs were tightened even more (26.32.10.).

Injurious treatment in penitentiary institutions: 39 out of the 473 interviewees (8.6 percent) claimed to have been harassed by the personnel of the peniten-

tiary institution, in a way which does not qualify as ill-treatment. Among these complaints there are some which relate to the tone used by the guards (19.5.7., 19.5.2.) or to calling detainees "gypsy" in a pejorative way (1.3.7.). It also became clear that the reaction of more self-assertive detainees to an offensive tone can lead to more serious consequences.

> A defendant detained in the Venyige street remand prison reported having been called "son of a bitch" by a guard. When he responded to the insult, the guard took him to the shower and threatened to beat him up. The same guard is still provoking him on the occasion of cell inspections (1.6.1.).
>
> A detainee from Sopronkőhida once left his cell in slippers, which is prohibited. The guard in charge then filled out a disciplinary form (a form used to record the initiation of a disciplinary procedure), but he also added that the detainee was smoking. When he protested, the guard beat him on the head saying "shut up, gypsy". The detainee did not take the insult silently, which infuriated the guard who threatened to take him down to the jail and "kill" him. In the end, the detainee was punished for smoking as well. He said that "this guard cannot stand Roma people" (8.6.3.).
>
> A defendant suffering from a cardiac disease reported the following case. Once he was prescribed a medical examination to be carried out in an outside hospital. When the guard told him to get prepared to go out, he asked where they were going. The guard responded to him roughly "It's none of your business. Shut up!" According to the interviewee, the guard was infuriated by the lack of humbleness. Later, when waiting for the elevator, the guard threatened to shoot him if he made any movement outside the prison. He was taken to the hospital handcuffed, fettered and leashed. He had to go up to the third floor on foot, despite his cardiac disease and the fact that the hospital is equipped with an elevator. Since because of the fetters he could not walk on the stairs, he was held under the armpits and "dragged" upstairs by the guards. When he protested, the guard repeatedly threatened to shoot him. When he finally arrived at the doctor's consulting room, he was already so ravaged that he requested that the physician not carry out any examination. A disciplinary procedure was then initiated against him by the chief doctor of the penitentiary institution for having "refused a medical examination" (1.6.3.).

Disciplinary procedures constitute a sensitive issue. Detainees often feel that their respective acts do not deserve such consequences, and that if someone is not "liked" by the guards, a disciplinary procedure can easily be initiated against him/her.

A detainee from Kecskemét said that he was threatened with a disciplinary procedure ("you will be transferred to the jail") whenever he asked a question. If someone lodges a complaint with the prosecutor, he will be transferred to a far-away penitentiary institution, separating him from his family (11.11.2.).
The above-mentioned detainee suffering from a cardiac disease told that once, during a cell inspection, a mobile phone had been found in his cell. The inmates were not in the cell during the inspection. Later, he was called to go back to the cell, only to see the guards pulling out a phone, which was not his, from under his mattress. A disciplinary procedure was then initiated against him. After the guards left, a cellmate told him that he was the owner of the phone and that he had informed the guards about this (1.6.3.).

In penitentiary institutions, the lights and the television in the cells are switched on and off by the guards, from outside. According to reports, guards occasionally use this as a way of disciplining and punishing detainees (similar to the way access to the toilet is used by police jail guards). Since this form of punishment is not mentioned in either the Penitentiary Code or the Penitentiary Rules, plus a disciplinary procedure can only be initiated against a defendant who infringes the rules of detention and only within the framework of a procedure strictly defined by the relevant laws, this practice is unambiguously unlawful and the defendants in pre-trial detention are right to feel aggrieved about it.

A juvenile detainee in Tököl claimed that if the inmates make too much noise the guards turn off the lights so that they cannot watch television, even if according to the daily timetable they would have the right to do so (9.6.1.).
An interviewee in Kaposvár said that if the cell is not straightened up enough, the guards sometimes turn off the electricity for a whole day (19.5.2.).
A detainee of the Venyige street remand prison, who is quite aware of his rights and who therefore often finds himself in conflict situations, reported that even though he had permission to stay in bed for the whole day (for health reasons), the guards regularly tried to make him stand up and when he refused to do so, they switched off the television, thereby punishing the whole cell (1.6.2.).

Problems concerning contact with the outside world and the family were also observed.

Complaints were formulated against an educator of the Budapest Penitentiary Institution who allegedly passed on the detainees' letters with delay or even failed to do so (7.4.3.).
Another interviewee claimed that once he was not permitted to kiss his girlfriend during her visit (9.5.1.).

When evaluating such complaints, it should be repeatedly emphasized that – as stipulated by the relevant law – a detainee in pre-trial detention shall only be subject to restrictions which result from the character of the criminal procedure or which are necessary for the order of the institution implementing the detention.[125] It should not be forgotten either how important such "physical" contacts can be for a person who has been in detention for months (who otherwise has not yet been declared guilty with a legally binding verdict).

Some of the complaints arise in connection with the detainees' belongings and their alleged expropriation.

An interviewee reported that during a regular cell inspection a bottle of cologne, which inmates do not have the right to have with them, had been found among his belongings. He asked the guard in charge to put the perfume in his deposit, but the guard refused to do so, saying that he would destroy the bottle, and took it away. The next day, the detainee was shown the official record about the elimination of the cologne and was asked to sign it. Instead of doing so, he noted on the paper that he had not seen the elimination. The cologne somehow "turned up" later (1.6.3.).
Another detainee claimed that one of the packages he had received had been opened by some members of the personnel, who had taken away some objects from the package and sent it back to the sender with a note that it had been damaged (1.6.9.).
A detainee claimed to be regularly harassed by the personnel of the Esztergom Penitentiary Institution because of the "offense against sexual morals" he had committed. Once, for instance, the guards dispersed the sugar sent to him in a package all over the corridor and he was obliged to sweep it all up (sugar is not permitted to be sent to detainees). It also happened that a package addressed to him, was sent back to the sender three times, thus all the food in the package was spoiled when he finally received it (8.6.6.).

[125] CCP, § 135 Par (3)

During the Hungarian Helsinki Committee's visits to penitentiary institutions in 2000 and 2001, many complaints were formulated in connection with the difficulty of accessing medical care. 178 interviewees (31.5 percent) out of 565 reported occasions when in cases of necessity – by fault of the penitentiary institution – they did not have access to a physician or they only had access with significant delay.[126] In this respect, it is a welcome improvement that this time only one person (a detainee at the Miskolc Penitentiary Institution) claimed that a guard had once refused to facilitate his access to a physician (12.20.7.).

Injurious treatment by other persons: Three persons identified the physician of the penitentiary institution as an "other person" responsible for unlawful abusive treatment at their expense.

> A person in pre-trial detention reported that the physician of the penitentiary institution intentionally refused to provide him with due medical care. His complaints lodged with respect to this treatment are regularly rejected by the prison personnel. He claimed that he was often given less food than necessary and that his diet was inappropriate (as he suffers from diabetes). The reason for the physician's negative attitude – according to the defendant – is personal antipathy. Once the doctor allegedly told him: "What do you want? You will perish here anyway" (8.6.4.).
> Another interviewee reported that once he asked the physician to prescribe a tranquilizer for him. The doctor responded that in this case he will consider transferring him to the IMEI (Forensic Observation and Mental Institution) of which the defendant was afraid, and this finally made him withdraw his request for tranquilizers (8.6.7.).

[126] Double Standard, p. 79

> A third defendant reported that once, when he had had a high temperature and a bad cough and had gone to see the doctor, he had not examined him, just looked at him, gave him some vitamin C and sent him away. The detainee requested permission to stay away from his workplace for one day, but the doctor refused to provide such a permission. The interviewee still has a pain in his back (8.6.11.).

Other complaints do not fit into the above classification, as the group of persons involved is highly varied.

> An interviewee reported that before he had been transferred to the Venyige street remand prison, an officer responsible for deposits in the Markó street jail had thrown some of his belongings (180 Duracell batteries, chocolate, coffee, salami) with a total value of HUF 300,000 (EUR 1,200), into a suspiciously clean and empty trash bin, although the interviewee had requested that he send everything home or put it in his deposit. The detainee was of the opinion that the officer was trying to acquire his belongings (1.6.3.).
>
> A detainee at the Gyorskocsi street police jail complained that the low-fat diet prescribed to him by the doctor was hardly (on Saturdays and Sundays never) observed (26.32.9.).
>
> Another detainee at the Gyorskocsi street police jail was aggrieved because he had been put – according to him, out of pure malice – in a non-smoking cell, while he was a heavy smoker (26.32.10.).

The relationship between abusive treatment and certain characteristics of the defendant: In the framework of the research, efforts were made to identify a relationship between certain demographic characteristics of the defendant and the concrete form/perpetrator of abusive treatment (not qualifying as ill-treatment).

The Roma: Among the above-mentioned five categories (cellmates, officers in charge of the investigation, police jail guards, penitentiary institution personnel, other persons) it was only that of the case officer in which a nearly significant difference could be identified between Roma and non-Roma interviewees. 30.2 percent of the Roma (35 persons) reported forms of abusive treatment not qualifying as ill-treatment, while the same proportion among non-Roma interviewees was 20.5 percent (73 persons). However, only 14 persons out of 104 (13.5 percent) claimed that the reason that he/she was harassed was his/her origin (23 persons referred to personal antipathy, 67 to other reasons).

Foreign nationals: As for foreign nationals, the only category with any important difference was that of the case officer, since 28.2 percent of foreigners and 22.5 percent of non-foreigners felt they were victims of abusive treatment by the investigator. However, this difference does not qualify as significant.

Juvenile persons: It is interesting, while far from mysterious, that the only category with a visible difference between juveniles and adults was that of cellmates. While 20 percent of juvenile defendants and 23.2 percent of adults claimed to have been somehow harassed by the case officer (therefore no significant difference could be established), the respective proportions concerning the occurrence of abusive treatment by cellmates was 16.7 percent for juveniles and 7.3 percent for adults. Even if the difference is a little too small to be considered statistically significant, it shows that more juvenile detainees are treated in an abusive way by their cellmates than adults. This observation concerning juvenile detainees' interpersonal conduct is supported by the educators' relevant experiences, too.

Gender: The difference between male and female detainees – never exceeding 10 percentage points – could not be considered significant in any of the categories. However, in two categories a visibly higher percentage of men reported abusive treatment. 14.6 percent of women and 23.9 percent of men claimed to have been treated in an abusive way by the case officer, while the same complaint concerning the penitentiary institution personnel was formulated by 2 percent of female and 9 percent of male detainees.

Educational background: It is interesting that interviewees who have a university degree or have acquired a secondary school diploma – who otherwise constitute only a relatively small proportion of detainees – complained most about abusive treatment by cellmates (17.2 percent and 14.3 percent respectively, while only 2.4 percent of defendants having completed 8 years of primary education and 10.8 percent of those not having completed primary education referred to the same). This phenomenon could have two different explanations. On the one hand, the community of detainees might refuse to "integrate" those who prove to be different from the majority in terms of educational background. On the other hand, detainees with a more sophisticated educational background, who were "uprooted" from their usual middle-class environment, might also become uncertain and might react to incidents in a more sensitive way than those fellow detainees who accept and are used to the norms of a different subculture.

It is also worth analyzing the difference between figures referring to an alleged abusive treatment by the case officer. A high proportion (28.7 percent)

of detainees who did not complete primary education claimed to have been treated in an abusive way by the officer during the procedure. As categories with a higher educational background are examined, the respective proportion of complaints regularly decreases: defendants who completed vocational school: 21.7 percent, defendants who acquired a secondary school diploma: 18.5 percent (this is already a statistically significant difference from the category including those who completed less than eight primary years). This trend has a logical explanation: the more educated a defendant is, the more he/she is aware of his/her rights and the more he/she can vindicate them. This means that the authorities can or do dare to treat them in an abusive way to a lesser extent. It may be surprising then that 31 percent of detainees with a university degree reported abusive treatment. This relatively high proportion might be purely accidental due to the small sample (only 29 persons). However, it is also possible that the members of this particular group – being much more aware of their rights than interviewees in other categories – are more sensitive than their fellow detainees, and therefore perceive as abusive some forms of treatment which are accepted by the others.

4.
POSSIBILITIES OF LEGAL REMEDY

Different human rights organizations have repeatedly criticized the tendency that the number of complaints for certain offenses committed by officials (ill-treatment, forced interrogation[127] and unlawful detention[128]) is likely to be much lower than the actual number of such cases. Furthermore, the number of indictments and convictions is relatively low compared to the total number of complaints. Both several years of the Hungarian Helsinki Committee's experience and the Kmetty case (see details below) show that the competent authorities (prosecutorial investigative offices, courts) do not stand up against these abuses with due firmness.

[127] See definitions in Chapter IV. Section 1

[128] As defined in § 222 of the Penal Code: An official who unlawfully deprives another person of his/her freedom commits a criminal offense and is therefore subject to up to 5 years of imprisonment.

Table 25:
Consequences of denunciations made on the grounds of offenses committed by officials, 2000-2002

	Ill-treatment		*Forced interrogation*		*Unlawful detention*	
	Number	*%*	*Number*	*%*	*Number*	*%*
2000						
Procedures started (complaints)	850	100.00	283	100.00	113	100.00
Refusal of investigation	303	35.60	130	45.90	51	47.30
Termination of investigation	442	52.00	128	45.20	46	45.20
Indictment	94	11.10	23	8.10	16	7.50
Other	11	1.30	2	0.70	–	–
2001						
Procedures started (complaints)	757	100.00	318	100.00	105	100.00
Refusal of investigation	318	42.00	169	53.10	58	55.20
Termination of investigation	369	48.70	127	39.90	35	33.30
Indictment	62	8.20	21	5.60	11	10.50
Other	8	1.10	1	0.30	1	1.00
2002						
Procedures started (complaints)	759	100.00	321	100.00	93	100.00
Refusal of investigation	282	37.20	176	54.80	44	47.30
Termination of investigation	397	52.30	121	37.70	42	45.20
Indictment	72	9.50	24	7.50	7	7.50
Other	8	1.10	–	–	–	–

Source: Department of Computer Application and Information of the Chief Public Prosecutor's Office

The 2003 prosecutorial examination into this problem identified the difficulties of finding evidence as the primary reason for the low ratio of indictments. These offenses are usually committed in premises that are not open to the public, and since there is a very strong solidarity among the potential perpetrators, the statements of the victim are rarely supported by witness testimonies. Without such testimonies and unambiguous expert opinions as to the causes of the injuries, no indictment is possible in ill-treatment cases, even if the investigation is very thorough.[129]

[129] The examination was conducted by the Chief Public Prosecutor's Office's Department for Investigation Review and Indictment Preparation.

At the same time, the so-called Kmetty case also reveals serious shortcomings in the investigation of offenses committed by officials. In its decision of 16 December 2003, the European Court of Human Rights (ECHR) held unanimously that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the failure to carry out an effective investigation into the allegations of the applicant (represented by a lawyer from the Hungarian Helsinki Committee) concerning ill-treatment.

The applicant, Mr. Ágoston Kmetty, claimed to have been ill-treated by police officers at the scene, in the police car and in the 9th district Police Headquarters when he was arrested in December 1998.

After the applicant had lodged a criminal complaint alleging ill-treatment and unlawful detention, the Prosecutorial Investigation Office "heard evidence from him, his relatives and a number of witnesses. In a medical report drawn up in March 1999 at the authorities' request, it was stated that three of the applicant's incisors had become loose and that he had bruising on his wrists and stomach." Finally, finding that it was impossible to exclude the possibility that the applicant's injuries had resulted from the police's lawful measures to overcome the applicant's resistance, the Prosecutorial Investigation Office discontinued the proceedings.

The ECHR did not establish that Mr. Ágoston Kmetty had indeed been the victim of ill-treatment. However, the Court stated "that where an individual raised an arguable claim that he had been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, the authorities were under an obligation to carry out an effective investigation capable of leading to the identification and punishment of those responsible. In the applicant's case, the authorities had indeed opened an investigation following his complaint, but the Court doubted whether it had been effective and sufficient." For instance, the doctor who had examined the applicant after he was taken into police custody had apparently not been interviewed during the investigation. The medical expert's opinion, prepared at the request of the authority, did not address the question whether or not the applicant's injuries had been present on his arrival at the police headquarters. The police officers suspected of the assault were not questioned during the investigation, not even as witnesses. The Court considered "that this inexplicable shortcoming in the proceedings had deprived the applicant of any opportunity to challenge the suspects' version of the events." Therefore, the Court concluded that there had been a violation of Article 3 of the Convention.

In response to criticism concerning the small proportion of actual accusations in cases of criminal offenses committed by officials, the competent authorities often refer to the high number of unfounded accusations aimed at "driving into the corner" the police officers, investigators or other officials in charge. Nevertheless, the experience of non-governmental organizations shows that the actual number of such offenses is significantly higher than the corresponding number of complaints, since victims often lack confidence in competent judicial authorities and – mostly victims in detention – are afraid of the perpetrator's revenge.

Regarding the above, interviewees reporting ill-treatment, psychological pressure or other forms of abusive treatment were asked whether they lodged a complaint about it, and if so, to whom and with what result.

Legal remedy in case of ill-treatment: 22 persons (26.5 percent) out of the 83 detainees reporting ill-treatment claimed to have lodged a complaint in some way. Eighteen of them turned to the public prosecutor's office, 11 requested assistance from a Hungarian or an international human rights organization, one person asked for advice from his lawyer, one expected help from the press, while six defendants turned to "another person."[130]

Among the six, some reported the ill-treatment to the case officer (1.8.9. and 11.7.17.) or to the physician who performed the examination upon arrival to the premises of detention or during a medical treatment (1.8.12. and 20.29.3.). A detainee at the Venyige street remand prison reported the ill-treatment to the chief guard of the floor (1.3.7.), while another defendant informed the warden of the penitentiary institution in which he was detained (8.6.6.). The "other persons" reported to also included a commander of the police jail (1.8.9.) and a judge (1.8.12.) to whom the ill-treatment was reported during the trial (1.8.12.).

