



Hungarian Helsinki Committee

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Update to the briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention UN Commission of Human Rights

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Excessive length of pre-trial detention has remained a significant problem in the Hungarian criminal justice system, as already presented in the Briefing Paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights.¹ The problem of unnecessarily long pre-trial detentions has been deepened by a recent piece of legislation, adopted after the visit of the Working Group on Arbitrary Detention to Hungary in September-October 2013. According to this new piece of legislation, the length of pre-trial detention became unlimited in the case of crimes punishable by a prison term of up to 15 years or life-long imprisonment.

The original text of Article 132 (3) of Act XIX of 1998 on the Code of Criminal Procedure (CCP), as in force until 17 November 2013, provided the following:

Pre-trial detention shall be lifted in case

- a) its term reaches one year and a criminal proceeding is conducted against the defendant for a crime punishable by a prison term of up to three years;*
- b) its term reaches two years and a criminal proceeding is conducted against the defendant for a crime punishable by a prison term of up to five years;*
- c) its term reaches four years and a criminal proceeding is conducted against the defendant for a crime punishable by a prison term of up to 15 years or by life-long imprisonment;*
- d) its term reaches three years – in all cases beyond the ones listed under points a)–c), except for the case where the pre-trial detention was ordered or upheld after the promulgation of the first instance judgment, and in case a third instance proceeding or a repeated trial is ongoing.²*

Thus, the original rules of the CCP provided that pre-trial detention shall be terminated after four years in any case if no first instance decision had been reached in the case. The current legislative step referred to above and aiming to abolish the upper limit of pre-trial detention affected the above Article 132 of the CCP.

The amendment of the CCP has been initiated by the governing party due to obvious political interests: it was triggered by a current case gaining wide media coverage. On 4 October 2013 two members of a criminal gang accused of attempted murder and robbery escaped from house arrest where they have been placed after their

¹ Briefing Paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights, 8 October 2013 (updated after the meeting of the Working Group on Arbitrary Detention with Hungarian NGOs on 23 September 2013), pp 4-5.

² CCP, Article 132 (3)



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pre-trial detention had reached the legal limit of 4 years and no first instance decision had been reached in their case. They were arrested in Switzerland five days later.³

As an immediate response to the above case, the governing party declared its intention to file a proposal amending the CCP to the Parliament to remove the upper limit of the term of pre-trial detention in cases of defendants facing more than 15 years imprisonment. The governing party claimed that the special situation given by the lengthy criminal proceedings and the fact that the delivery of judgments may take even more than three years, demands special solutions which would relax the wider society about their safety.⁴

After the respective proposal has been submitted to the Parliament on 4 October 2013, it turned out that the four-year time limit of pre-trial detention will expire in the case of another member of the abovementioned gang on 22 November 2013. In order to ensure that the proposal is adopted and enters into force before the gang member's pre-trial detention would expire, the Speaker of the Parliament proposed that the Parliament deflects from the House Rules and speeds up the legislative proposal. The latter suggestion was approved by the Parliament.

Finally, on 11 November 2013, the Parliament adopted the Bill⁵ on the amendment of the CCP, amending Article 132 (3) of the CCP in the following way:

Pre-trial detention shall be lifted in case

- a) its term reaches one year and a criminal proceeding is conducted against the defendant for a crime punishable by a prison term of up to three years;*
- b) its term reaches two years and a criminal proceeding is conducted against the defendant for a crime punishable by a prison term of up to five years,*
- c) its term reaches three years – in all cases beyond the ones listed under points a) and b), except for the case where the pre-trial detention was ordered or upheld after the promulgation of the first instance judgment, and in case a third instance proceeding or a repeated trial is ongoing.*

Furthermore, the Bill integrated the new Paragraph (3a) in Article 132 of the CCP, as follows:

(3a) Pre-trial detention shall not be terminated even in cases falling under Paragraph (3) c) in case a criminal proceeding is conducted against the defendant for a crime punishable by a prison term of up to 15 years or life-long imprisonment.

Thereby, the four-year time limit on the duration of pre-trial detention for those accused of crimes punishable by a prison term of 15 years or by life-long imprisonment was abolished.

The amendment entered into force on 18 November 2013.

The Hungarian Helsinki Committee (HHC) highly criticized the elimination of the time limit in a statement⁶ issued after governing party politicians announced their intention to amend the CCP; and the HHC also turned to the Members of Parliament before the adoption of the Bill, calling them not to vote for it,⁷ but in vain. The HHC

³ See e.g.: http://hvg.hu/itthon/20131023_Aroktoi_banda_elozetesben_vannak_az_elfog, <http://www.politics.hu/20131010/ruling-parties-look-to-extend-pre-trial-detention-in-case-of-serious-crimes/>.

⁴ See e.g.: http://nol.hu/belfold/eltorolnek_a_kormanypartok_az_elozetes_letartoztatás_felső_hatarat?ref=sso.

⁵ The final text of the adopted Bill is available here in Hungarian: <http://www.parlament.hu/irom39/12617/12617-0027.pdf>. The Bill was adopted as Act CLXXXVI of 2013 on the Amendment of Certain Criminal Law Acts and Other Related Acts.

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⁷ See: <http://helsinki.hu/a-hatarozatlan-ideju-elozetes-letartoztatás>.



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claimed that eliminating the time limit contradicts the Fundamental Law of Hungary and international standards, and that it raises serious concerns in light of the relevant case-law of the European Court Human Rights.⁸ The HHC also drew the attention to the fact that the state shall ensure that all accused are tried within a reasonable time, and four years shall be sufficient time for this under any circumstances. In addition, the authorities are obliged by Article 64/A (1) a) of the CCP to proceed without delay in cases where the accused is held in pre-trial detention. The accused cannot be punished for the failure of the state and the courts to provide expeditious proceedings. Furthermore, in the view of the HCC, the unlimited term of pre-trial detention sends the message to the authorities that they do not need to hurry with the proceedings.

⁸ According to the case-law of the European Court of Human Rights, in cases where pre-trial detention extends the term of three years, there is a probable violation of Article 5 (3) of the European Convention of Human Rights. The European Court of Human Rights held a longer term of pre-trial detention acceptable only in extremely complicated cases where the authorities' claim that they needed longer time to conduct the investigation was reasonable. See e.g.: *W. v. Switzerland* (Judgment of 26 January 1993, Application no. 14379/88).