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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports of States parties due in 2000

Addendum*

HUNGARY

[16 June 2004]

* For the initial report of Hungary, see CAT/C/5/Add.9; for its consideration, see CAT/C/SR.34 and 35 and *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 44* (A/45/44), paragraphs 280-312.

For the second periodic report, see CAT/C/17/Add.8; for its consideration, see CAT/C/SR.141, 142/Add.2 and 145/Add.1 and Add.2 and *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44* (A/48/44), paragraphs 342-364.

For the third periodic report, see CAT/C/34/Add.10; for its consideration, see CAT/C/SR.356, 357 and 361 and *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), paragraphs 78-87.

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CONTENTS

Introduction

1. This report is submitted in pursuance of article 19 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force with respect to Hungary on 26 June 1987. The report is organized in conformity with the general guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19 (1) of the Convention (CAT/C/14/Rev.1).

2. The report deals with changes in legislation and legal and administrative practice relating to the individual material provisions of the Convention that have occurred since the Government of Hungary submitted its third periodic report (CAT/C/34/Add.10) on 15 April 1998. To the extent that no changes have taken place in legislation and legal practice since Hungary submitted its third report, reference is made to Hungary's previous reports.

3. International monitoring of the protection of human rights is given high priority in Hungary. The Hungarian authorities undertake continuous efforts to ensure the improvement of the standard of human rights protection and are particularly interested in carrying out a continuous and fruitful dialogue with the various human rights bodies in the framework of the United Nations and the Council of Europe.

4. During the reporting period, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out two visits to Hungary, in December 1999, and from 30 May to 4 June 2003. A detailed final report will be issued by the CPT at the end of 2003. According to the preliminary observations made by the President of the Committee, the following can be summarized from the delegation's experience.

5. This third visit of the CPT to Hungary was "ad hoc" in nature and also a targeted visit which focused on the situation of remand prisoners in both police and prison establishments, including establishments previously visited by the CPT.

6. The Committee's delegation visited three police establishments: the Police Central Holding Facility at Gyorskocsi Street (already visited in 1994 and 1999), and the 2nd and 4th District Police Stations in Budapest.

7. The delegation did not receive any allegations of ill-treatment by custodial staff working in the above-mentioned facilities. Overall, staff-detainee relations appeared to be free of tension and, in each facility visited, positive remarks about some staff members were made by detainees.

8. The CPT regretted that the entry into force of section 135 of Act XIX of 1998 (according to which pre-trial detention must be carried out in remand prisons) had been delayed from January 2003 to January 2005. In the Committee's opinion vigorous efforts were required to ensure that the implementation, in practice, of that provision was not delayed any further.

9. The CPT established that, as was the case during its last visit in 1999, it was still common for persons to be held on remand in police establishments, often for periods of several months. The CPT also stated, however, that the information received by the delegation suggested that the number of such inmates had decreased lately, as had apparently the time remand prisoners spent in police facilities.

10. According to the recommendations of CPT, remand prisoners should not, in principle, be held in police cells. Such a practice is all the more inappropriate bearing in mind that the detention facilities of law enforcement agencies will often not be suitable for long periods of detention.

11. The delegation of the CPT was particularly concerned about the material conditions under which remand prisoners were being held at the 2nd and 4th District Police Stations in Budapest. In both facilities, cells had virtually no access to natural light and ventilation was grossly insufficient. Further, the beds in the 2nd District Police Station were extremely narrow, and the cleanliness of the establishment's communal sanitary facilities left a lot to be desired. The CPT requested that urgent measures be taken to address these shortcomings.

12. At the Central Police Holding Facility, the delegation noted several improvements since its last visit in 1999, especially regarding the communal sanitary facilities, the establishment's central kitchen and the lighting system in the corridors. However, the deficiencies criticized both in 1994 and 1999 (poor access to natural light, weak artificial lighting and poor ventilation in detention accommodation) were still present.

13. At the three facilities, inmates complained about difficulties in obtaining access to the communal lavatories, especially during the night. On the positive side, inmates could take showers on a daily basis.