The following responses concern the result of the complaint.

Table 26:
What was the result of your complaint about ill-treatment?

Result of the complaint	*Persons*	*%*
The person(s) accused was/were called to account	–	–
The person(s) accused was/were not called to account	13	59.09
The procedure aimed at calling to account the accused person(s) is currently in process	2	9.09
Other	7	31.82
Total	22	100.00

[130] An interviewee could indicate more than one answer.

The interviewees' statements seem to support the statistical data about the important proportion of discontinued investigations and rejected complaints. Many persons claimed that the investigations initiated upon their complaints were terminated for lack of evidence (1.8.9., 10.18.2., 10.18.6., 11.7.3.), while one defendant said that his complaint had been refused with reference to a "lack of credibility" (6.17.9.).

> Similar reasons were reported by the detainee who was retransferred from the Veszprém Penitentiary Institution to the local police headquarters in order to conduct an evidentiary procedure. In the short-term arrest cell of the police headquarters, he was kneed in the stomach and hit in the ribs. Afterwards he was transported back to the penitentiary institution, he had to be transferred – because of his state of his health – to the hospital of Veszprém, where his injuries were recorded. The prosecutorial investigator refused, however, to conduct an investigation, saying that the defendant's declaration is worthless against the statements of two honorable police officers (2.11.6.).
>
> A detainee who was allegedly ill-treated by the police officers transporting him claimed that no constat was prepared about his injuries and that the public prosecutor in charge told him that if he cannot identify the perpetrators there is no way he could have a confrontation with them. The investigation was therefore terminated (6.5.9.).
>
> The investigation was terminated in the following case, too. A defendant claimed that during his interrogation, the police officers hammered him for more than 15 minutes, then he was held handcuffed (with his hands behind his back) for four hours. The procedure was terminated for lack of witnesses and other evidence; the occurrence of ill-treatment could not be proved (1.7.4.).

The importance of medical examination in cases of ill-treatment: The constat – as the above two examples show – plays a key role in combating abuses committed by authorities, due to the fact that generally there are no impartial witnesses to testify about the ill-treatment (especially when it occurs after the arrest, e.g., in the police car, in the police office, during the interrogation, etc.). This concern is also reflected by the relevant legal regulations. According to the Police Jail Regulation, if the physician in charge of the detainees' medical care witnesses any outward sign of injury he/she shall prepare a constat, establish the plausible cause of the injury and record the detainee's declaration concerning the origin

[131] Police Jails Regulation, § 22 Par (2) b)

of the injury.[131] According to the Penitentiary Rules, a medical examination shall be immediately carried out, if outward signs of injury are witnessed upon the arrival of the detainee, or a person transferred from a police jail, youth custody center, or military custody claims to have been ill-treated. A record of the examination shall be prepared, and a copy thereof shall be sent to the authority performing the detainee's transfer and to the public prosecutor in charge of supervising the lawfulness of detention.[132]

HHC wished to know to what extent the above provisions are abided by in police jails and penitentiary institutions.

Fifteen persons (3.5 percent) out of the 429 responding to the relevant question claimed that they had not been examined at all by a physician upon their arrival at the police jail. However, a significantly higher proportion of interviewees (185 out of 400, 46.3 percent) were of the opinion that the medical check, which consisted of only a few questions, was purely a formality.

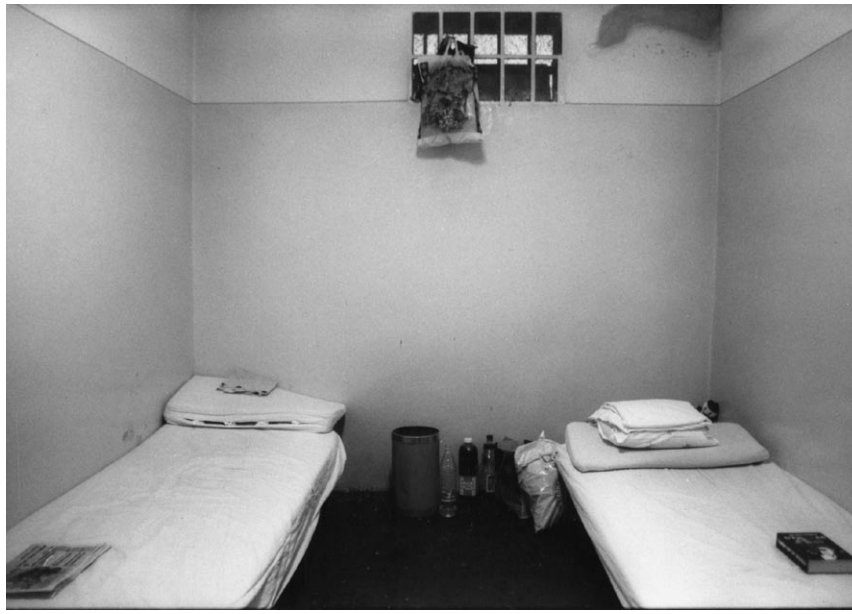
38 interviewees claimed that when they had arrived at the police jail they had had injuries originating in ill-treatment committed by officials. Five of them did not report the injuries to the physician. Among the remaining 33 persons, only seven (21.2 percent) reported that the doctor had proceeded properly. 22 interviewees (66.7 percent) claimed that no official record had been taken of the medical examination, and four persons (12.1 percent) could not recall whether an official record had been prepared or not.

In penitentiary institutions, the respective figures proved to be more favorable. "Only" ten interviewees (3 percent) out of 333 reported the total lack of medical examination upon arrival, while 82 of them (26 percent) claimed that the check-up had been only a formality. The latter figure still refers to one quarter of the defendants responding to this specific question, but compared to the 46.3 percent in police jails it may be considered relatively favorable.

Among those six persons who upon their arrival at the penitentiary institute had injuries originating in ill-treatment by officials, two (33.3 percent) said that the physician had made an official record, one person (16.7 percent) claimed that the doctor had failed to do so, while the remaining three (50 percent) could not recall whether this had happened or not. (Due to the small sample, no valid conclusions can be drawn from these figures.)

In this regard the results of the survey coincide with the experiences of the prosecutor's office responsible for the supervision of the lawfulness of implementing legal sanctions. In a number of cases prosecutorial measures became

[132] Penitentiary Rules, § 17 Par (1)



necessary because – violating the prevailing legal norms – neither police officers, nor physicians recorded the injuries of the detainee. It also happened that it was not mentioned in the medical records what the detainee had indicated as the cause for his/her injuries.[133]

According to the Police Jail Regulation, medical care services shall be provided to detainees by the Police Medical Services. Therefore the obligatory medical examination upon arrival at the police jail is often carried out by physicians who are not independent from the police. This obviously has an unfavorable effect on the accurate recording of injuries. Moreover, this practice can sometimes lead to a situation in which the doctor tries to convince the defendant not to lodge a complaint, as more interviewees claimed.

> A detainee reported having been seriously beaten up by police officers during his arrest, in consequence of which he lost a tooth. However, the physician of the Gyorskocsi street police jail did not prepare a constat of the injuries. Finally, he was taken to a hospital, where he stayed for one week (1.2.1.).
> Another interviewee detained in the Venyige street remand prison claimed to have

[133] Görgy Vókó's comment at the Round Table.

been beaten with a truncheon, in consequence of which his rib fissured and he still has nodes on his neck. He said that following his ill-treatment he had been transferred to Gyorskocsi street, where the doctor in charge had failed to prepare a constat of his injuries. According to the defendant, the physician wanted to make him sign a declaration stating that he had not been ill-treated, but he refused to do so. Finally, a police officer signed this paper in his own name (1.5.5.).

Another person was also reportedly ill-treated during his interrogation, after which he started to bleed in his cell because of a previous surgery. The two physicians at the police jail then advised him not to make an accusation because the police officer would "know how to find him" after his release (11.11.9.).

A detainee at the Venyige street remand prison claiming to have been ill-treated by three guards reported the ill-treatment to the chief guard responsible for the floor, who forwarded the complaint to the competent persons. He was then examined by a doctor, but since there were no outward signs of injury, they tried to convince him not to take any further steps saying that "he would only be beaten up even harder" (1.3.7.).

Representatives of the judiciary also voiced criticism related to the medical documentation included in certain case files, saying that the documentation is often not accurate enough for the judge to be able to decide whether the defendant's injuries were caused by lawful or excessive use of force.[134]

In the police's view, due to the strict regulations governing the activity of Police Medical Services, the risk of unsatisfactory documentation is more eminent if the detainees are examined by civilian doctors.[135]

Despite this opinion, it may be stated that the independence of the members of Police Medical Services is disputable, and the objective recording of people complaining about abusive treatment by the authorities remains to be problematic.

Lengthy investigations: Many of those who – in order to assert their rights – lodged a complaint about their ill-treatment reported that the investigation in such cases had been quite lengthy.

[134] Éva Lányi's comment at the Round Table.

[135] Györgyi Mendege and Zoltán Szauter, representative of the Head Directorate of Public Security at the National Police Headquarters at the Round Table. Zoltán Szauter quoted a case when a civilian general physician simply refused to examine a detainee. According to Zoltán Szauter, there is nothing the police can do in such cases.

An interviewee detained in the Venyige street remand prison reported that he made an accusation at the beginning of July 2002 (approximately one year before the interview) based on ill-treatment by officers conducting his interrogation. He was once questioned in connection with his complaint, but since then he has not received any information about the procedure (1.6.2.).

Another interviewee reported that, following his complaint, he had been interrogated by an officer of the prosecutorial investigation office, but the investigation was closed one month later with reference to a lack of evidence. He lodged a complaint against this decision, but he has not yet been informed of the decision concerning his complaint (1.8.9.).

A person interviewed in September 2003 said that he had information that the investigation in his case had already been closed, but he had not received any official document about it since May 2002 (19.14.13.).

It is obvious that in these specific cases a quick procedure is an absolute necessity, since the victim is under the control of those against whom he/she has lodged a complaint. A lengthy procedure can make complainants waver and enables those accused of ill-treatment to put pressure on the alleged victims.

Defendants refraining from lodging a complaint: As mentioned above, most interviewees reporting ill-treatment (61 out of 83, 73.5 percent) said that they had not lodged a complaint about it. This shows that the actual number of offenses committed by officials (including the unlawful use of force) may be even higher than it seems from the statistics based on the number of accusations. The following answers were given to our question concerning the reason for refraining from lodging a complaint.

Table 27:
Why did you not lodge a complaint about ill-treatment?

Reason	*Persons*
Thought there was no point in it	32
Was afraid of reprisal	19
Did not know how to do so	6
Other	17

An interviewee could give more than one answer.

According to more than half of the interviewees, there is no point in lodging a complaint in such cases, since no fair investigation will be carried out anyway.

An interviewee claimed to have been hit in the stomach and the chin while being transported in the police car. He did not lodge a complaint because when in 1996 he was accused of robbery and was seriously beaten up at the Miskolc Police Headquarters, he lodged a complaint against the perpetrators but the public prosecutor did not deal with his complaint on the merits (12.11.14.).
Another person said that he had already been condemned on a count of false accusation in a similar case, so he did not want to put himself at risk again (12.11.2.).

Many interviewees reported being afraid of the vengeance of the person accused or of the possibility that such an expression of self-assertion could have a negative impact on their criminal procedure. This fear is often reinforced by those who would otherwise be obliged to take a stand against any occurrence of ill-treatment. (According to the CCP, members of the authority and officials are obliged to report any criminal offense that becomes known to them within their sphere of competence.[136]) Examples have already been quoted of cases in which the doctor carrying out the medical examination tried to convince the victim of ill-treatment not to lodge a complaint, and this attitude is far from unfamiliar to other actors of the procedure either.

An interviewee claimed that he had withdrawn his complaint about ill-treatment because he had been frightened by a police jail guard who had advised him not to defy police officers (12.14.1.).
Another detainee reported to the case officer that he had been beaten up while being transported to the police office. The officer told him not to accuse the perpetrators, since that would only make his situation worse. Afterwards, one of the police officers involved in the ill-treatment visited him in the police jail and "demanded threateningly" that he not lodge a complaint (1.3.2.).
In one case, it was the attorney who advised the detainee to refrain from lodging a complaint against the police officer who had previously slapped him once or twice (1.7.2.).
The previously mentioned defendant who claimed that his rib had fissured and that he still had nodes on his neck because of the ill-treatment suffered tried to lodge a complaint in the Gyorskocsi street police jail, but was told by the officer on duty that it did not make any sense. When the doctor also refused to make an official record about his injuries, he finally gave up the complaint (1.5.5.).

[136] CCP, § 171 Par (2)

A Romanian national had to be hospitalized following his ill-treatment. He reported to the physician what had happened and repeated his statements to the judge at his court hearing. The judge said he had had knowledge about the defendant's complaint via medical reports, however, he did not take any measures in order to call the perpetrators to account (1.8.12.).

At the same time, HHC could also identify cases – although fewer in number – in which the officials with whom a complaint about ill-treatment was lodged proceeded in a lawful manner and did take the necessary measures.

An interviewee who was ill-treated (hit and kicked) in the Esztergom Penitentiary Institution, lodged a complaint to the warden of the remand unit, who informed the military prosecutor's office about the perpetrators (8.6.6.).
Another interviewee said that he had reported the ill-treatment suffered during his short-term arrest to the investigator conducting the second interrogation, who took the necessary measures (11.7.17.).

Foreigners and persons with a lower educational background are often hindered from vindicating their rights because they do not know whom to turn to and what steps to take if they want to lodge a complaint or make an accusation (see below).

A Romanian national who also referred to the passivity of the judge in charge of his case, said that he had refrained from seeking a legal remedy because of his lack of Hungarian knowledge and the lack of help from other persons, while his main objective was to be released as soon as possible (1.8.12.).
Another Romanian defendant claimed that during his short-term arrest he had been the victim of ill-treatment causing outward signs of injury, but when he complained about this to the ex officio appointed counsel and the interpreter present at his interrogation, they did not consider his complaint (3.12.6.).

Another type of response within the category of "other reasons" was given by persons who did not consider the ill-treatment serious enough to run the risk of "complications" related to an eventual complaint (1.7.5., 1.8.10. and 1.8.11.). Others referred to the lack of evidence.

An interviewee claimed that during the interrogation an investigator (not the one in charge of his case) kicked him in the chest while he was sitting on a chair. But since he was examined by a physician only 3-4 hours later, when the injury was already barely visible, he decided not to report the incident to the doctor (6.5.8.).
The person who was hit in the neck and slapped twice by the case officer at the 19th District Police Headquarters (for not having made the "right" statement) said that he refrained from lodging a complaint because no outward signs remained of the injuries and "it was not such a big deal anyway" (8.6.14.).

In addition to the above, the interviewees formulated some further unique reasons.

A defendant claiming to have been subjected to forced interrogation at the Dorog Police Headquarters said that he would only take the necessary steps after his release (8.6.6.).
Another interviewee who claimed to have been seriously beaten up during his arrest was released after 72 hours and was only put in pre-trial detention at a later stage of the procedure, thought that he had been released because he refrained from lodging a complaint (he told the physician that he had fallen down the stairs). He said, "I was happy to be released, why would I have made a complaint?" (9.6.6.).
A defendant detained in the Venyige street remand prison reported the ill-treatment of a fellow detainee, who was laughing during the line-up, which made the guards

> pull him out from the line and repeatedly thrust him to the wall. Three or four detainees decided during the daily walk to lodge a complaint (by putting a note in the "complaints box" of the warden). A guard overheard this, and finally the persons involved were transferred to new cells, dispersed on different floors (1.6.1.).

There were two interviewees among those claiming to have been victims of ill-treatment but not yet having lodged complaints, who informed the HHC about their intention to seek a legal remedy.

> A person accused of disorderly conduct reported that in Debrecen he had been handcuffed by the police officers arriving on the scene so brutally that the traces of the injuries were still visible and his hands were still stiff from time to time. He has not had the occasion yet to report the above to the Public Prosecutor, but he intends to do so (10.18.7.).
> Another person who was punched at the Nagykanizsa Police Headquarters asked for a hearing with the Public Prosecutor, but – at the time of the interview – no response had yet been given to him (13.21.7.).

Legal remedy in cases of psychological pressure: 31 persons (13 percent) of the 238 reporting the use of psychological pressure during the interrogation said that they had lodged a complaint about it in some form. The proportion of defendants who complained about occurrences of ill-treatment was above 26 percent. It is therefore evident – and understandable – that psychological pressure is even more rarely reported than ill-treatment. The use of psychological pressure is much more difficult to prove, due to the nature of its means (promises, threats, lengthy waits, etc.) and to the fact that it is not always conspicuously unlawful. Thus it is no wonder that fewer victims take the risk of lodging a complaint or making an accusation. Also they do not always perceive that they are subject to questionably acceptable treatment.

Fifteen complaints were lodged with the Public Prosecutor, two with the Ombudsperson, while one person turned to a Hungarian human rights NGO and another one to the press. Six victims asked their lawyers for advice and nine interviewees reported having turned to "another person or organization". The latter category includes the case officer (1.1.1., 19.5.8.), the court (1.8.12., 6.1.3. and 6.17.9.), the Constitutional Court (6.17.9.), the head of the local police headquarters (6.18.8.) and the head of the police station (13.21.1.).[137]

[137] An interviewee could indicate more than one answer.

The following answers were given to the query concerning the result of the complaint.

Table 28:
What was the result of your complaint about psychological pressure?

Result of the complaint	*Persons*	*%*
The person(s) accused was/were called to account	–	–
The person(s) accused was/were not called to account	13	61.90
The procedure aimed at calling to account the accused person(s) is currently in process	2	9.52
Other	6	28.57
Total	21	100.00

The above figures largely correspond to the ones included in Table 26 (concerning the result of complaints about ill-treatment). It could therefore be concluded that occurrences of ill-treatment and psychological pressure are punished (or not punished) in like manner. Nevertheless, it must be emphasized that 31 interviewees claimed that they had lodged some sort of complaint, thus 10 responses are not included within the above table. For this reason, no clear conclusion can be drawn from these figures.

More interviewees claimed that the authority they had approached had refused to deal with their complaint.

> A detainee claimed that he had not been given any food for hours before his interrogation. He lodged a complaint about this to the head of the local police headquarters, but without any consequence. Moreover, both the chief police officer and the officer in charge of the case seemed to "resent" the complaint (6.18.8.).
> An interviewee at whom the interrogator leveled a pistol turned to the public prosecutor for legal remedy. Later on, the detainee was let know in an informal way that the reason his complaint was of no consequence was that the officer had previously been awarded the prize of "police officer of the year" and his superior assured the authorities that he was an excellent policeman (8.5.6.).

As in complaints about ill-treatment, many persons claiming occurrences of psychological pressure complained about the protraction of the procedure (e.g., 1.6.2., 3.12.3.) and the total lack of feedback.

An interviewee reported during his trial that his interrogators had previously threatened that if he did not make a full confession more policemen would come and beat him until he did so. The court did not react to this statement, and the detainee has not received any relevant feedback whatsoever since then (6.1.3.).

The following interviewee proved to be relatively luckier. When he lodged a complaint about the treatment he had been subject to during the interrogation, the prosecutor supervising his procedure promised him to investigate his complaints as soon as possible, even if "surely not within the prescribed deadline" (26.1.6.).

Defendants refraining from lodging a complaint: As it has already been mentioned, most interviewees reporting psychological pressure (207 out of 238, 87 percent) reported that they had not lodged a complaint or made an accusation. The reasons follow.

Table 29:
Why did you not lodge a complaint about psychological pressure?

Reason	*Persons*
Thought it would not make any sense	131
Was afraid of reprisal	23
Did not know how to do so	17
Other	27

An interviewee could give more than one answer

The reasons were again similar to those cited in cases of ill-treatment. The majority of interviewees referring to psychological pressure thought – like the majority of alleged victims of ill-treatment – that it would be useless to make any effort to vindicate their rights.

An interviewee who claimed that the officers tried to "convince" him to make a confession with threats concerning his family, refrained from lodging a complaint because of his previous bad experience (in a similar case he had been condemned to 8 months in prison on a count of false accusation) (6.17.3.).

Another person who claimed to have been continuously interrogated for nearly 12 hours, alternately by two officers, reported that the prosecutor in charge of his case had always been hostile with him, and said that this was why he did not even try to lodge a complaint (1.3.8.).

More interviewees cited the impossibility of proving the use of psychological pressure as the reason why they thought that there would be no point in a complaint (e.g., 6.18.5.).

> A person who – according to his statements – was regularly prevented from going out to the bathroom during his lengthy interrogations, said that he would not have any means to prove that (7.16.6.).

The fear of reprisals also plays an important role.

> A defendant who was allegedly subject to psychological pressure said that his situation would get even worse if he lodged a complaint (6.17.2).
> According to another interviewee, whose case officer was walking around with a huge hammer in his hand during his interrogation thought it was better "to mingle and not to call attention to himself" (19.5.3.).

Several interviewees did not know whom to turn to for legal remedy (e.g., 12.14.8.).

> An interviewee claimed that he had been under the influence of drugs and alcohol during his interrogation. It is with reference to this that he allegedly requested not to be interrogated, but the officers in charge of the investigation did not consider his request. He did not lodge a complaint about this treatment because he was not aware that it was possible to do so (12.11.11.).

Many interviewees did not consider what had happened to them serious (8.6.7., 8.6.8., 9.5.7.).

> For example, a detainee who was promised release by the case officer if he admitted committing the crime, but who is still in detention despite having made a full confession, commented upon this treatment as follows: "The officer swindled me, but it is not such a big deal" (12.20.7.).

Besides the above, the category of "other reasons" reflects a wide variety of responses.

> Reference can be made again to the case of the detainee whose defense counsel was summoned to appear at the interrogation only 15 minutes after its begin-

ning, while in the meantime the officers tried to convince the defendant to make a confession. The person in question did not lodge a complaint for fear that his case would be handed over to another officer and therefore the procedure would be protracted (4.14.2.).

A detainee claimed that he was always somehow hindered from meeting and talking to the prosecutor supervising detention during his visits (25.31.2.).

Another interviewee, who was allegedly under the influence of a tranquillizer (Xanax) when he made a confession, was advised by his counsel to report this fact only during his trial (11.11.3.).

Remedies for other types of injurious treatment: 29 percent (47 persons) of the altogether 162 persons who referred to injurious treatment that cannot be deemed ill-treatment or psychological pressure stated that they had filed a complaint in some way. Hence it can be concluded that defendants most often attempt to enforce their right to a legal remedy against this type of abuse.

Of the above group, 18 persons turned to the prosecutor's office and two to a domestic human rights organization for help, while seven sought assistance from the defense counsel. No one indicated that they had contacted the ombudsman or the press in response to this question, and not one person had contacted an international human rights organization. However, 25 persons stated that they had asked for a remedy from another organization or individual. [138]

In cases of harassment by cell-mates, most detainees in penitentiary institutions turn to the educator (19.14.8., 9.5.5., 9.6.6. and 12.20.5.); some detainees inform the guard (1.3.9.), while one complainant detained in a police jail indicated that he had contacted the jail commander (10.1.4.) regarding this problem. Similarly, the majority of respondents turned to the jail commander on account of the injurious treatment by guards in the police jail (13.22.1., 25.20.1., 5.15.4., 26.32.9.), while some complained to the police officer in charge of their case (1.3.1.).

Regarding abuse by the penitentiary personnel, respondents sought assistance from the educator (1.6.3.), the warden (1.6.2., 1.6.3., 8.5.6., 8.6.6.), or another high-ranking penitentiary official (8.5.2.). Two persons stated that they had complained to the Ministry of Health about insufficient medical care in the penitentiary institution (1.6.2., 8.6.4.). One of them, not finding the Ministry's response satisfactory, filed a civil lawsuit against the penitentiary institution based on damage to his health (8.6.4.).

[138] The same respondent could give several responses.

The most intriguing question focused on the fora where pre-trial detainees seek a remedy against what they believe to be injurious conduct (not amounting to ill-treatment and psychological pressure) by the case officer. In accordance with the CCP, the prosecutor shall consider complaints against the decisions of the investigating authority,[139] while objections to a measure or the omission thereof shall be considered by the authority itself or by the prosecutor.[140] In terms of the Police Act, the head of the police organ implementing the measure shall bring a decision on complaints against police measures.[141]

In spite of this, a number of detainees stated that they had filed a complaint with the police jail commander against the injurious measures or the omission of measures by the officer in charge of their case (3.13.3., 4.14.1., 6.17.8., 6.5.2., 9.6.5.), although the jail commander has no competence to decide on such complaints. A likely explanation is that as a result of the inconsistency of the legal framework, the responsibility to ensure contact with the outside world (correspondence, visits, telephone calls) is in practice divided between the person in charge of the detention and the case officer. Thus, it is not clear for most detainees whom they have to address if their related rights are violated.

Based on the accounts of detainees, it can be stated that jail commanders rarely provide adequate information about the existing opportunities to file a complaint. Only one person told us that when the officer in charge of his case had promised to allow him a visit, which eventually was not made possible because of the officer's summer holidays, and he had complained to the jail commander to this effect, the commander had informed him that he could request permission for a visit from the prosecutor (4.14.1.). Other respondents complained that they did not receive an answer in such cases (e.g. 6.17.8. or 6.5.2.).

Many detainees therefore are uninformed and unclear about where to turn if they wish to seek a remedy against (allegedly) injurious treatment. This is supported by the fact that three detainees complained against the officer in charge of their case to the judge at the court hearing (1.8.12., 6.1.3., 19.14.13.), while there were only three persons who had contacted the head of the competent police headquarters on account of a conflict with the case officer (6.5.10, 8.5.5., 9.6.5.).

The following responses were received in relation to the success rate of complaints.

[139] CCP, § 195 Par (4)

[140] CCP, § 196

[141] Police Act, § 93 Par (3)

Table 30:
If you filed a complaint against the injurious treatment, what was the outcome?

Outcome of complaint	*Person*	*%*
The person(s) complained of was/were held accountable	5	10.64
The person(s) complained of was/were not held accountable	8	17.02
The procedure is still pending	3	6.38
Other	31	65.96
Total	47	100.00

As seen above, in contrast to ill-treatment and psychological pressure, some of the respondents (10.6 percent) to this question replied that the persons complained of had been held accountable. It should be noted, however, that this time detainees could also feature among the perpetrators of the injurious conduct. Taking a closer look at the members of the group that had been punished for such conduct, one discovers that not one official is to be found among them.

> A detainee's cellmates wanted to take some of his belongings from him and when he resisted, they hit him several times. The victim told the HHC that once he had notified the guards of the problem, the detainee who had most seriously mistreated him had been taken into disciplinary custody, while the complainant had been placed in the security isolation ward (1.3.9.).
>
> We heard a similar story from a respondent in Sopronkőhida, whose injured eye required hospital treatment because a cellmate had beaten him after a verbal conflict. The victim informed the educator, and the person who had-injured him was taken into the disciplinary detention unit, i.e., received solitary confinement as a disciplinary punishment (9.6.6.).
>
> A detainee in Tököl, who had been beaten by his cellmates as he was the newest arrival, told the HHC that after he had complained to the educator, the persons who had abused him were placed in the disciplinary detention unit, while he was transferred to a better cell. He also told us that as a further "informal" punishment, following their release from the jail, his former cellmates were dispersed in so-called "cannibal cells" (9.5.8.).

On the other hand, if an official person applies injurious treatment, and the authority receiving the complaint acknowledges this, the most the complainant can expect is a solution to the problem. The person who caused the injury is generally not held accountable.

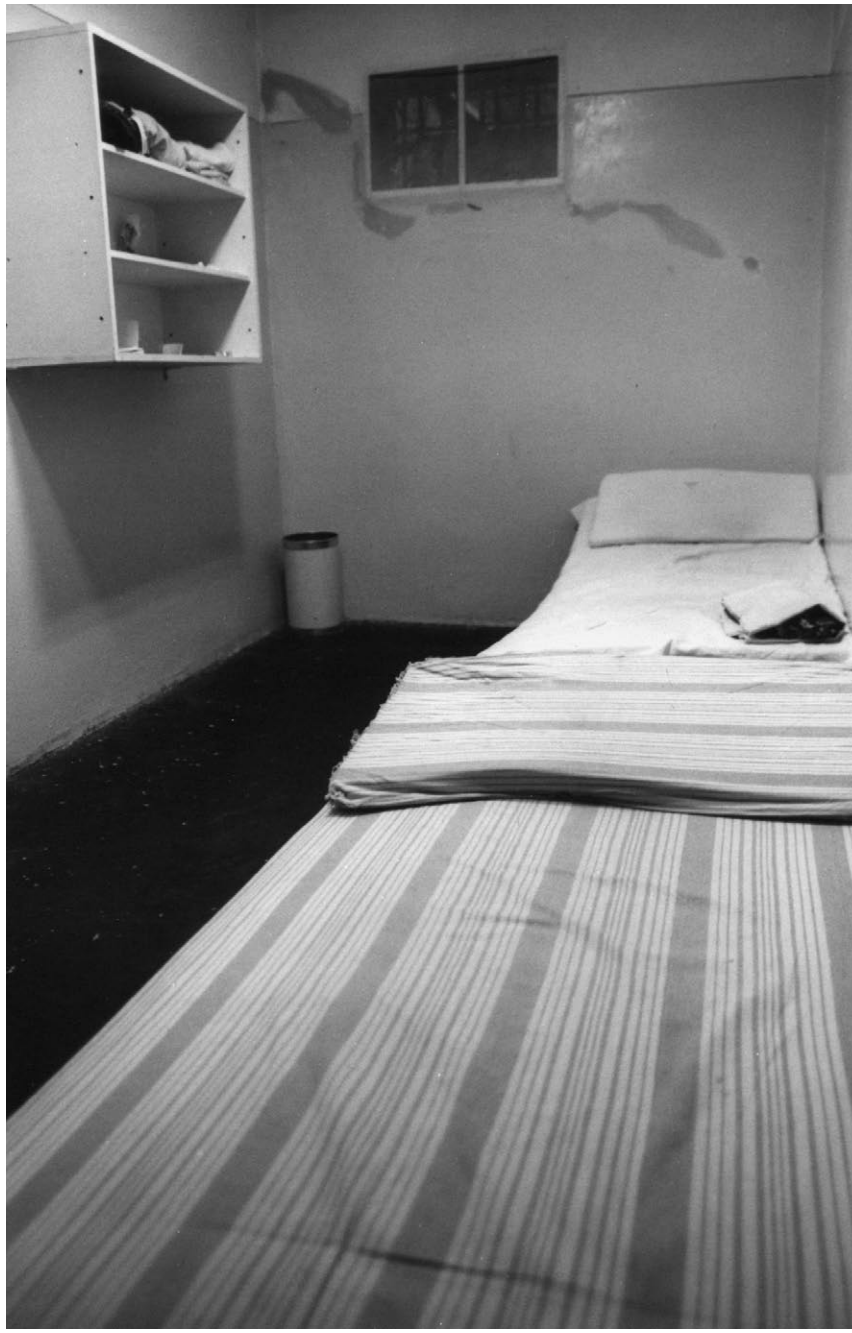
As examples of injurious treatment not amounting to ill-treatment or psychological pressure, a detainee (mentioned above) related three instances which all had similar outcomes. When guards inspecting the cell issued a disciplinary form to him for having "found" a cellmate's mobile phone under his mattress, he complained to the head educator, who destroyed the disciplinary form, but failed to hold the guards accountable. On another occasion, when the guards found a bottle of cologne that he had been keeping illegally, and he refused to sign the official minutes on the elimination of the cologne as he had not been present, and the allegedly eliminated bottle later resurfaced, he turned again to the head educator. As a result, his disciplinary form was torn up (although he did in fact commit a disciplinary offense by having kept perfume in the cell), but there was no other follow-up to the case, and the guards were not held responsible. Lastly, when guards escorting him to a hospital outside the detention facility forced him, despite his heart condition, to climb the stairs on foot to the surgery on a higher floor, he refused to undergo the examination. Following a complaint to the prison warden, the disciplinary form issued as a result of his refusal of the medical examination was withdrawn, but the guards were not held accountable. The prison warden allegedly told him to report the guards to the police if he wished (1.6.3.).

Another respondent who for a long time was only allowed by the jail guards to go to the toilet after lengthy waiting periods told the HHC that after he complained to the jail commander, the situation improved, but according to his knowledge the guards were not held accountable (5.15.4.).

A detainee in Debrecen told a similar story to the HHC: as in the jail he was frequently not allowed to go to the toilet, he at times had to make use of the rubbish bin in the cell. After he filed a complaint, the situation improved somewhat, but the problem was only solved eventually after he had repeatedly complained. Therefore it seems that the guards were not held responsible – at least not until after the first few complaints (11.11.10.).

A similar pattern evolves with regard to complaints against investigators, i.e., the grievance is remedied without holding the person who had caused the grievance accountable.

A respondent, whose case officer failed to take the steps necessary to ensure contact with the outside world, told the HHC that after he had lodged a complaint with the police chief, the problem was resolved quite quickly. However, he had no information about whether any action was taken against the investigator (8.5.5.)



Another detainee faced the same problem when he was only allowed a visit following the police chief's intervention. No one was held accountable (9.6.5.)

The HHC met a detainee who stated that – despite repeated requests – the officer investigating his case refused to hear witnesses supporting his statements. After the detainee filed a complaint to the prosecutor, the investigator accepted his motions and summoned the witnesses indicated by the detainee (12.20.14.).

An investigator tried to obtain a confession from another respondent through a series of "unofficial" interrogations. The interrogations stopped after the detainee filed a complaint with the prosecutor, but the defendant did not know whether the investigator was given even a warning (14.27.2.).

The only example of any type of "sanction" the HHC found concerned the case of a detainee whose investigator failed to forward his letters, and did not even inform the detainee of this. Moreover, the investigator failed to close the case despite the defendant's confession. The defendant complained to the prosecutor supervising the investigation, which resulted in a new investigator being assigned to the case (1.5.6.).

We cannot exclude the contention that some persons will cast doubt on detainees' reports on the lack of punishment against investigators who violate procedural rules, arguing that the lack of detainees' awareness about the punishment does not necessarily mean that there was no punishment. The HHC believes that if complainants are not aware of transgressors being held accountable, this will weaken their confidence in the fairness of the criminal procedure and may discourage detainees from seeking a remedy. This would bring into question the safeguards afforded by the ability to seek a remedy.

As in cases of ill-treatment and psychological pressure, several detainees complained of protracted procedures (2.10.10., 19.14.3.) or a lack of a response to their complaints, not having received even a decision refusing the complaint.

A respondent told the HHC that he was not allowed to go to the toilet at the jail of the 1st district Police Headquarters. When he complained about this, the jail guard threatened him. The detainee filed a complaint with the officer investigating his case, but did not receive any response (1.3.1.).

A complaint to the jail commander by a detainee who protested against a jail guard who had taken a bite out of his food before giving him the meal was in vain, as the jail commander did not take any action in the case (13.22.1.).