14. The CPT noted, however, that, as during previous visits, none of the police establishments offered a suitable regime for persons on remand. Such prisoners spent almost all their time locked up and idle in their cells. There were virtually no jobs available and no sports activities were offered. Even regular outdoor exercise of one hour per day was not guaranteed in all establishments.

15. The CPT had considerable misgivings as regards the approach towards the medical screening of newly arrived detainees, especially in respect of infectious diseases such as tuberculosis and hepatitis. This was all the more of concern as police facilities in the country holding remand prisoners were central entry points onto the prison system. The treatment of drug-addicted inmates and assessment of mental illness needed to be urgently reviewed. These and other issues, such as the presence of police officers during the initial medical examination of newly arrived detainees, the absence of personal medical dossiers, and the continuing practice of administering medication by staff not medically trained, will be examined in greater detail in the CPT report.

16. The CPT also stated that it was very important for pre-trial detainees to be able to maintain reasonably good contact with the outside world. Detainees must be given the means of safeguarding their relationship with their family and close friends. The existing arrangements for family visits and, even more so, the possibilities of using the telephone were very restrictive at the three police establishments during the Committee's visit. The CPT recommended the improvement of this state of affairs.

17. The delegation welcomed the fact that district prosecutors were now required to inspect police detention facilities and prison establishments at least once every two weeks.

18. The CPT delegation visited Unit II of Budapest Remand Prison, which it had already visited in 1994 and 1999, as well as the establishment's new Unit III.

19. The delegation heard some allegations of ill-treatment at Unit III. These involved beatings of inmates by staff as well as verbal abuse. This was in contrast to Unit II, where no such allegations were received.

20. According to the Committee's observation, Budapest Remand Prison as a whole continued to be severely overcrowded; this had a series of negative consequences on the overall quality of life in the establishment, including in terms of the regime offered to remand prisoners, who could spend lengthy periods awaiting trial.

21. Despite the age of the premises of Unit II and the high level of overcrowding, the CPT noted that the establishment was in good decorative order and reasonably clean. Some improvements were noted as regards facilities for collective use; these included the fitting of a new weight-lifting room and, in the women's section, the creation of a small library and communal room as well as of an area for table tennis in the corridor.

22. Overall, material conditions of detention in the new Unit III were of a high standard and could serve as a model in the long-term development plan for penal institutions in Hungary. The CPT considered as noteworthy that cells were equipped with power points which allowed the use of television sets and other electric equipment.

23. However, despite having large windows, cells had very poor ventilation, and the vast majority of inmates met by the delegation complained about this state of affairs. The CPT advised that a permanent solution to this problem be found as a matter of urgency.

24. The delegation visited two cells, the windows of which had been fitted with plexiglas screens. These devices were found to exacerbate the already stuffy conditions prevailing in the establishment's standard cells, and the hot and airless atmosphere in the two cells reached unbearable levels. The delegation invoked article 8 (5) of the European Convention and requested that all existing plexiglas screens be removed immediately.

25. The CPT noted that the above-mentioned improvements in Unit II regarding facilities for collective use were no doubt steps in the right direction. In Units II and III of Budapest Remand Prison the health-care services in terms of staffing, premises and equipment did not call for improvements. The delegation was pleased to note that medical records were found to be of a good standard. The CPT also welcomed the fact that HIV tests were now performed on a voluntary basis.

26. The open visiting arrangements at Unit II appeared to be working well, a fact highly valued by inmates. By contrast, the layout of the visiting facilities at Unit III only allowed for closed visits and inmates complained about this situation. Ways must be found to address this deficiency. As in 1999, the visit entitlement at Budapest Remand Prison was still one hour per month, despite the earlier recommendations by CPT on this matter.

27. In conclusion, it has to be stressed that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment did not record any hint of torture in

detention facilities in Hungary during either of their visits in 1999 and in 2003. The shortcomings and deficiencies noted by the CPT are in the focus of actions to be taken by the Government of Hungary in the near future. Continuous efforts are undertaken to improve the existing situation in prisons and police detention facilities, as detailed in the following parts of the present report.