A detainee contacted the prosecutor's office because he had allegedly been interrogated on several instances without official records being kept of the event. The detainee received no feedback (3.12.3.).

Comparable problems arise, albeit less frequently, with regard to grievances caused by cellmates. A respondent who alleged that his cellmates had spread toothpaste on his bed then poured water on it stated that the educator did not deal with his complaint (19.14.8.).

Unwillingness to file a complaint: As indicated above, the majority of respondents referring to injurious treatment not amounting to ill-treatment or psychological pressure (almost 71 percent of 162 persons, i.e., 115 respondents) stated that they did not file a complaint or report. The HHC received the following types of responses to the question about reasons for not complaining.

Table 31:
Why did you not file a complaint against the injurious treatment?

Reason	*Person*
Thought there was no point in it	62
Was afraid of reprisal	14
Did not know how to do so	6
Because of the solidarity among detainees	2
Other reason	12

The same respondent could give several responses

Practically the same responses were given here as regarding ill-treatment and psychological pressure. Most respondents stressed that filing a complaint is meaningless.

One respondent who had not been allowed to go to the toilet in the jail of the Budapest 3rd district Police Headquarters stated that he had not taken any steps, because he had already learned that "inmates cannot be right" (1.1.4.).

Several respondents underscored that they did not know whom to approach or what to do (1.2.4., 2.11.7., 10.1.11.). Others thought that the grievance was not serious enough to embark on all the difficult procedures (1.6.4.), while one detainee decided to solve the conflict with his cellmates by "way of the fist" (8.6.9.).

Relationship between the chance for success of a remedy and various characteristics of the defendant: Here questions focused on the role of the defendant's various demographic characteristics in filing complaints in the case of grievances, and in the success of their complaints.

Roma origin: There was almost no noticeable difference between Roma and non-Roma defendants as regards filing complaints or reports if they believe that they have suffered a grievance. 26.9 percent of Roma and 26.3 percent of non-Roma (7 and 15 persons respectively) who referred to ill-treatment stated that they had sought a remedy for the grievance. While at first glance it may seem as if there were significant differences as regards the success of the complaint, as 83.3 percent of Roma and 50 percent of non-Roma respondents stated that no one was held responsible for the grievance, it should be borne in mind that the sample is fairly small, and neither group reported on completed procedures against the perpetrators of ill-treatment. The group of non-Roma defendants was in a more favorable position in this regard simply because the procedures on account of ill-treatment were still on-going in two cases. However, should these procedures be closed without having the perpetrators punished, it can be concluded that non-Roma have similarly slight chances to find a remedy in case of ill-treatment by official persons.

With respect to psychological pressure exerted during the interrogation, it seems that non-Roma defendants are somewhat more willing to file a complaint on account of this grievance (14.9 percent compared to 8.1 percent among Roma defendants). The reason for not filing a complaint is an interesting issue in this regard. 75.6 percent of non-Roma defendants did not avail themselves of any type of complaint possibility because they did not see the point (the rate among Roma was 61.5 percent), while Roma detainees referred more often to the fear of reprisal (21.2 percent as compared to 9.2 percent among non-Roma). Therefore it seems that, on the one hand, non-Roma defendants may be characterized by skepticism about strict and impartial official procedures against ill-treatment by official persons, while mistrust is coupled with explicit fear among Roma on the other hand. Furthermore, a higher percentage of Roma defendants referred to the lack of information about how to file a complaint (15.4 percent as compared to 6.9 percent among non-Roma).

As regards the success rate of complaints, the most noteworthy fact is that neither Roma nor non-Roma defendants reported a single case in which the official person who had – allegedly – committed abuse had been found responsible.

No difference was identified between Roma and non-Roma defendants with respect to the willingness to file complaints against other grievous treatment (27.7 percent and 28.6 percent respectively). No significant difference was noted in the reasons for not filing a complaint either. Still, no Roma was part of the group who reported about the perpetrators of the injurious treatment being

held responsible (albeit the sample number was small and several complaints filed by Roma were still being considered).

Foreigners: Foreign and Hungarian defendants referring to ill-treatment filed complaints at roughly the same rate (27.3 percent and 26.4 percent). Perhaps not surprisingly, a higher number of foreigners indicated fear of reprisals as a reason for not filing complaints (50 percent among foreigners as compared to 27.8 percent of non-foreigners), and that they were uninformed about how to exercise their rights (37.5 percent among foreigners as compared to 5.6 percent of Hungarians). There was no significant difference regarding the successfulness (or rather the unsuccessfulness) of complaints.

Foreigners and Hungarians referring to such injurious treatment were similarly willing to complain with respect to psychological pressure exerted during the interrogation: 15.8 percent of the first group, and 12.8 percent of the latter group sought some type of remedy in this case. Among the reasons for not filing a complaint, the lack of information about the process was where most difference was evident: 8.3 percent of Hungarian and 20 percent of foreign detainees stated that they had not sought a remedy because they did not know how to do this. Survey results on the successfulness of complaints were not conclusive due to the small sample: only three foreign detainees stated they had availed themselves of some type of complaint opportunity.

No significant difference was noted between the behavior and motivation of the two groups of defendants as regards other injurious treatment not amounting to physical ill- treatment or psychological pressure.

Juveniles: Due to the small sample (altogether 8 juvenile respondents stated that they had been ill-treated, 10 persons complained of psychological pressure, and 11 related other types of injurious incidents), no valid comparison could be made between adult and juvenile groups of defendants with respect to seeking legal remedies and the success rate thereof.

Gender: Responses about ill-treatment from female detainees were not conclusive either, as only four women alleged having been ill-treated. With regard to psychological pressure, however, it is interesting to note that out of 18 female detainees referring to such treatment, not one had sought legal remedies (as compared to 14.1 percent of males). Most of these female detainees (13 of them) explained that they did not see any point in filing complaints. Out of the 13 women referring to other types of injurious treatment, only two had made an attempt to seek legal remedies.

Education: The correlation between levels of education and the willingness to complain turned out to be contrary to our original expectations. At the out-

set of the research, it was thought that persons with higher levels of education would have an increased awareness of the law, and would take more determined action against abuses due to a better ability to represent their own interests. However, both in the case of ill-treatment and other types of injurious treatment not amounting to ill-treatment or psychological pressure, the HHC observed that the better educated a detainee is, the more reluctant he/she is to file a complaint on account of abuses suffered.

While 30.8 percent of respondents (referring to ill-treatment) who had completed less than eight years of primary education sought some type remedy against the abuse suffered, only 17.9 percent of detainees who had completed more than eight school years but had not graduated from secondary school did so. (For persons with a secondary school diploma, this rate was 25 percent, but only eight of them had stated that they had suffered ill-treatment, therefore this result is not conclusive.) Similarly, 31.3 percent of those with lowest levels of education turned to some person or organ against other types of injurious treatment, compared to 21.7 percent of those holding a secondary school diploma. In the case of psychological pressure applied during the interrogation no such tendency could be observed: 12.5 percent of persons with less than eight years of schooling who referred to such treatment, 8.6 percent of persons having completed primary school, 19.8 percent of persons who had completed more than eight years of school but failed to obtain a secondary school diploma, and 8.7 percent of respondents with a secondary school diploma or higher level of education stated that they had filed a complaint or report on account of psychological pressure. At the same time, it is striking that only a small percentage of persons with secondary school diplomas sought remedies against abuses.

Hence it seems that there is a notable deficit of confidence among persons with the highest levels of education as regards the determination and effectiveness of actions by the authorities against abuses taking place during the criminal procedure. The lack of trust is corroborated by the fact that a significant number of respondents holding a secondary school diploma identified pointlessness as the reason for not filing a compliant or report (the relevant response rate is 50 percent regarding ill-treatment, 63.2 percent regarding psychological pressure, and 70.6 percent regarding other types of injurious treatment). This particular group of respondents was far less afraid of retaliation, and only one person holding a secondary school diploma identified a lack of awareness of how to file a complaint (with regard to psychological pressure). As expected, the lack of information about how to file a complaint was the most significant obstacle to enforcing their rights among respondents with the lowest levels of edu-

cation (16.7 percent regarding ill-treatment, 15 percent regarding psychological pressure, and 13.6 percent with respect to other types of injurious treatment.)

No significant difference was noted among the various groups with respect to the success rate of complaints.

5.
SUMMARY

From the point of view of ill-treatment, the most sensitive part of the procedure is the apprehension and the first interrogation of the alleged offender. Primarily these are the phases and actions of the criminal procedure that should be reinforced with additional safeguards with a view to more effective prevention of abuse. Proper psychological training of official persons involved in apprehending suspects, video recording of the apprehension as well as events taking place in the police car and police buildings as far as possible, guaranteeing the independence of the physician carrying out the medical examination and the presence of the defense counsel at and/or video recording of the first interrogation may contribute to reducing ill-treatment. At the same time, the presence of the defense counsel is a safeguard for the investigating authority as well, since it prevents the defendant from withdrawing his/her statements at a later stage in the process with reference to allegations of ill-treatment or other types of prohibited psychological pressure.

It should be ensured that the supervision of pre-trial detainees' contact with the outside world is not turned into a method of psychological pressure applied against the detained defendant. Strict regulations should ensure that case officers are prevented from arbitrarily delaying the sending of letters, the transmittal of received written correspondence, the reception of visitors, etc., as such conduct cannot be reconciled with the statutory aims and principles of pre-trial detention. In this respect, the frequent reference to the workload of investigators is understandable but not acceptable, as depriving the defendant's liberty prior to finding him/her guilty of the offense is such a severe limitation that all other restrictions on the detainee's remaining rights become impermissible – if they are applied as a result of negligence, but even more so if the restrictions are applied in the interest of extorting a confession.

In this respect, it is of concern that a provision of the new CCP has resulted in legal uncertainty with respect to maintaining contacts with family members. The Penitentiary Code provides that the pre-trial detainee may exchange writ-

ten correspondence with his/her family members or – based on the permission of the prosecutor, or the court after the bill of indictment has been submitted – with other persons, and may receive visitors and a package at least once a month; the right to correspondence and receiving visitors and packages may be limited – save contacts with the defense counsel – in the interest of ensuring the success of the criminal procedure.[142] However, the new CCP provides that – until the submission of the bill of indictment, based on the permission of the prosecutor, later based on the permission of the judge – the detained defendant may contact his/her family members orally or in person under supervision, or in writing under control.[143] Thus, while under the Penitentiary Code the detained defendant can only be prohibited from contacting his/her family members if the prosecutor or the judge forbids this in the interest of ensuring the effectiveness of the criminal procedure, the CCP provides that pre-trial detainees may not write letters or meet with their relatives without the express permission of the prosecutor or the judge. This uncertainty has resulted in increased difficulties for defendants in maintaining contact with their family members. Furthermore, it has become increasingly difficult to detect any negligence or arbitrary restriction by the case officer. Prompt legislative action is needed to resolve this contradiction in the law.

One of the most important findings of the survey concerns the high degree of latency in cases of abuse. The majority of detained defendants do not even make an attempt to take action against various forms of (perceived or real) abuses. The primary reason for this is mistrust in the authorities' action against themselves or their counterparts. Data on the success rate of complaints show that the lack of trust is not unfounded. Investigations are often protracted or wither away completely, and holding the official persons who committed the abuse accountable fails even in cases where the violation to the rights of detainees or defendants is remedied by the organ considering the complaint. As long as organs and individuals entitled to conduct investigations and take measures do not show due diligence (out of misguided professional loyalty or for other reasons) in their actions against abuses violating the rights of defendants, no significant improvement can be expected.

[142] Penitentiary Code, § 118

[143] CCP § 43 Par (3)(b)

V.
ISSUES RELATED TO LEGAL DEFENSE OF PRE-TRIAL DETAINEES

The (retained or appointed) defense counsel plays a vital role in the exercise of criminal procedural rights by the pre-trial detainee, who has been fully deprived of the freedom of movement and partially deprived of other important rights, and who is in a considerably vulnerable position in spite of the safeguards contained in the CCP. It is therefore of utmost importance how a defendant in pre-trial detention is able to contact the defense counsel, from which moment in the process the defendant can rely on the counsel's assistance, and how he/she can communicate with the defense lawyer from the place of detention. A further crucial question concerns the quality of defense available for those defendants who lack sufficient funds to retain an attorney and are therefore appointed a defense lawyer by the authorities. While defendants who are better off can easily exercise "quality control" over the activities of the defense (by hiring another attorney in case of dissatisfaction), defendants with appointed counsels lack the practical means to arrange for another counsel to be appointed (see Chapter I. point 6.) should they feel that their attorney is not performing properly. The section below will examine this issue in detail.

1.
CONTACTING THE DEFENSE COUNSEL WHEN THE PROCEDURE STARTS

As described under Chapter I. point 6., the phase of the criminal procedure against a definite person starts when well-founded suspicion is communicated. The communication of well-founded suspicion is generally promptly followed by the first interrogation. With regard to defendants being able to benefit from the assistance of defense counsel during the first interrogation, the manner in which the defendant comes into contact with the authorities is a significant factor. If the defendant receives summons to appear before the investigative authorities, and is thereby also informed that he/she is a criminal suspect, he/

she will be able to ensure his/her defense in time (if his/her financial position allows). On the other hand, if the authorities contact the suspect in a different way, it is more than likely that the first interrogation will take place without the presence of the defense counsel. The HHC's experience shows that this second scenario is more common.

Table 32:
How did you come into contact with the investigating authority prior to the pre-trial detention?

Response	*Selected*		*Not selected*		*Total*	
	Person	*%*	*Person*	*%*	*Person*	*%*
Taken to the police station after someone had called the police	70	14.06	428	85.94	498	100.00
Taken to the police station after being caught committing a crime	66	13.25	432	86.75	498	100.00
Taken to the police station after being found in the course of the investigation	174	34.94	324	65.06	498	100.00
Detained pursuant to an arrest warrant	61	12.25	437	87.75	498	100.00
Taken to the police station following an identity check	56	11.24	442	88.76	498	100.00
First summoned as a witness, then became a suspect	18	3.61	480	96.39	498	100.00
Summoned to appear before the authority as a criminal suspect	17	3.41	481	96.59	498	100.00
Other	70	14.06	428	85.94	498	100.00

The same respondent could give several responses.

There are overlapping responses in the table, as some respondents had been caught in the act because someone had called the police, while others were caught during an identity check after an arrest warrant had been issued against them. Most of the respondents who selected the "other" option had contacted the police voluntarily: either they had called the police to the scene of the crime of their own accord (e.g., 3.14.1., 5.15.8., 6.1.5.) or when they became aware that the police were searching for them, they presented themselves (e.g., pl. 2.11.2., 3.12.1., 6.17.9., 7.16.4., 9.19.1., 9.19.3., 10.18.5.,

11.7.15., 11.11.2., 13.22.3., 15.24.3., 17.26.2.). Several respondents became detainees right after having served a sentence of imprisonment, i.e., they were placed in pre-trial detention without having been released (e.g., 8.6.3., 8.6.7., 10.18.8.).

Although it may be debatable why so many persons who present themselves to the police of their own accord are taken into pre-trial detention (whether the statutory grounds for pre-trial detention are met), what is truly interesting and well demonstrated by the table is that, prior to the deprivation of liberty, only a fraction (3.4 percent) of respondents had been summoned to appear before the authorities. Even if the number of those against whom an arrest warrant had been issued is included in the calculation (because in most cases the reason for this is that the defendant fails to appear despite being summoned and his place of residence is not known to the authorities, therefore he/she cannot be forced to appear), out of the altogether 498 respondents, summons were attempted in the cases of only 78 persons (15.7 percent), while more than one-third of respondents (174 persons) were taken to the police prior to the order of pre-trial detention from their home (e.g., 1.1.4., 1.8.1., 7.16.2., 7.16.7., 7.16.8. etc.), work place (10.18.3.) or school (8.5.9.), and a few respondents had been initially summoned as witnesses and then, upon appearing before the authority, were charged with a crime.[144]

Several respondents who had selected the "other" option reported to the HHC that the circumstances in which the deprivation of liberty occurred did not allow them to ensure their defense.

> Two persons alleged that they had not been summoned in a lawful manner, as they had been called to the police station on the telephone without being informed of their status in the procedure, and when they had appeared, they were first taken into custody, then into pre-trial detention (1.2.2., 1.5.7.).
> A respondent was taken into custody when he went to the police station to retrieve his seized car (1.5.8.).

[144] When evaluating survey results, it should be borne in mind that this relates to suspects of severe criminal acts, which are grounds for ordering pre-trial detention. It cannot be excluded that in the total sample of defendants the rate of those defendants who did not receive summons as a suspect was considerably lower. At the same time, with respect to defendants who had been taken first into custody then into pre-trial detention, this issue is of particular importance as defendants who have not been detained are in a much better position to ensure and hire appropriate defense services.

A respondent's mother, who was working in the Ministry of the Interior, told him that the police would like to talk to him. When he appeared at the police station, he was interrogated for about six hours, then taken into custody (2.11.5.).
A respondent went to the police station to find out why his sister-in-law had been taken to the station, but he was also taken into custody right away (19.5.2.).

Although it can improve the effectiveness of investigations, this practice is of concern: if the suspect (or person about to become a suspect) is held in detention (in short-term arrest or custody), it is highly probable that he/she will not be able to ensure defense for the first interrogation, since (as it is pointed out under I.6.) the first interrogation generally takes place shortly after the deprivation of liberty has commenced. At the same time that the charge is communicated, the suspect has to be informed of his/her right to choose a defense counsel or to request the appointment of an ex officio counsel (or importantly, if the suspect states that he/she does not wish to retain a defense counsel, by the terms of the CCP, the prosecutor or the investigating authority shall immediately appoint a defense counsel[145]). However, this information is provided in practice during the first interrogation, therefore even if the suspect states his intention to hire a defense counsel, this may only take place once the interrogation has ended (as the presence of counsel is not a prerequisite for conducting the interrogation).

In light of the above, the possibility to select a defense counsel (at least with regard to the first interrogation) becomes practically illusory, as corroborated by a number of responses to the question: "At the first interrogation, were you informed of your right to select a defense counsel?"

A respondent voiced incredulity, stating that the information had been provided, but he had not been permitted to notify any of the four attorneys he had named (1.6.2.).
A detainee in the Venyige street remand prison reported a similar incident: the information about the right to counsel had been given to him, and he had asked permission to telephone his attorney, but the police officers had told him that they were not obliged to ensure the presence of counsel at the first interrogation and that he would have the opportunity to inform his attorney after making a confession (1.6.4.).
A detainee in the Csillag Prison in Szeged complained to the HHC that upon taking him into custody, the case officer did not permit him to inform his parents, and did not allow his attorney to take part at the first interrogation (6.5.2.).

[145] CCP, § 179 Par (3)

Out of the 475 respondents to this question, 116 persons (24.4 percent) reported that they had not been given information about their right to counsel. Considering that the CCP requires this information to be given (and to be recorded in the minutes), in reality the number of cases where the information is not provided must certainly be lower. Presumably the problem stems from the fact the detectives do not place proper emphasis on this matter. The HHC has seen examples where the case officer attempted to circumvent the rules on providing information about the right to counsel.

> A respondent stated that although the minutes that he had been given to sign in fact contained the information about access to counsel, this notice had not been mentioned to him orally (1.6.9.).

The HHC met relatively few persons who stated that the right to hire a defense counsel had been taken seriously during the first interrogation.

> A respondent in the Venyige street remand prison stated that the case officer had allowed him to make a telephone call, and within half an hour his attorney had arrived and the first interrogation could take place in the presence of the defense counsel (1.8.14.).

It seems that persons who report voluntarily to the police are in the best position in this respect, as they are able to take steps to ensure their defense before the first interrogation is to take place.

> A respondent stated that when he had become aware of the arrest warrant issued against him, he appeared at the police station with his attorney; thus the interrogation took place with his defense counsel present (14.27.2.).

With regard to ex officio defense counsels, the situation is even worse. As mentioned above, if the defendant is detained, a defense counsel must be appointed before the start of the first interrogation for defendants who do not wish to or cannot retain a defense counsel.[146] In practice however this – otherwise welcomed and new – provision does not unconditionally guarantee the presence of counsel at the first interrogation. If, for example, the authority only notifies the defense counsel one hour before the scheduled time of the interrogation,

[146] CCP, § 48 Par (1)

in spite of having formally complied with the rule, it is likely that the ex officio appointed counsel will be unable to appear at the procedural action.

> A respondent stated that after having been informed of the right to retain counsel or to request that a defense counsel be appointed, he asked for an attorney to be appointed as he did not have his own, but the attorney was not present at the interrogation (1.8.13.).

A further question included in the survey focused on the time that had elapsed between the start of the deprivation of liberty and contact between the defense counsel and defendant. The following responses were received.

Table 33:
After the start of the deprivation of liberty, when could you contact your defense counsel?

Response	*Ex officio appointed counsel*		*Retained counsel*		*Total*	
	Person	*%*	*Person*	*%*	*Person*	*%*
Immediately	12	5.66	48	21.43	60	13.76
Later, but still before the first interrogation	9	4.25	29	12.95	38	8.72
At the first interrogation	29	13.68	13	5.80	42	9.63
After the first interrogation, or still no contact at all	162	76.41	134	59.82	296	67.89
Total	212	100.00	224	100.00	436	100.00

Hence 23.6 percent of appointed counsels and 40.2 percent of retained counsels had not contacted their clients until the first interrogation. The difference is particularly significant because – as evidenced by the statements gathered by the HHC – the presence of counsel at the interrogation in vital from the point of view of the defense, as well as in the interest of preventing any abuse. Investigating officers also have a clear understanding of these considerations.

> For example, a detainee who complained of ill-treatment stated that the beatings began when the appointed defense counsel left the venue (referring to the fact that he is also acting as defense counsel for one of the accomplices, therefore he cannot represent the complainant) (11.11.9.).

> In another case the case officer summoned the respondent's defense counsel 15 minutes later than when the interrogation had begun, and in the meantime tried to persuade the defendant to make a confession (4.14.2.).

The importance of having the defense counsel present at the interrogation is underscored by complaints about some case officers attempting to force detained suspects to confess to the crime during "unofficial" interrogations which are conducted without minutes being taken (pl. 3.12.3., 14.27.2.).

> One of the most outrageous examples of this is the case (already cited above) in which the respondent's formal interrogation was preceded by an informal questioning, where ten officers "were bombarding him with their questions" (1.6.9.).

Moreover, it is far more difficult to manipulate the interrogation minutes if the defense counsel is present. A high number of respondents who did not have their defense counsels present at the interrogation voiced complaints about their statements not being recorded, or being inaccurately recorded in the minutes (e.g., 3.12.2., 7.16.8.).

> A respondent stated that the case officer did not record in the minutes parts of his statements that he thought to be unimportant, and his complaints about this were not included in the minutes by the prosecutor either (1.3.3.).
> An additional, also worrisome case concerns a respondent whose case officer recorded in the minutes of the first interrogation that the defendant had refused to testify, although he had stated that he did not commit the crime in question (1.6.9.).

In summary, certain situations (for example, to prevent escape or elimination of evidence) may be justified if the presumed perpetrator of a crime is not summoned, and instead the investigating authority unexpectedly "seizes" him and takes him into custody. This is particularly so in the case of severe crimes which later will also serve as grounds for ordering pre-trial detention. At the same time, however, it should not automatically follow from the deprivation of liberty imposed on the alleged perpetrator that the defense counsel does not take part at the first interrogation, which takes place after the suspicion has been communicated to the suspect – although this had been the case for nearly 70 percent of the respondents interviewed by the HHC. Opportunities and suitable amounts of time should be given even to defendants who have been taken

into custody by surprise to try to arrange for their defense, or if they cannot afford to retain an attorney, to have ex officio counsel appointed in due time so that the appointed defense counsel has a realistic opportunity to appear at the first interrogation. In the HHC's view, it would be desirable to amend relevant provisions so that only justified cases would merit an exception (e.g., if the detained defendant must be interrogated without delay in the interest of catching accomplices, preventing the completion of a crime, preventing or alleviating damages caused by the criminal act).

Given the present practice, the most advantageous position for the defendant is when he/she refuses to testify as long as the presence of the defense counsel is not ensured at the interrogation. As referred to above, the defendant must be informed at the start of the interrogation about the right to refuse to testify (and the testimony may not be included in the evidence if the defendant had not been informed of this right). Nonetheless, it may well happen that the defendant is not sufficiently "experienced" to refuse to testify until he/she has had an opportunity to consult with the defense counsel. Furthermore, when asked whether a warning about the right to refuse testimony had been given to him/her prior to the first interrogation, 96 persons (20 percent) out of 480 respondents gave the HHC a negative answer. Although – much like when the warning about the right to counsel is not given to defendants – it is probable that in most cases the warning had actually been communicated in some form (as the defendant's signature is required for this part of the minutes), it is not impossible that detectives place little emphasis on this right, which explains the high number of respondents who cannot recall having heard this warning.

2.
PRESENCE AND INVOLVEMENT OF THE DEFENSE COUNSEL IN THE CRIMINAL PROCESS

One aspect of the survey examined the performance of defense counsels in the criminal process pending against defendants in pre-trial detention. Considering that the client – at least in principle – may exert genuine control over the retained counsel's performance through the possibility of dismissing the attorney, our assessment placed emphasis on sensitive issues related to the performance of ex officio defense counsels. (Furthermore, survey results substantiated our initial hypothesis that defendants encounter fewer problems with retained defense counsels than with defense counsels appointed ex officio.)

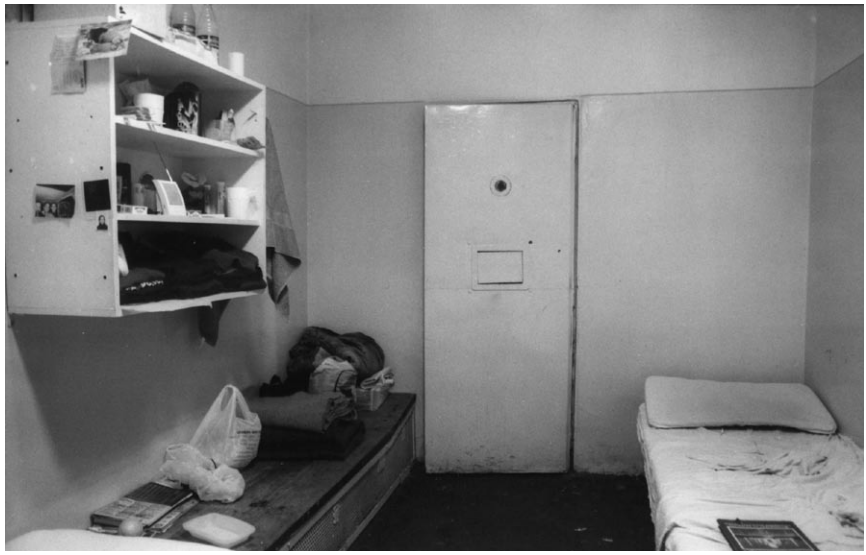
In terms of rules previously discussed under I.6., ex officio defense counsels are obliged to report to the authority ordering the appointment without delay after having received the appointment order, and to gather information from the authority, as well as to promptly initiate personal contact with the client held in pre-trial detention. Under the general provisions of the CCP, ex officio (and retained) defense counsels are also obliged to use all lawful means and methods of defense in their client's interest *in due time*, to inform the defendant of the lawful means of defending himself/herself and of his/her rights, as well as to promote the collection of evidence suitable for acquitting the defendant or mitigating his/her responsibility under criminal law.[147]

As shown in the previous section, the presence and involvement of the defense counsel is of crucial importance for ensuring procedural safeguards. Thus it is of particular significance in regard to how diligently and actively ex officio defense counsels, appointed to represent indigent detainees, perform their role in the criminal process. This question becomes even more significant because out of 494 respondents to this question in the survey, 261 persons (52.8 percent – more than half of all respondents) had ex officio defense counsels to assist them in the criminal process.

Contacting the defendant: As set out in Table 32, 40.2 percent of retained defense counsels contacted the defendant before the first interrogation, compared to 23.6 percent of ex officio defense counsels. However, this comparison in itself is not very conclusive, considering that – as explained in the previous section – in an overwhelming majority of cases the defense counsel is wholly unable to influence whether he/she will be able to contact the client prior to the first interrogation, or if he/she can be present at the interrogation.

More telling data comes from comparing whether defendants had been contacted by their attorney at the time of the HHC survey: 4.9 percent (11 persons out of 227) of defendants with retained counsels compared to 26.4 percent (65 persons out 246) of defendants with ex officio counsels reported that they had not had been contacted at all by their attorney. Despite the significant difference, this may be considered a genuine improvement compared to the Hungarian Helsinki Committee's 1996 survey, which found that 43.7 percent of defendants who had ex officio defense counsels had not met their defense counsel at the time they responded to the survey. However, as the 1996 survey only concerned police jails (where pre-trial detention may be implemented until the investigation has been closed), while the present survey also concerns per-

[147] CCP, § 150



sons who had already had hearings in the trial phase of the criminal procedure, where the presence of ex officio counsel is mandatory (unlike the investigation phase), responses from defendants whose cases were still being investigated or where the investigation had already been closed but the indictment has not occurred yet were analyzed separately.

Our findings show that 31.2 percent of respondents with ex officio defense counsels in cases where the investigation was still pending had not had contact with their defense counsel. This rate if somewhat higher than in the sample containing all defendants with ex officio defense counsels, but still constitutes a marked improvement (12.5 percentage points) from the 1996 results. Still, every third person with an ex officio defense counsel had remained without actual assistance from his/her attorney in the investigation phase of the procedure.

> A respondent in the Venyige street remand prison stated that the case officer had named at the second interrogation the defense counsel appointed to his case, and informed him that the defense counsel failed to appear at the interrogation in spite of lawful summons issued. Almost a full year has passed since then, but the defense counsel still had not sought contact with this client (1.6.1.).
>
> Another detainee reported that his first ex officio defense counsel refused to visit him despite his request, thus he applied for a different defense counsel to be appointed to his case, which was granted by the authority. It took almost half a year for the new ex officio defense counsel to contact him (7.4.1.).

A respondent's defense counsel sent a message through the case officer that he could not visit the defendant in the jail yet, as "he is busy" (23.31.1.).
A detainee in the Veszprém prison reported that since his ex officio defense counsel did not appear even at the court hearing, the prison chaplain recommended a defense counsel who was eventually appointed to his case by the court (2.11.6.).
A respondent reported that before his current ex officio defense counsel (who fulfills his duties diligently), he had two ex officio defense counsels, but he does not know them and has never met them in person because both resigned from the appointment before having done anything for him (6.18.5.).

Most respondents were not able to explain why their ex officio defense counsel had so far failed to contact them, but some pre-trial detainees provided interesting replies.[148]

A respondent said that his ex officio defense counsel is only willing to spend time on cases for which he also receives payment "in his pocket," but says he has no money (10.1.4.).
Another respondent gave a similar reply: his attorney informed him that he would only deal with his case if he paid, but he did not have money; therefore they had no contact at all during the procedure (6.18.9.).
The existence of the above phenomenon is corroborated by another detainee, who reported that his first contact with his ex officio defense counsel was after seven months, and only because he had paid him (8.5.1.).
Another respondent said that the ex officio defense counsel did not contact him until his mother gave him power of attorney and paid him a fee of HUF 35,000 (EUR 140) (12.11.6.).
Problems concerning consultation between ex officio defense counsels and foreign detainees (see I.6.) are highlighted by a case from the Venyige street remand prison, where a detainee has alleged that his defense counsel does not visit him because the lawyer does not speak Russian, therefore they cannot communicate (1.1.5.).

[148] Reasons provided by respondents with retained defense counsels explaining why they had not yet established contact with their attorney did not raise issues related to professional errors. One respondent stated that his family members had hired the attorney, but the respondent had so far not felt the need for a visit (12.20.1.); another respondent's attorney would contact him once a Romanian interpreter had been identified (10.28.3.).

Indisputably, attorneys may offer several defenses, ranging from low fees and the unacceptable requirement that they advance interpretation costs to the lack of cooperation from investigation authorities. Occasionally the place of detention is not included in the ex officio appointment order, which can mean that the defense attorney has to spend several days trying to find his client.[149] One survey respondent reported that the officer in charge of his case regularly keeps his defense counsel waiting for 60 to 90 minutes before interrogations (12.11.8.). Notwithstanding the foregoing frustrations, this cannot be considered an excuse for violating professional ethical and criminal procedure norms relating to the obligation to contact defendants.

If the ex officio defense counsel fails to establish personal contact with the detained defendant, the defendant has to somehow reach his attorney. The first obvious precondition for this is that the defendant should be aware of which attorney has been appointed by the investigation authority (or the prosecutor's office or the court). According to the CCP, the defendant should be informed of the identity of the defense counsel after the appointment has taken place,[150] and in case of detained defendants, the authority making the appointment should also inform the institution where detention is implemented about the defense counsel.[151] The institution where pre-trial detention is being implemented is obliged to provide information about the identity of the ex officio defense counsel at the detainee's request. Although this requirement is not expressly stated in the legal regulations, it is implicitly contained therein, as the terms of the Penitentiary Rules require that the penitentiary institution ensure the exercise of rights guaranteed by criminal procedural law for pre-trial detainees[152]; the Police Jail Regulation also provides that "detainees [held in police jails] may exercise their rights guaranteed by criminal procedure law, and may maintain contact with their legal representative proceeding in the case serving as the basis for detention".[153] It would be difficult for detained defendants to exercise their rights guaranteed by criminal procedure law without knowing who their ex officio defense counsel might be.

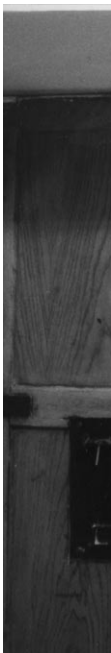
[149] Information from István Győrffy, attorney at law and head of the legal clinic at the University of Debrecen, at the Hungarian Helsinki Committee roundtable meeting held on 28 and 29 October 2002.

[150] CCP, § 48 Par (1)

[151] CCP, § 48 Par (8)

[152] Penitentiary Rules, § 244 Par (1)

[153] Police Jail Regulation, § 2 Par (1)



In spite of the aforementioned legal framework, a relatively high percentage of detainees reported that they did not know the identity of their ex officio defense counsel: out of 261 respondents to this question, 62 persons (23.6 percent) gave this reply. The following responses were given regarding the reasons.

Table 35:
If you do not know who your ex officio defense counsel is, what is the reason for that?

Explanation	*Person*	*%*
Did not inquire	23	38.33
Inquired but did not receive information (in a police jail)	7	11.67
Inquired but did not receive information (in a penitentiary institution)	3	5.00
Other	25	41.67
Missing element	2	3.33
Total	60	100.00

Among those detainees who indicated other reasons, some stated that they had no information about their ex officio defense counsel because their family members maintain contact with the attorney (1.6.6., 8.6.14.). Some detainees did not remember who their defense counsel was, although they had been previously informed (1.6.8., 2.10.9.). This cannot be attributed to the detainee's bad memory in every case.