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS IN RELATION TO THE IMPLEMENTATION OF THE CONVENTION

Article 2

28. Reference is made to the previous reports.

29. Legal regulation relating to the Hungarian penitentiary system has in recent years become complete. The orders of the National Commander of Penitentiary Institutions on the application of order No. 6/1996 (VII.12), governing the implementation of detention on remand has been issued.

30. Respect for the rights and obligations of persons deprived of their liberty continues to be a high priority, as set forth in law-decree No. 11 of 1979 (henceforth: Bv. tvr.) on the implementation of sentences and measures. The cooperation of non-governmental organizations with penitentiary institutions contributes significantly to the successful accomplishment of the tasks.

31. Order No. 13/2000 (VII.14) of the Minister of Justice established chaplain service - a chaplain is available in all the penitentiary institutions.

32. However, the development in the field of legal conditions has unfortunately not always been matched with a paralleled development in the field of the infrastructure and the physical environment of the penitentiary institutions. It is exactly these shortcomings that prevent the penitentiary system from fully complying with professional standards. The lack of appropriate financial means hinders to a significant extent the realization of the European norms declared in Hungarian legal provisions. The fluctuation of the staff is also a major problem and is primarily due to the difficult working conditions and the low social prestige.

33. In 1999 the CPT undertook a comprehensive survey of the penitentiary institutions of Hungary. No hint of torture or inhuman treatment was observed. At the same time, the CPT remarked the overcrowding and poor infrastructure within the institutions and recommended the improvement of facilities for leisure time and sport activities.

34. The Public Prison Prosecutors' Office carried out a national survey on the treatment of detained persons and published a report on the findings. According to this report, the treatment of detainees in the penitentiary institutions was generally in compliance with the legal provisions.

35. In 2000, the National Commander of the Penitentiary Institutions presented a report to the competent committee of the National Assembly on the general situation of the penitentiary institutions and on the observance of human rights.

36. From 1 March 2000, offences committed by prison officers in the place of service or connected to their duties - included the mistreatment of detainees - are to be investigated by the military justice organs. These are additional guarantees and provide for specialized, enhanced adjudication.

37. The application of punishments was more rigorously regulated - since 1 March 1999, section 83 (2) of the Penal Code has stipulated that the courts in sentencing should apply in general the median length of legal limits of imprisonment in most cases - divergence is allowed only on special grounds, including infringement of the Convention against Torture.

Overcrowding and measures taken to alleviate it

38. The CPT recommended that the Hungarian authorities pursue vigorously the implementation of the whole range of measures designed to combat prison overcrowding. In the period under review the number of detained persons held in penitentiary institutions grew on average from 20 to 60 per cent above the capacity of the institutions. At present, 15,771 detained persons are held in 9,797 places.

39. Government decree 2072/1998 (31 March) sets out a three-pronged development plan to be completed by 2007 for penal institutions designed to:

- Increase official capacities for remand prisoners;
- Place minors and women closer to their place of residence;
- Refurbish penitentiaries.

40. The programme is scheduled as follows. Priority projects included a new prison to be built in Veszprém County, suitable for placing 220 inmates; two prisons to be built for juveniles, one in southern Hungary (Pécs), the other in north-eastern Hungary (Miskolc); a prison for juveniles of a capacity of 100-150 to be built within the administrative limits of Budapest; the extension of Pécs Prison by 50 places, of Miskolc Prison by 100 places and of Szolnok Prison by 64 places; refurbishment of Sopronkőhida Prison; extension of Szeged Prison by 210 places; capacity extension at Nyíregyháza Prison; rebuilding of the basement in Unit II of Budapest Remand Prison; and reconstruction of Budapest Penitentiary and Prison.

41. A new building (Unit III) added to the Budapest Remand Prison has been opened which is suitable for placing 1,000 remand prisoners. Unit III operated at full capacity by the end of 2000. Tököl Prison is no longer the only penal institution holding juveniles, since there is a regional prison of 30 places for juveniles in Kecskemét. Female juveniles are placed in a unit of Pálhalma Prison in Mélykút.

42. Hungarian legislators are working on simplified procedures to be introduced as alternatives to court proceedings in certain types of cases. We wish to point out that a provision enabling deferral of indictment against adults came into force on 1 March 1999. Part III of Act CX of 1999 introduced yet another simplified procedure, waiver of trial (chapter XVII/B of the Act on Criminal Procedure), in which case the court resorts to a substantially lighter sentence than is prescribed for the given offence by the law. In line with the recommendations, Act XIV

of 2000 redefined one of the causes for arrest. The new law on criminal procedures contains a number of instruments that can be used as substitutes for pre-trial detention. For example, the instrument prohibiting a person to leave his/her place of residence has been upheld and amended, and new institutions such as house arrest, seizure of passport and release on bail have been introduced.

43. When deciding at the end of 1999 to defer the entry into force of the new law until 1 January 2003, the legislator also decided to put into effect the newly legislated ban on leaving one's place of residence, house arrest and seizure of passport at an earlier date. Therefore, these legal institutions were subsequently incorporated into legislation currently in force and these measures have been applicable since 1 March 2000. Following appropriate adjustment in court practice, these measures are likely to function as alternatives to pre-trial detention in a number of cases.

44. Electronic surveillance to supervise the location of a suspect in a designated place became a lawful instrument as from 1 March 2000 in the context of house arrest, which is a special additional measure applicable to persons prohibited to leave their place of residence (section 1, paragraph (3) (b) and section 5, paragraph (2) (c) of the Joint Decree of the Ministries of Justice and Interior 2/2000, 26 February).

45. In light of the present prison population, however, even the successful accomplishment of the programme will provide only a temporary solution for the problem of overcrowding in the penitentiary institutions, since a steady growth of the prison population can be foreseen for the future.

Work possibilities

46. State-financed work as the most important element of social reintegration plays a diminishing but still dominant role in the employment of detained persons. The following figures show the number of inmates performing work: 1998 - 2,961; 1999 - 2,736; 2000 (first quarter) - 2,621.

47. The majority of the inmates work within the detention facilities (maintenance work), whereas a restricted number work outside the prison premises. The decrease in the number of working inmates is partly due to low remuneration.

48. Measure No. 1-1/17/1999 of the National Commander on the procedural rules of inmates' employment, which entered into force on 20 March 1999 and was issued in compliance with the provisions of order No. 6/1996 (VII.12) of the Minister of Justice, specifies in a unified structure the rules and tasks to be observed and accomplished in the employment of inmates.

49. The experience gained from the monitoring carried out in the period under review can be summarized as follows:

(a) Detention facilities are able to offer maintenance work only for a limited number of persons;

(b) The employment of the inmates is preceded by thorough medical examination;

(c) Working tools and protective equipment are provided for the inmates;

(d) Remuneration differentiated on the bases of accomplished work is secured for the inmates;

(e) Paid holidays due after days worked off are secured for the inmates.

50. In sum, it can be established that inmates' State-financed employment takes place in a system worked out and operated with a view to the basic penitentiary tasks and within a framework specified by legal provisions.

51. Inmates are also employed in companies formed by legal succession from State-owned factories founded for this purpose.

Issues related to medical care

52. During its earlier investigations the CPT made several observations and recommendations aiming at improving inmates' accommodation and sanitation.

53. Despite the limited budgetary resources available and the increase in the number of inmates, significant results have been achieved in this field.

54. A new institution housing remand prisoners in Budapest (Unit III) was opened in September 2000, providing adequate accommodation, nutrition, medical facilities and improving sanitary facilities in general.

55. Upon the authorization of Act CLIV of 1997 on medical care, in 1998 order No. 5/1998 (III.6) of the Minister of Justice was issued on medical care of detained persons. The order follows the spirit of the act focusing on patients' rights, regulating - among others - medical data protection and the right to refuse medical care. This legal provision determines the scope of free medical services (including pharmaceutical products) available for detained persons at the different levels of progressive medical care.

Circumstances of detention

56. In the period under review State-financed educational and training programmes, with the participation of 1,500-1,600 persons/year, have continued to be launched.

57. A three-year vocational training course organized for juveniles with support from PHARE has come to an end. Within the framework of this programme 160 juveniles received qualifications in five occupations.

58. Inmates have access to the telephone in all the institutions.

59. Order No. 17/1999 (XI.18) of the Minister of Justice has been issued on the protection of non-smokers and on the rules governing consumption and distribution of tobacco products in detention facilities.