> One respondent complained in particular that although he had been told the name of the attorney, the attorney's data had not been handed to him in written form despite his specific request, and therefore he could not remember the data (26.32.6.).
>
> Another respondent reported that the name of the defense counsel had been told to him, but the attorney did not appear at any of the interrogations; therefore the detainee does not wish to see him and has already forgotten the attorney's name (21.4.1.).

A significant percentage of pre-trial detainees (38.3 percent) selected the "did not inquire" option – it should be noted that according to law, the authority making the appointment should inform the defendant about the identity of the defense counsel even without the defendant "showing interest". In some cases, the failure to inquire about the defense counsel stemmed not from disinterest but from being uninformed.

A respondent stated that he had been waiting to have someone appointed as defense counsel to his case, but the attorney did not establish contact with him. No one told him that he could have asked about the identity of the defense counsel (1.8.11.).

A detainee in the Sopronkőhida prison told the HHC that his ex officio defense counsel resigned from the appointment after the first instance decision, because he did not want to travel to Budapest for the subsequent trial. The detainee inquired from the penitentiary institution about what steps he should take. Although according to law the second instance court should appoint a new defense counsel in this case, the detainee received the answer that he should hire his own attorney. He complained to the HHC that he cannot afford to do this (8.6.1.).

A detainee in the Venyige street remand prison stated that he does not know the telephone number or address of the ex officio defense counsel appointed to his case. He did not try to ask the penitentiary institution, because he was unaware that he could request this information from the prison. Anyhow, after having spent one year in pre-trial detention, he sees no point in trying to find the ex officio defense counsel who has not contacted him yet (1.6.1.).

As indicated by the latter example, the indifference about the defense counsel displayed by respondents may often be explained by bad experience and skepticism towards the institution (pl. 1.7.4., 1.6.8.).

A detainee explained: unless the ex officio defense counsel takes steps to contact the detainee voluntarily, there is no hope that the attorney will truly pay attention to the case; therefore the detainee does not even want to know who his ex officio defense counsel is (10.18.11.).

Another detainee indicated that he had not inquired about who his defense counsel is because he did not believe that the ex officio defense counsel would help him (10.18.7.).

One detainee showed similar indifference when asked why he had not tried to inquire about the identity of the defense counsel appointed to his case: he simply replied "it doesn't make any sense, the attorney wouldn't do anything" (19.14.3.).

Another person stated that the case officer had informed him that the ex officio defense counsel would be present at the upcoming confrontation, but the lawyer had failed to appear; therefore the detainee does not see any point in making inquiries (21.4.2.).

A pre-trial detainee gave a frank answer with respect to ex officio defense counsels: "I got used to the idea of not being interesting for them" (1.8.9.).

> The severe lack of trust in the institution was exemplified by a rather bizarre explanation offered by a pre-trial detainee, who said that he had not inquired about the identity and contact information of his ex officio defense counsel because he believes that ex officio defense counsels are "working for" the police (19.14.6.).

The lack of trust is corroborated by data concerning defendants who had not come into contact with their ex officio defense counsel at the time of the HHC's survey: 73.2 percent had not made any attempt to contact their attorney.

Compared to initial expectations formulated based on the HHC's monitoring programs, fewer persons (only 10) stated that although they had tried to inquire from the authority implementing detention about the data of the ex officio defense counsel, no response was received. However this figure still shows that 16.7 percent of detainees (i.e., every sixth person) who did not know their ex officio defense counsel indicated that the reason for their lack of knowledge was the detention facility's omission in providing the required information. Moreover, as referred to above, due to the lack of information many detainees were unaware that they could ask information from the detention facility.

> One detainee was obviously not informed about the obligation of authorities implementing detention to provide information about the ex officio defense counsel, as he replied that he had not tried to contact his defense counsel because he did not know where he should turn to (6.1.11.).
>
> The HHC received a similar answer from a detainee who said that he had not tried to contact his ex officio defense counsel because "he did not know the telephone number" (12.14.9.).
>
> A respondent stated, "I never tried to contact my attorneys, and many times did not even know who I should look for" (12.14.6.).

Detainees who have met their ex officio defense counsels but still did not know their details, particularly contact information, constitute a distinct group. In the case of these attorneys, the violation of professional and legal obligations is not (or not particularly) excessive, as they have contacted their client in some way, and have taken part in procedural actions. But they have not told the client how he/she may reach them and do not provide contact information, thereby denying clients the opportunity to communicate with the attorney – this, in fact, may well hinder the effective realization of the right to defense.

> A respondent said that although he had met the ex officio defense counsel at the

court hearing preceding the ordering of pre-trial detention, he does not know the attorney's name, address or phone number (9.6.3.).
Another respondent stated that he had been appointed a new defense counsel, as the first one "did not do anything". The new defense counsel did not tell him her name, and the respondent only knew that she is "a blonde woman" (19.5.5.).
A detainee in the Venyige street remand prison was also unaware of the name and data of his ex officio defense counsel, and could only remember "an elderly lady" (1.8.9.).

The HHC also inquired about how contact was established with ex officio or retained defense counsels who had met their clients. The following replies were given.

Table 36:
If you have had contact with your defense counsel, how did this take place?

Response	*Respondents who had ex officio defense counsels (181 persons)*		*Respondents who had retained defense counsels (216 persons)*	
	Person	*%*	*Person*	*%*
The defense counsel contacted the detainee on his/her own initiative	51	26.98	105	48.61
The defense counsel contacted the detainee at the latter's request	24	12.70	105	48.61
The defense counsel was present at the court hearing about pre-trial detention	32	16.93	38	17.59
The defense counsel was present at a procedural action during the investigation	41	21.69	47	21.76
The detainee called the defense counsel on the telephone	17	8.99	35	16.20
The defense counsel replied to the detainee's letter	3	1.59	5	2.31
At his/her own initiative, the defense counsel sent his/her trainee attorney to meet with the detainee	3	1.59	8	3.70
The defense counsel sent the trainee attorney to meet with the detainee at the latter's request	2	1.06	2	0.93
The trainee attorney was present at the hearing about pre-trial detention	5	2.65	–	–
The trainee attorney was present at a procedural action during the investigation	6	3.17	2	0.93
The detainee spoke to the trainee attorney on the telephone	–	–	–	–
Other way	58	30.69	24	11.11

The same respondent could give several responses.

The above data clearly demonstrate that the difference is significant as regards personal consultations between the defense counsel and the detained defendant: retained defense counsels visit (at their own initiative or at the detainee's request) clients held in pre-trial detention in far higher numbers than ex officio defense counsels (respective variations of 21.6 and 35.9 percentage points).

The majority of defendants with ex officio defense counsels who had selected the "other" option stated that the first occasion when they had met their defense counsel was at the court hearing (pl. 1.3.7., 1.8.9., 7.16.5., 7.16.6., 8.5.8., 8.6.1., 8.6.3., 8.6.5., 8.6.6., 8.6.8., 8.6.9., 8.6.10., 10.18.2., 10.28.5., 12.14.6., 12.20.6., 19.5.10.).

> A respondent complained that the ex officio defense counsel is only present at the court hearings, and otherwise never pays him a visit (7.16.2.).
> A detainee said that although he had written to his ex officio defense counsel asking the counsel to visit him in the jail, they only met at the first instance court hearing for the first time (7.4.3).
> A defendant did not know his ex officio defense counsel until "they ran into each other" at the court hearing – thereby providing a peculiar description of the relationship between attorney and client, and expressing his opinion about the performance of ex officio defense counsels (1.7.10.).

The reason that many defendants only see their ex officio defense counsel for the first time at the court hearing is *inter alia* that – in cases of mandatory defense – the presence of the defense counsel is mandatory at the court hearings, but not during the investigation.[154] In case of a court hearing the court will summon the defense counsel, and if the attorney fails to appear in court, he/she may be fined HUF 1,000 (EUR 4) to 200,000 (EUR 800) or up to HUF 500,000 (EUR 2,000) in particularly severe or recurring cases.[155]

Appearance at court hearings is, however, not sufficient to guarantee effective defense. Practicing attorneys believe that the investigation is decisive for the subsequent steps of the procedure: in the empirical study referred to under I.6., 20 out of 34 interviewed attorneys stated that the investigation plays a crucial role in determining criminal responsibility ("many […] judges make their decision based mostly on the investigation file").[156] Therefore ex officio defense counsels who first meet their clients at the court hearing do not comply with their obligations under the CCP, the Attorneys Act and the code of professional ethics.

[154] CCP, § 242
[155] CCP, § 69 Par (1) and § 161 Par (1)
[156] Fenyvesi, p. 125

Defense counsels' activeness during the procedure: Although based strictly on defendants' accounts it is extremely difficult, perhaps impossible, to gain a realistic picture about the level of defense counsels' performance, endeavors were made to approach this issue from the point of view of defense counsels' activeness, and to find out whether the respondent remembers if the defense counsel had participated at certain procedural actions, and whether he/she made any motions or remarks during the action. Taking into account that in cases of mandatory representation, the presence of the defense counsel is mandatory at the court hearing, the question about presence during procedural actions was limited to procedural actions during the investigation.

Table 37:
According to your knowledge, did the defense counsel take part at any procedural action during the investigation?

Response	*Respondents who had ex officio defense counsels (234 persons)*		*Respondents who had retained defense counsels (220 persons)*	
	Person	*%*	*Person*	*%*
Yes	70	29.91	149	67.73
No	123	52.56	52	23.64
The trainee attorney was present	3	1.28	6	2.73
Does not remember	39	16.67	21	9.55

The same respondent could give several responses (e.g., sometimes the defense counsel and sometimes the trainee attorney participated at certain actions).

As was expected in light of the above, significantly more detainees with retained defense counsels reported that the attorney had been present at some action during the investigation (37.8 percentage point difference).

Moreover, contrary to ex officio defense counsels, many respondents indicated that retained attorneys were absent from investigatory actions because the attorney was hired after the investigation had been closed (6.5.10., 8.5.5., 8.6.2., 19.14.8), or the attorney was not, or only belatedly notified of the time of the procedure (12.11.5., 12.11.7., 10.1.2.).

A separate question inquired whether the defense counsel had taken part at the court hearing held before ordering pre-trial detention. Again, responses related to retained defense counsels proved more favorable, as 64.8 percent (140 persons) of detainees who had retained counsel answered affirmatively, compared to 47.9 percent (114 persons) of detainees with ex officio defense counsels.

The survey also focused on the types of procedural actions in the investigation where defense counsels were present.

Table 38.a:
At which actions of the investigation did the defense counsel take part?

Response	*In relation to respondents who had ex officio defense counsels (86 persons)*		*In relation to respondents who had retained defense counsels (157 persons)*	
	Person	*%*	*Person*	*%*
First interrogation as defendant	22	25.58	54	34.39
Further interrogation as defendant	5	59.30	121	77.07
Polygraph examination		1.16	1	0.64
Hearing of witness	12	13.95	43	27.39
Confrontation	32	37.21	66	42.04
Inspection	2	2.33	6	3.82
Evidentiary experiment	2	2.33	5	3.18
Presentation for recognition	2	2.33	8	5.10
On-site survey	2	2.33	6	3.82
Presentation of expert opinion	6	6.98	23	14.65
Parallel hearing of experts	2	2.33	4	2.55
Presentation of the files	22	25.58	45	28.66
Other	11	12.79	13	8.28

The same respondent could give several responses.

Thus significant variations can be seen with respect to a number of procedural actions during the investigation (such as the defendant's interrogation, hearing of witnesses, presentation of expert opinions), while in other procedural actions, including confrontations and the presentation of the files, the difference is less than significant for retained defense counsels. However, it should be borne in mind during the evaluation of the above figures that the basis of comparison for percentage numbers is the overall number of defendants whose defense counsel had taken part at some action during the investigation. If figures are compared to the total number of respondents, the results are different.

Table 38.b:
At which actions of the investigation did the defense counsel take part?

Response	*In relation to the overall number of respondents who had ex officio defense counsels (261 persons)*		*In relation to the overall number of respondents who had retained defense counsels (228 persons)*	
	Person	*%*	*Person*	*%*
First interrogation as defendant	22	8.43	54	23.68
Further interrogation as defendant	51	19.54	121	53.07
Hearing of witnesses	12	4.60	43	18.86
Confrontation	32	12.26	66	28.95
Presentation of the files	22	8.43	45	19.73

This approach highlights the significant difference that favors retained defense counsels with respect to every procedural action during the investigation. While Table 38.a indicates that in the case of about 60 percent of persons with ex officio defense counsels who responded to this question, the attorney took part in the second or subsequent interrogations, which seems like a good result, if the examination is based on the overall population with ex officio defense counsels, the results are far less positive.

With respect to procedural actions where the defense counsel was present, the next question is whether the attorney had demonstrated any substantive activity beyond mere presence. The approach of the survey was to inquire whether the defense counsel (or trainee attorney) had made any motions or remarks in the course of the procedure, and if yes, when.

Table 39:
According to your knowledge, did the defense counsel/trainee attorney make any motions in the course of the procedure?

Response	*Respondents with ex officio defense counsels*		*Respondents with retained defense counsels*	
	Person	*%*	*Person*	*%*
Yes	92	38.17	171	77.73
No	100	41.49	30	13.64
Does not know; does not remember	49	20.33	19	8.64
Total	241	100.00	220	100.00

The comparison again provides more favorable results for retained defense counsels. The qualitative analysis also produces similar results based on an analysis – to the extent possible within the limits of the present survey – of the types of motions, the results of such initiatives, as well as client satisfaction with defense counsels.

Both with respect to retained (e.g., 1.3.5., 1.3.6., 1.3.8., 1.3.9., 1.8.1., 1.8.7., 1.8.8., 2.11.3., 5.15.4., 11.11.9., 13.21.6.) and ex officio (e.g., 1.3.10, 1.5.7., 1.8.5., 1.8.6., 1.8.12., 3.12.1., 3.12.2., 12.11.2., 12.14.6., 12.14.8.) defense counsels, most defendants reported applications for release, or appeals against the judicial decision ordering or extending pre-trial detention. Evidently, being released from detention matters most for pre-trial detainees, therefore they would mostly remember motions and procedural actions that might entail the possibility of ending the detention.

Regarding other motions, generally defendants with retained defense counsels reported higher "creativity" levels and more substantive activity from defense counsels. Most frequently this meant motions for appointing experts, questioning witnesses, arranging a confrontation or application for bail (e.g., 1.4.9., 26.32.10., 2.11.8., 12.14.7., 12.11.4., 12.11.7., 19.5.7., 19.14.14.).

> A detainee in the Venyige street prison gave a typical answer: in addition to writing and submitting an application for release, his retained defense counsel put forward numerous motions, such as applying for the appointment of an expert and questioning witnesses (1.3.4.).
> A few respondents reported less frequently applied actions: a defendant's retained attorney submitted a motion for a hearing with the prosecutor out of concern for the manner in which the investigation was being carried out (13.22.6.).
> A respondent's attorney filed a criminal report on account of the ill-treatment suffered by his client in the course of the official procedure (6.5.9.).

At the same time, it was clear from the responses of defendants who had ex officio defense counsels that – despite inadequate fee levels and other difficulties – the role of the defense counsel can be performed diligently and appropriately here as well (e.g., 5.15.8., 6.17.3., 7.4.6., 8.6.8., 11.11.3.).

> A respondent stated that the ex officio defense counsel's arguments at the court hearing preceding the ordering of pre-trial detention were so effective that the court initially decided not to order pre-trial detention, but as a result of the appeal lodged by the prosecutor, the court of the second instance ordered him to be

detained for 30 days. The same defense counsel continued to be very active at the hearing where detention was under review after 6 months (9.6.2.).

A detainee, who had been recommended a new defense counsel by the prison chaplain after the first ex officio attorney failed to appear even at the first hearing, stated that the new defense counsel regularly pays visits to him and has applied for his release and submitted several motions for evidence (2.11.6.). Another defendant who had been dissatisfied with the first ex officio attorney was very positive about the second defense counsel appointed to his case. As a result of the new attorney's actions, a part of the charges against the defendant were dismissed at the first instance (8.5.4.).

Among negative opinions about the performance of defense counsels, the majority deals with the activities of ex officio defense counsels. The HHC heard only two very negative assessments of retained defense counsels.

A respondent in the Sopronkőhida prison stated that the defense counsel had only taken part in one out of five interrogations, and remained silent throughout the occasion (9.6.1.).
Another detainee held in the Sopronkőhida prison made the following outcry: "I was my own lawyer. The attorney never says anything, but [he] cannot be dismissed because we have already paid him." (9.6.6.).

The above examples draw attention to the fact that effective control over the performance of retained defense counsels can only be exercised by those defendants who, in case of dissatisfaction, can afford to hire another attorney regardless of payments already made. If legal fees are to be paid in advance, many families are no longer able to change the defense counsel. Nevertheless, as demonstrated by the aforementioned examples, defendants with ex officio defense counsels may find themselves in particularly vulnerable situations.

A respondent told the HHC that the ex officio defense counsel had appeared at the judicial hearing regarding the ordering of pre-trial detention, but the attorney was noticeably drunk (8.5.6.).
A defendant in the Sopronkőhida prison stated that his ex officio defense counsel had been present at the "30-day hearing", but remained seated and silent throughout the hearing (9.6.5.).
Another respondent related that when he demanded an explanation from his ex

> officio defense counsel for the latter's passivity in the courtroom, the attorney replied that "he will not start to argue with a judge" (8.6.6.).
> A Romanian detainee who did not speak Hungarian and who at the time of the HHC survey still carried severe bruises on his arm from the alleged ill-treatment suffered from the police officers who had apprehended him, voiced the most serious "charges" against his ex officio attorney. The detainee stated that he had reported the incident to both the Romanian interpreter and the ex officio defense counsel present at the interrogation, but neither had done anything (3.12.6).
> It seems that many defendants only realize the importance of effective defense after the first instance judgment has been passed. One respondent, for example, told the HHC that he did not have contact with his ex officio defense counsel during the investigation phase. It was only the trainee attorney who had appeared during the court hearing, but he had stayed quiet. Because of this, the detainee requested a new defense counsel to be appointed by the court of the second instance (8.6.3.).