Tasks and measures related to inmates' leisure time and sport activities

60. The greatest barrier to productive utilization of leisure time is overcrowding. At present a modest development of facilities for such purposes is financed from a central fund, in proportion to the annual budget of the given detention facility. It includes support for the enlargement of libraries, for establishing and equipping fitness studios or for establishing training workshops.

61. In the interest of securing free religious exercise, penitentiary institutions have established prison chapels and meeting-houses, mostly from their own resources. At present, there are 10 such places and 2 further ones shall be opened this year.

62. In 1999 the CPT recommended that the Hungarian authorities make vigorous efforts to develop programmes of activities for prisoners in all Budapest remand establishments. Further, the Committee reiterated the recommendation made in the 1994 visit report that all prisoners be offered at least one hour of outdoor exercise every day.

63. The entry into service of Unit III of Budapest Remand Prison helps expand opportunities for community, church, charity and other activities. A project to rebuild the basement of Unit II may contribute to an expansion of activities for detainees. In an effort to provide training for detainees seven different courses given by lecturers of the Budapest People's College were launched on 25 October 2000.

64. Outdoor exercise is held in accordance with regulations in force. The Budapest Remand Prison, as all other prisons, provides for one hour of outdoor exercise daily. A prisoner's wish not to avail himself of the opportunity of outdoor exercise must be documented.

Torture and ill-treatment

65. Statistical figures from 1998-2000 show the following:

(a) In 1998 four persons were convicted on the basis of section 226 of the Criminal Code (Act IV of 1978) for the offence of ill-treatment committed in official proceedings. One person received a reprimand whereas proceedings against him were discontinued. In 13 cases the competent criminal authority terminated proceedings on the basis of section 139 of the Act on criminal proceedings;

(b) In 1999, 12 persons were convicted on the basis of section 226 of the Criminal Code for the offence of ill-treatment committed in official proceedings. In 11 cases the competent criminal authority terminated proceedings on the basis of section 139 of the Act on criminal proceedings;

(c) As of 31 August 2000 two persons had been convicted on the basis of section 226 of the Criminal Code for the offence of ill-treatment committed in official proceedings. In 22 cases the competent criminal authority terminated proceedings on the basis of section 139 of the Act on criminal proceedings.

Article 3

66. No new developments.

Article 4

67. No new developments.

Article 5

68. Act LIV of 2002 on the Cooperation of the International Criminal Investigation Agencies was adopted by the Parliament on 17 December 2002 but will enter into force only when the international treaty on the accession to the European Union takes effect. The goal of the Act is to regulate cooperation between Hungarian and international criminal investigation agencies in the preventive and investigative phases, with the aim of increasing the effectiveness of investigative procedures. The provisions of the Act can only be applied where an international treaty exists on the various forms of cooperation outlined in the Act.

69. Requests for cooperation are admissible when relating to the prevention or investigation of crimes punishable with imprisonment. Requests for cooperation have to be transmitted through the International Criminal Investigation Cooperation Center.

70. Article 8 of Act LIV of 2002 outlines the possible forms of such cooperation, as set out below:

(a) Direct exchange of information;

(b) Supervised transfer;

(c) Creation of a joint criminal investigation team;

(d) Involvement of persons cooperating with criminal investigation agencies;

(e) Application of undercover inspectors;

(f) Transboundary observation;

(g) Hot pursuit;

(h) Assignment of a liaison officer;

(i) Undisclosed data collection pursuant to international cooperation;

(j) Application of the witness protection programme pursuant to international cooperation.

Act LIV of 2002 deals in detail with the various forms of international cooperation in criminal matters as listed above, thereby contributing to the enhanced effectiveness of future investigation procedures at the international level.

Article 6

71. No new developments.

Article 7

72. No new developments.

Article 8

73. Hungary has promulgated the Additional Protocol to the Convention on the Transfer of Sentenced Persons by Act LXVII of 2001. The Additional Protocol was adopted by the Council of Europe on 18 December 1997, the Council having considered it desirable that the Convention be amended in certain respects.