Several indigent families also only decide to retain a defense counsel after initial negative experiences with ex officio defense counsels.

> One respondent had an ex officio defense counsel for a while, but as that attorney failed to do anything, his daughter decided to authorize a defense counsel, despite the fact that they cannot really afford this (6.18.6.).
> Another person's partner hired an attorney after the ex officio defense counsel had only arrived at the judicial hearing concerning the ordering of pre-trial detention just as the hearing was ending (11.11.8.).

These families have to exercise a good deal of caution when hiring a defense counsel, because if they have to pay the full or partial amount of the legal fees in advance, and the attorney does not provide diligent services, they will not be able to exercise any more control over the lawyer's performance than persons who have an ex officio defense counsel.

Reports from defendants who complained that ex officio defense counsels tried to persuade them to confess to the crime raise a particularly sensitive issue (e.g., 12.11.9., 12.11.10.). Without information about these cases, it is obviously impossible to ascertain whether this was part of the attorney's well thought-out defense strategy (as a confession may be considered a mitigating circumstance in an otherwise hopeless case), or whether other considerations had played a role, such as attempts to make the attorney's work easier, or – even

worse – to maintain good relations with police officers with a view to securing future ex officio appointments. Either way, widespread mistrust in the ex officio defense system among defendants is exemplified by the fact that several respondents provided the following justification for the ex officio defense counsel's advice regarding making a confession:

> A detainee in Debrecen stated that the ex officio defense counsel, who is a good friend of the detective, tried to coax him into making a confession and cooperating with the police (11.11.5.).
> A respondent in Kaposvár believed that his ex officio defense counsel has close ties to the prosecutor's office, as the prosecutor was an old friend and former colleague of his attorney. "The attorney is only good for persuading suspects into making a confession" (8.6.7.).
> Another respondent had even told the ex officio defense counsel that he no longer needed him, as the attorney tried to persuade him to make a confession (12.11.3.).
> A further sad example of the general lack of trust was expressed by a pre-trial detainee who, when asked why he had not contacted his defense counsel, replied, "the ex officio attorney is more against the client than on his side" (11.7.9.).

It is, however, difficult to judge whether the above objections from defendants are legitimate, or whether defense counsels had good reasons for advising the defendants to make a confession. Nevertheless, in certain cases circumstances were at least suspicious.

> One respondent only met with his defense counsel on two occasions: first, at one of the interrogations, and second, when the defense counsel visited him to persuade him to make a full confession. The detainee refused this, and has not seen the attorney since (8.5.4.).
> Another detainee reported that an attorney appeared during his second interrogation and advised him to accept the charges against him, because in this case he would not be sent to prison. A new ex officio defense counsel participated at the next interrogation, and made him revoke the confession given at the previous interrogation, referring to the medication the defendant had been taking (11.11.3.).

This phenomenon is related to the problem discussed under I.6.: in the investigation phase, the authority that appoints the ex officio defense counsel

and ensures defense for the defendant is an agency which has interests that are blatantly contrary to those of the defendant. In this respect, the investigation authority or the prosecutor may exercise almost complete discretion, as any attorney registered on the list provided by the bar associations may be appointed as an ex officio defense counsel. This evidently does not build trust among defendants in the ex officio system, which would otherwise be crucial in the relationship between defense counsel and client. Therefore the HHC believes that, in pending cases, the powers of the investigation authority (and the prosecutor's office) should be restricted to simply signaling the need for an appointed defense counsel, while the appointment itself (i.e., selection and notification of the ex officio defense counsel) should be the task of an agency which is completely disinterested and impartial in the criminal procedure. The recently established legal aid offices could perform these functions.

3.
THE CONNECTION BETWEEN DEFENSE COUNSEL TYPES AND CERTAIN CHARACTERISTICS OF DEFENDANTS AND THE PROCEDURE

The aforementioned findings may lead to the conclusion that defendants who have retained defense counsels have a better chance of benefiting from effective defense in the course of the criminal process. Thus the HHC's survey also inves-

tigated the proportion of ex officio defense counsels to retained attorneys with respect to defendants with particular demographic characteristics, as well as any possible correlation between the type of defense counsel (ex officio or retained) and the chance of becoming a victim of injurious treatment discussed in Chapter IV, or the effectiveness of action taken against such injurious treatment.

The connection between the type of defense counsel and certain characteristics of defendants: Here the HHC looked at three characteristics: defendants' level of education, ethnic origin (Roma or non-Roma) and citizenship.

Table 40:
Variations among defendants having ex officio and retained defense counsels according to their level of education

	Ex officio defense counsel	*Retained defense counsel*	*Total*
Less than 8 years of primary education (persons)	72	23	95
Percentage of defendants having completed less than 8 years	75.79	24.21	100.00
8 years (persons)	83	47	130
Percentage of defendants having completed 8 years	63.85	36.15	100.00
Percentage of defendants who completed more than 8 years but did not acquire a secondary school diploma	83	122	205
Defendants with a secondary school diploma** (persons)	40.49	59.51	100.00
Defendants with a secondary school diploma** (persons)	23	36	59
Percentage of defendants with a secondary school diploma	38.99	61.01	100.00
Total number of defendants (persons)	261	228	489
Percentage of total number of defendants	53.37	46.63	100.00

** Those defendants who completed vocational school or frequented a high school but did not or have not yet completed their secondary studies. (Secondary studies are completed when the student acquires the secondary school diploma, which is a precondition of moving into higher education studies.)*

*** Those defendants who acquired a secondary school diploma, plus those with a university degree.*

The correlation is evident: the higher the level of education the defendant has, the higher is the likelihood of being able to retain a defense counsel due to his/her financial situation. The difference between defendants who have completed 8 years of primary school and those who have not is significant. Nonetheless, the true gap is found between those who have only completed 8 years of primary school and those who have completed more years of education, although genuine differences in the financial situation would presumably be evident between persons who have obtained a secondary school diploma and those who have not. Therefore one may conclude that defendants (and their families) do not consider hiring a defense lawyer a luxury, and those who – despite severe financial constraints – are able to afford it, will most likely retain a private defense counsel.

Table 41:
Variations among defendants having ex officio and retained defense counsels according to ethnic origin

	Roma (person)	*In percentage of Roma defendants*	*Non-Roma (person)*	*In percentage of non-Roma*	*Roma and non-Roma together (person)*	*In percentage of total*
Ex officio defense counsel	78	65.55	183	49.60	261	53.48
Retained defense counsel	41	34.45	186	50.40	227	46.52
Total	119	100.00	369	100.00	488	100.00

Among Roma defendants, the proportion of those who have ex officio defense counsels is significantly (nearly 16 percentage points) higher. This fact is obviously related to the more disadvantaged social situation of most Roma (which issue regrettably could not be examined within the framework of the present survey).

Table 42:
Variations among defendants having ex officio and retained defense counsels according to citizenship

	Foreign citizen (person)	*In percentage of foreign citizens*	*Hungarian citizen (person)*	*In percentage of Hungarian citizens*	*Foreign and Hungarian citizens together (person)*	*In percentage of total*
Ex officio defense counsel	20	45.45	241	54.16	261	53.38
Retained defense counsel	24	54.55	204	45.84	228	46.62
Total	44	100.00	445	100.00	489	100.00

The proportion of retained defense counsels is relatively high among foreign defendants. This supports the finding that if someone is able to afford to pay legal fees, he/she will do so. Presumably this is especially true when it comes to foreign citizens, who due to the lack of Hungarian language skills are particularly vulnerable in the criminal procedure.

The connection between the type of defense counsel and injurious treatment, or the consequences thereof: The survey's initial hypothesis was that two basic differences might be revealed between defendants according to whether they had ex officio or retained defense counsels: first, with respect to the likelihood of being subjected to injurious treatment, second, with respect to the frequency of filing complaints and their successfulness. Regarding the first issue, the types of injurious treatment, which might be affected by the presence of the defense counsel, should be dealt with separately from treatment where the presence of the attorney carries no influence. The type of defense counsel would not make a difference with respect to ill-treatment committed when the defendant was caught or at the very start of the procedure, since in most cases the defendant would not have a defense lawyer yet. Similarly, jail guards who might proceed in an injurious manner would not differentiate between detainees who do not display due respect based on the detainee's type of defense counsel. On the other hand, the presence or activity of the defense counsel is likely to have an impact on the ill-treatment carried out during an interrogation or psychological pressure applied by an investigator. However, the filing of complaints on account of various forms of ill-treatment or the assessment of the success rate thereof does not require such a differentiation to be applied.

Ill-treatment cases: A significantly lower number of persons who had retained defense counsels complained of ill-treatment than those who were represented by ex officio defense counsels. Out of 257 respondents who had ex officio defense counsels, 60 persons (23.4 percent) stated that they had suffered ill-treatment, compared to 20 persons (8.9 percent) out of a total of 225 responding defendants who had retained defense counsels.

For both groups, the alleged ill-treatment had principally taken place at the very start of the procedure, during capture or transportation to the police station. However, contrary to the preliminary expectation, no significant difference could be detected as regards the occurrence of ill-treatment in later phases of the criminal procedure.

Nevertheless, the difference was considerable with respect to the first interrogation, which may be considered as constituting a boundary between the initial and all later phases of the criminal procedure and which comprises a crucial element of it: 15 respondents with ex officio defense counsels stated that they had been ill-treated during the first interrogation, which constitutes 25 percent of all persons with ex officio defense counsels who complained of ill-treatment. In comparison, the 3 respondents with retained defense counsels who complained of ill-treatment suffered during the first interrogation only make up 15 percent of respondents with retained defense counsels who complained of ill-treatment. The difference in this case may be considered significant. Presumably higher participation levels at the first interrogation among retained defense counsels may explain this difference.

Likewise, the difference the survey found with respect to complaints and their effectiveness was not as significant as previously expected. Although respondents with retained defense counsels filed comparatively more complaints about ill-treatment than their counterparts with ex officio defense counsels, the difference between the two groups is only slightly significant. Out of 20 defendants with retained defense counsels who reported ill-treatment, 7 persons attempted to seek remedies (35 percent), while in the sample of 60 defendants with ex officio defense counsels complaining of ill- treatment, only 15 (25 percent) reported having filed a complaint.

As previously described, not one complainant reported that the perpetrator of ill-treatment had been held accountable. Only one case each was pending in the groups of defendants with ex officio or retained defense counsels. There-

fore, contrary to the HHC's preliminary expectations, it seems that as regarding cases of ill-treatment the type of defense counsel a detainee has does not play a decisive role.

As regards the reasons for not filing a complaint, in accordance with the HHC's preliminary expectations, the survey found that a larger proportion of defendants with ex officio defense counsels referred to the lack of information about legal remedies. Six of them (13 percent) explained that they had not filed a complaint about ill-treatment because they did not know how to go about it. In comparison, none of the respondents with retained defense counsels gave this answer. Fear of reprisal was mentioned with approximately equal frequency among both groups (32.6 and 30.8 percent); interestingly, defendants with retained defense counsels indicated skepticism about the success of complaints as a reason for their reluctance in somewhat higher numbers than those with ex officio defense counsels (53.9 and 50 percent respectively). Since the defendant is presumed to report any ill-treatment to his defense counsel, this result could be explained in two ways: either a good number of attorneys acting as retained defense counsels do not believe their defendants unconditionally, or only a few of them have faith in the effective investigation of ill-treatment cases.

Psychological pressure: Although the survey began with the presumption that (due to the proven higher rate of participation and activity among retained defense counsels) respondents with retained attorneys would complain less about psychological pressure, no significant difference was found between the two groups of detainees. 44.8 percent of defendants with ex officio defense counsels (117 out of 261 persons) stated that they had been subject to some form of psychological pressure. Among defendants with retained defense counsels, this rate was even slightly higher: 52.2 percent (119 out of 228 persons) felt they had been subjected to psychological pressure.

Although the difference was nearly significant, the original hypothesis (whereby retained defense counsels, or their clients, would be more active in taking steps to counter psychological pressure) was again not fully confirmed: 17.6 percent (21 persons) filed complaints against this type of injurious treatment, compared to 8.6 percent (10 persons) among defendants with ex officio defense counsels.

With regard to the success rate of complaints, no significant difference was encountered: no one reported that the perpetrator held been held accountable, although two persons with retained defense counsels reported that the procedure started due to the filed complaint was still pending. However, the low

number of respondents who had filed complaints prevent a conclusive evaluation of the results.

As in the case of ill-treatment, the reasons for reluctance in filing complaints showed no significant difference between the two groups. About 70 percent of respondents from both groups voiced skepticism, while the fear of retaliation was selected by approximately 10 percent of defendants interviewed as the reason for not availing themselves of the opportunity to seek a remedy against psychological pressure. 12.9 percent of respondents with ex officio defense counsels and 5.6 percent of defendants with retained defense counsels stated that they lacked information about how to make a complaint.

Other types of injurious treatment: Respondents with retained defense counsels complained somewhat more about injurious treatment not amounting to ill-treatment or psychological pressure (36.8 percent compared to 29.1 percent of respondents with ex officio defense counsels), which – compared to the case of psychological pressure – is not entirely surprising, since the type of defense counsel does not influence the occurrence of harassment by cellmates or unlawful actions taken by jail guards.

Interestingly, there was no difference in the rate of persons filing complaints. 29 percent of respondents (22 persons) with ex officio defense counsels filed complaints on account of injurious treatment, while this figure was 28.6 percent (24 persons) among defendants with retained defense counsels. Two explanations are possible: on the one hand, it may be presumed that defendants do not tell their retained counsel about such harassment, as it is not closely related to the outcome of the criminal procedure, while on the other hand it cannot be excluded that defense counsels fail to pay attention to this issue for the same reason (additionally, the power of attorney given to them for the criminal case does not include handling a complaint against a penitentiary officer).

Neither with respect to the success rate of complaints, nor regarding the reasons for not filing complaints could the survey identify any regularity. (As referred to above, some respondents did in fact state that the persons who had subjected them to injurious treatment – exclusively cellmates – have been held responsible. Two of these respondents had retained counsel, and one respondent had an ex officio defense counsel; these samples are however so small that no conclusion may be drawn from them.)

4. SUMMARY

The survey results corroborate that ex officio defense counsels are less frequently present and are less active in the investigation phase of the criminal procedure than retained defense counsels. Hence defense provided by ex officio defense counsels does not provide in each case effective defense for the indigent, as required by constitutional and international law.

In the HHC's view, in addition to the well-known constraints (low fee levels, late notification, extremely high copying fees, difficulties in communicating with non-Hungarian speaking defendants, etc.), fundamental structural issues also contribute to the aforementioned inadequacy. In order for an ex officio system to work properly, four basic functions should be addressed: 1) providing legal aid/ex officio defense counsel in all cases where it is mandatory or otherwise needed; 2) monitoring the quality of services provided by ex officio defense counsels (individual quality assurance); 3) monitoring and evaluating the system as a whole (general quality assurance); 4) budgetary planning and implementation for the legal aid system.

In the present system of ex officio defense counsels in Hungary, general quality assurance is entirely non-existent, while the other three functions are shared among different agencies and persons. For example, the defense counsel should be appointed, from a register compiled by the bar association, by the authority which is carrying out the procedure; the activities of individual defense counsels are supervised by the bar association based on the defendant's and/or the particular authority's report (but this is done within the disciplinary procedure rather than within a systemic supervisory framework); the Minister of Justice determines the rules relating to the payment of fees and reimbursement of costs for ex officio defense counsels, while the fee levels themselves are set by Parliament. Therefore the agencies that determine the system's budget do not have the means to control the quality of services provided for their funds, while the entity that performs the most functions in operating the system (the bar association) only has a limited say in budgetary matters or actual appointments of attorneys.

In light of the above, the HHC recommends that most of the aforementioned functions be centralized within the legal aid service, while professional supervision (in the interest of preserving professional independence) should be carried out by the bar association or a special board organized at the level of the legal aid service's county offices, whose members would comprise representatives of the bar associations and other independent experts.

The HHC furthermore recommends that authorities, which today order appointments themselves, be limited to notification of the need to appoint an attorney to a case, while the actual appointment (i.e., the selection and notification of the ex officio defense counsel) should be the task of the legal aid service based on the register compiled by the bar association. The ex officio defense counsel should report to the legal aid service if he/she has established contact with the defendant, and should also file a brief report to the service at reasonable intervals (e.g., quarterly) about developments in the case. In case of doubt about the appropriateness of the defense counsel's activities, the bar association, based on the legal aid service's report, would have the right and the responsibility to carry out professional supervision.

An alternative solution could empower the aforementioned board to carry out performance monitoring over ex officio defense counsels. In case of complaints or through random checks, the board members (based on confidentiality provisions set forth in legislation) would be entitled to have access to case documents relevant to assessing the defense counsel's performance, and would have the right to consult the attorney. Should a professional error be discovered, the board would be entitled to initiate the revocation of the appointment, or – in more severe cases – to initiate disciplinary procedures before the bar association.

ANNEX 1

QUESTIONNAIRE FOR THE EXAMINATION OF THE SITUATION OF PRE-TRIAL DETAINEES[157]

GENERAL DATA

1. Name of the interviewer and the detention facility, code of the interviewee

2. Place of the interview

1) police jail
2) penitentiary institution

3. Time of the interview

4. Since when have you been detained?

5. If you are detained in a penitentiary institution, when were you transferred here from the police jail?

6. What offense(s) are you charged with?

7. In which phase is the procedure?

1) the investigation is still in progress
2) the investigation has been closed down but no charges have been pressed yet
3) charges have been pressed but no sentence has been delivered yet
4) the first instance sentence has been delivered but an appeal has been submitted

[157] This version of the questionnaire does not contain the guidelines and instructions for the interviewers.

8. Do you have a criminal record?

1) no
2) yes

If yes:

2.1 recidivist
2.2 special recidivist
2.3 multiple recidivist
2.4 previously convicted but none of the above

9. How did you come into contact with the investigating authority prior to the pre-trial detention?

1) someone had called the police
2) caught committing a crime
3) contacted during the investigation
4) detained pursuant to an arrest warrant
5) identity check
6) summoned as a witness
7) summoned to appear before the authority as a criminal suspect
8) other, namely:

QUESTIONS CONCERNING ILL-TREATMENT

10. Were you ill-treated in the course of the procedure?

1) yes
2) no

11. If you were ill-treated, in which phase of the procedure did it happen?

1) in the initial phase of the procedure
   1.1 on the spot
   1.2 in the police car
   1.3 in the police building
2) later in the procedure
   2.1 during the first interrogation
   2.2 during a subsequent interrogation
   2.3 at the police jail
   2.4 in the penitentiary institution

12. Who ill-treated you?

1) the police officer performing the apprehension
2) the case officer (investigator)
3) the police jail guard
4) the prison guard
5) the educator
6) other, namely

13. How were you ill-treated?

14. Did you lodge a complaint or file a report about the ill-treatment?

1) yes
2) no

15. If not, why?

1) thought there was no point in it
2) was afraid of reprisal
3) did not know how to do so
4) other, namely

16. If you lodged a complaint, who did you turn to?

1) prosecutor
    a) prosecutorial investigation office
    b) military prosecutor
    c) prosecutor supervising detention
2) ombudsman
3) domestic human rights organization
4) international human rights organization
5) defense counsel
6) press
7) other, namely

17. If you lodged a complaint about ill-treatment, what was the result?

1) the person(s) accused was/were not called to account
2) the person(s) accused was/were called to account
3) the procedure aimed at calling to account the accused person(s) is currently in process
4) other, namely

18. If you were ill-treated during one of the interrogations, what do you think the purpose of the ill-treatment was?

1) extorting a confession
2) extorting the names of accomplices
3) generating fear
4) causing pain without any particular purpose
5) other, namely

INTERROGATION OF THE SUSPECT

19. Were you informed before the first interrogation that you are not obliged to make a confession?

1) yes
2) no

20. Were you informed before the first interrogation that you are entitled to a defense counsel?

1) yes
2) no

21. How many times have you been interrogated in this procedure?

1) no interrogation yet
2) once
3) twice
4) three times
5) more than three times

ACTIVITY OF THE DEFENSE COUNSEL

22. Your defense counsel is

1) ex officio appointed
2) retained
3) does not know if he/she has a defense counsel

Appointed counsel

23. Do you know who your defense counsel is?

1) yes
2) no

24. If you do not know who your counsel is, what is the reason for that?

1) has not inquired
2) has not received information
    a) at the police jail
    b) in the penitentiary institution
3) other, namely

25. Have you had contact with the counsel since the beginning of the detention?

1) yes
2) no
3) only with the trainee attorney

26. If not, what is reason for that?

1) the counsel has not been appointed yet
2) the counsel has been appointed but has not contacted the defendant yet
3) does not know the reason
4) other, namely

27. If you have not had contact with the counsel yet, have you tried to contact him/her somehow (in writing, via telephone, through a family member, police officer, the educator)?

1) yes
2) no

28. If you have had contact with your defense counsel, how did this take place?

1) the defense counsel contacted the detainee on his/her own initiative
2) he defense counsel contacted the detainee at the latter's request
3) the defense counsel was present at the hearing about pre-trial deten tion

4) the defense counsel was present at a procedural action during the investigation
5) the detainee called the defense counsel on the telephone
6) the defense counsel replied to the detainee's letter
7) on his/her own initiative, the defense counsel sent his/her trainee attorney to meet with the detainee
8) the defense counsel sent the trainee attorney to meet with the detainee at the latter's request
9) the trainee attorney was present at the hearing about pre-trial detention
10) the trainee attorney was present at a procedural action during the investigation
11) the detainee spoke to the trainee attorney on the telephone
12) other way, namely

29. After the beginning of the detention, when could you contact your defense counsel?

1) immediately
2) later, but still before the first interrogation
3) at the first interrogation
4) after the first interrogation
5) not yet

30. Was the defense counsel present at the court hearing preceding the ordering of the pre-trial detention?

1) yes
2) no
3) the trainee attorney was present

31. Was the defense counsel present at the court hearing preceding the decision on allowing a bail?

1) yes
2) no
3) the trainee attorney was present
4) there was no motion requesting a bail / there has been no such hearing yet

32. According to your knowledge, did the defense counsel take part at any procedural action during the investigation?

1) yes
2) no
3) the trainee attorney was present
4) does not know, does not remember

33. If yes, at what action?

1) first interrogation as defendant
2) further interrogation as defendant
3) polygraph examination
4) hearing of witness
5) confrontation
6) inspection
7) evidentiary experiment
8) presentation for recognition
9) on-site survey
10) presentation of expert opinion
11) parallel hearing of experts
12) presentation of the files
13) other, namely

34. According to your knowledge, did the defense counsel / trainee attorney put forth any motion during the procedure?

1) yes
2) no
3) does not remember

35. If yes, when?

1) first interrogation as defendant
2) further interrogation as defendant
3) polygraph examination
4) hearing of witness
5) confrontation
6) inspection
7) evidentiary experiment
8) presentation for recognition
9) on-site survey

10) presentation of expert opinion
11) parallel hearing of experts
12) presentation of the files
13) other, namely

36. If the defense counsel / trainee attorney visited you outside procedural actions, how many times did he/she do so?

Retained counsel

37. Have you had contact with the counsel since the beginning of the detention?

1) yes
2) no
3) only with the trainee attorney

38. If not, what is reason for that?

1) he/she (the family) has not retained a counsel yet
2) the counsel has been retained but has not contacted the defendant yet
3) does not know the reason
4) other, namely

39. If you have not had contact with the counsel yet, have you tried to contact him/her somehow (in writing, via telephone, through a family member, police officer, the educator)?

1) yes
2) no

40. If you have had contact with your defense counsel, how did this take place?

1) the defense counsel contacted the detainee on his/her own initiative
2) he defense counsel contacted the detainee at the latter's request
3) the defense counsel was present at the hearing about pre-trial detention
4) the defense counsel was present at a procedural action during the investigation
5) the detainee called the defense counsel on the telephone
6) the defense counsel replied to the detainee's letter

7) on his/her own initiative, the defense counsel sent his/her trainee attorney to meet with the detainee
8) the defense counsel sent the trainee attorney to meet with the detainee at the latter's request
9) the trainee attorney was present at the hearing about pre-trial detention
10) the trainee attorney was present at a procedural action during the investigation
11) the detainee spoke to the trainee attorney on the telephone
12) other way, namely

41. After the beginning of the detention, when could you contact your defense counsel?

1) immediately
2) later, but still before the first interrogation
3) at the first interrogation
4) after the first interrogation
5) not yet

42. Was the defense counsel present at the court hearing preceding the ordering of the pre-trial detention?

1) yes
2) no
3) the trainee attorney was present

43. Was the defense counsel present at the court hearing preceding the decision on allowing a bail?

1) yes
2) no
3) the trainee attorney was present
4) there was no motion requesting a bail / there has been no such hearing yet

44. According to your knowledge, did the defense counsel take part at any procedural action during the investigation?

1) yes
2) no
3) the trainee attorney was present
4) does not know, does not remember

45. If yes, at what action?

1) first interrogation as defendant
2) further interrogation as defendant
3) polygraph examination
4) hearing of witness
5) confrontation
6) inspection
7) evidentiary experiment
8) presentation for recognition
9) on-site survey
10) presentation of expert opinion
11) parallel hearing of experts
12) presentation of the files
13) other, namely

46. According to your knowledge, did the defense counsel / trainee attorney put forth any motion during the procedure?

1) yes
2) no
3) does not remember

47. If yes, when?

1) first interrogation as defendant
2) further interrogation as defendant
3) polygraph examination
4) hearing of witness
5) confrontation
6) inspection
7) evidentiary experiment
8) presentation for recognition
9) on-site survey
10) presentation of expert opinion
11) parallel hearing of experts
12) presentation of the files
13) other, namely

48. If the defense counsel / trainee attorney visited you outside procedural actions, how many times did he/she do so?

PSYCHOLOGICAL PRESSURE

49. Did the case officer promise during the interrogation that if you made a confession…

1) …you would be released
   - 1.1 yes
   - 1.2 no
   - 1.3 does not remember

2) …you would be allowed to receive visitors more often
   - 2.1 yes
   - 2.2 no
   - 2.3 does not remember

3) … you would be allowed to write letters more often
   - 3.1 yes
   - 3.2 no
   - 3.3 does not remember

4) … you would be allowed to make phone calls more often
   - 4.1 yes
   - 4.2 no
   - 4.3 does not remember

5) …you would be placed in a better cell
   - 5.1 yes
   - 5.2 no
   - 5.3 does not remember

50. Were you threatened during the interrogation that if you refused to make a confession…

1) … you would be put in pre-trial detention or your detention would be prolonged
   - 1.1 yes
   - 1.2 no
   - 1.3 does not remember

2) …you would not be allowed to receive visitors
   - 2.1 yes
   - 2.2 no
   - 2.3 does not remember

3) … your correspondence would be restricted
    3.1 yes
    3.2 no
    3.3 does not remember
4) … your phone use would be restricted
    4.1 yes
    4.2 no
    4.3 does not remember
5) …you would be placed in a worse cell
    5.1 yes
    5.2 no
    5.3 does not remember

51. Did it ever happen that before (during) the interrogation…

1) … you were kept waiting for a long time without food
    1.1 yes
    1.2 no
    1.3 does not remember
2) … you were kept waiting for a long time without anything to drink
    2.1 yes
    2.2 no
    2.3 does not remember
3) … you were kept waiting for a long time
    3.1 yes
    3.2 no
    3.3 does not remember
4) … the investigators tried to break your resistance in any other way
    4.1 no
    4.2 yes, namely

52. Did you lodge a complaint or file a report about the psychological pressure?

1) yes
2) no

53. If not, why?

1) thought there was no point in it
2) was afraid of reprisal
3) did not know how to do so
4) other, namely

54. If you lodged a complaint, who did you turn to?

1) prosecutor
    a) prosecutorial investigation office
    b) military prosecutor
    c) prosecutor supervising detention
2) ombudsman
3) domestic human rights organization
4) international human rights organization
5) defense counsel
6) press
7) other, namely

55. If you lodged a complaint about psychological pressure, what was the result?

1) the person(s) accused was/were not called to account
2) the person(s) accused was/were called to account
3) the procedure aimed at calling to account the accused person(s) is currently in process
4) other, namely

CONTACTS WITH THE OUTSIDE WORLD

56. When were the members of your family, relatives, or the person you wished to notify informed about your short-term arrest, 72 hour detention or pre-trial detention?

1) the same day
2) the next day
3) after a couple of days
4) after a week
5) does not know
6) there was no one to notify

57. Is there a telephone where you are detained?

1) yes
2) no

58. Can you contact your defense counsel via telephone from the place of your detention?

1) does not have a defense counsel / does not know whether he/she has a counsel
2) yes
3) no

59. Can you contact other persons via telephone from the place of your detention?

1) yes
2) no

60. How many times per month do you receive visitors?

1) once
2) twice
3) more than twice per month
4) less than once a month
5) is not allowed to receive visitors at all

61. If you receive visitors less than once per month or not at all, what is the reason for that?

1) is not allowed to
2) there is no one who would come to visit
3) other, namely

62. On which week were you allowed to receive your first visitor following your arrest?

1) first week
2) second week
3) third week
4) fourth week
5) even later

63. Do you receive packages?

1) yes
2) no

64. If yes, how often?

1) twice a week
2) once a week
3) once every two weeks
4) once a month
5) less than once a month

65. If you receive packages less than once per month, what is the reason for that?

1) there is no one who could send packages
2) this is due to financial reasons
3) it is not allowed to receive packages more often
4) other, namely

66. Are you exchanging letters with somebody?

1) yes
2) no

67. If not, what is the reason for that?

1) there is no one to write to
2) the defendant is not allowed to send and receive letters
3) other, namely

68. According to your knowledge, how much time passes on average before the addressee receives your letters?

1) 1-4 days
2) 5-7 days
3) 8-10 days
4) 11-14 days
5) more than two weeks
6) does not know

69. On average, after how many days do you receive the letters addressed to you?

1) 1-4 days
2) 5-7 days
3) 8-10 days
4) 11-14 days
5) more than two weeks
6) does not know

70. Has it ever happened while you have been detained in this institution that the addressee did not receive your letter?

1) no
2) yes

71. Has it ever happened while you have been detained in this institution that you did not receive a letter addressed to you?

1) no
2) yes

72. Has it ever happened while you have been detained in this institution that an incoming official letter was opened by the personnel?

1) no
2) yes

73. Has it ever happened while you have been detained in this institution that an outgoing official letter was opened by the personnel?

1) no
2) yes

MEDICAL CARE

With regard to police jails

74. Were you examined by a physician upon your admission to the jail?

1) yes
2) no

75. If yes,

1) thoroughly
2) only formally

76. If you had injuries or were ill at the time of your admission, did you inform the physician about it?

1) was ill and informed the physician
2) was ill and did not inform the physician
3) was injured and informed the physician
4) was injured and did not inform the physician

77. If you were injured at the time of the admission, what caused the injury?

1) accident
2) ill-treatment by the authorities
3) fight, struggle
4) other, namely

78. If you said that your injury had been caused by ill-treatment, did the physician record it?

1) yes
2) no
3) does not know, does not remember

79. If you informed the physician about your illness, he/she…

1) …sent you to a specialist
2) …prescribed some medicine
3) …failed to deal with the complaint
4) other, namely

With regard to penitentiary institutions

80. Were you examined by a physician upon your admission to the jail?

1) yes
2) no

81. If yes,

1) thoroughly
2) only formally

82. If you had injuries or were ill at the time of your admission, did you inform the physician about it?

1) was ill and informed the physician
2) was ill and did not inform the physician
3) was injured and informed the physician
4) was injured and did not inform the physician

83. If you were injured at the time of the admission, what caused the injury?

1) accident
2) ill-treatment by the authorities
3) fight, struggle
4) other, namely

84. If you said that your injury had been caused by ill-treatment, did the physician record it?

1) yes
2) no
3) does not know, does not remember

85. If you informed the physician about your illness, he/she…

1) …sent you to a specialist
2) …prescribed some medicine
3) …failed to deal with the complaint
4) other, namely

CASES OF OTHER INJURIOUS TREATMENT

86. Were you exposed to other injurious treatment by…

1) ...a cellmate
    1.1 no
    1.2 yes, namely
2) ...the case officer
    2.1 no
    2.2 yes, namely
3) ...a police jail guard
    3.1 no
    3.2 yes, namely

4) ...a prison guard
    4.1 no
    4.2 yes, namely
5) ...another person
    5.1 no
    5.2 yes, namely

87. If such a case occurred, what was the reason for that?
1) the detainee's origin
2) the detainee's disability
3) personal antipathy
4) other, namely

88. Did you lodge a complaint about the injurious treatment?
1) yes
2) no

89. If not, why?
1) thought there was no point in it
2) was afraid of reprisal
3) did not know how to do so
4) out of solidarity for other inmates
5) other, namely

90. If you lodged a complaint, who did you turn to?
1) prosecutor
    a) prosecutorial investigation office
    b) military prosecutor
    c) prosecutor supervising detention
2) ombudsman
3) domestic human rights organization
4) international human rights organization
5) defense counsel
6) press
7) other, namely

91. If you lodged a complaint about injurious treatment, what was the result?

1) the person(s) accused was/were not called to account
2) the person(s) accused was/were called to account
3) the procedure aimed at calling to account the accused person(s) is currently in process
4) other, namely

DEMOGRAPHIC DATA

92. The interviewee's gender

1) male
2) female

93. The interviewee's age

94. The interviewee's level of education

1) less than 8 years of primary education
2) 8 years (full primary education)
3) more than 8 primary years, but without completed secondary education
4) vocational school
5) high school
6) college / university education

95. The interviewee's national or ethnic affiliation (if wishes to answer)

1) Hungarian
2) Foreigner, namely
3) Gypsy / Roma
4) Other, namely

ANNEX 2

LIST OF THE INTERVIEWERS

Ildikó Babják, Orsolya Beszedics, Éva Bezzeg, Orsolya Bolyki, Balázs Dénes, Sándor Dobó, Bernadett Farkas, Lilla Farkas, Tamás Fazekas, Katalin Friedrich, Anikó Gál, Gyula Gál, Iván Gáspár, Györgyi Haklits, Csongor Herke, Zoltán Hesz, Péter Horváth, Zsuzsa Jelencsics, Anikó Karmazsin, András Kádár, Bálint Komenczi, Ferenc Kőszeg, Éva Kovács, Tímea Kovács, Béla Kővári, Ibolya Csutak Krajnák, Gábor Lei, Iván Mándli, István Mátyus, Mária Méhes, Dóra Németh, Andrea Pelle, Iván Péter, Zoltán Simon, János Somogyi, István Szaniszló, András Szegedy, Livia Bertalanffy Szegedy, Zsolt Szobeczki, Gyula Técsy, Anna Tóth, Anna Ungár, Zoltán Ákos Vida, Edina Vinnai, Zsolt Zádori