Article 9

74. No new developments.

Article 10

75. Since the 1996 report, a textbook entitled *International Documents* has been compiled and published. It is used in all the basic training courses and by students of the Police Academy taking the major "penitentiary institutions", both in regular and correspondence courses.

76. In the interest of raising the level of theoretical training offered for members of the prison staff in direct contact with inmates, a new, accredited training granting the qualifications of "penitentiary inspector" and "penitentiary inspector general" has been launched. Attention is being paid to the relevant changes in the international legal provisions that are built into the syllabus of the subject.

77. Hungary took yet another step forward in the area of enhancing the police training programme by drawing up a central programme for police and border guard training. This programme forms the basis of training in law enforcement schools for police and border guards in the following areas:

- **Legal training** covers legal protection for minorities, guaranteeing human and minority rights, measures and procedures of law enforcement bodies (the notions of abuse of office, ill-treatment in official procedures, interrogations under duress and unlawful possession of weapons are also covered, though without a detailed description of the relevant passages in the Criminal Code);

- **Social studies** cover migration, prejudice, discrimination, racism and anti-Semitism*;*

- **Psychological studies** cover the effects of attitude and prejudice on human behaviour, moral and ethical requirements concerning law enforcement officers, standard international expectations, the importance of a prejudice-free attitude, empathy and tolerance in police work, special psychological problems related to police measures (against persons of different ages and genders, foreign nationals,

ethnic groups, persons under the influence of alcohol and narcotics, brutal or violent persons, persons offering bribes, and persons in a morbid mental state or mentally handicapped persons), psychological problems related to community shelters and police detention facilities and psychological issues of police interrogation;

- **Investigation techniques** (including criminal procedure law) cover witness protection and personal protection for people involved in criminal proceedings.

Hands-on training is designed to turn theory into everyday skills.

78. In an attempt to give psychological support to police staff exposed to stress, the police have employed qualified psychologists since 1999 to deal with staff including, of course, guards in detention facilities. Appropriate individualized psychotherapy is being provided for police staff struggling with stress-related psychic problems, and permission is being sought for the use in Hungary of a questionnaire from Cary L. Cooper's Occupational Stress Inventory (OSI2). In addition, the parliamentary commissioner for human rights (Ombudsman) has suggested that police on regular duty in public areas should be given training on conflict management. Since September 2000, regular general and targeted psychiatric tests have been introduced to find out whether the staff continues to satisfy aptitude requirements.

Article 11

On the legality of treatment of the imprisoned in the years 1998-1999

79. Point 4 of Circular No. 2/1995 (ÜK.5) issued by the Deputy Prosecutor-General on the adaptation of the Recommendations for the Prosecution Service of the CPT stipulates that the county prosecution offices should report on the legality of treatment of the imprisoned. The county prosecution offices have submitted their reports summarizing their conclusions, formulated on the basis of the monthly visits to the police detention facilities and institutions of execution of the punishment of deprivation of liberty (further: prisons) on the legality of treatment for the period 1998-1999.

80. From all places of execution of punishments, including police facilities and prisons, the county prosecution offices received 639 requests, 168 complaints and 220 reports in writing in 1998. Additionally, the supervising prosecutors orally heard 6,818 detained persons in 1,632 cases, at their own request, submitted on a systematized form. In 1999 there were 795 requests, 342 complaints and 390 reports, and the supervising prosecutors heard 6,682 detainees.

81. In these years the detained submitted, in writing or orally, more than 1,000 requests, complaints and reports to the supervising prosecutors on the treatment in detention facilities exclusively. The complaints of offences committed by officials - mainly corporal or verbal abuse of detainees during arrest, transfer or interrogation - were transmitted to investigating offices of the Prosecution Service, which have exclusive competence for the examination of such complaints. The complaints were conveyed to the competent authorities by the prison commanders or by the supervising prosecutor. The supervising prosecutors examined the complaints promptly - on the spot in cases of maltreatment submitted to them orally - and issued orders for prevention or transfer to a competent authority. The majority of complaints submitted,

however, did not refer to the conditions of treatment but to the length of the legal proceedings, to insufficient contacts with the investigator, to the late delivery of letters or to the shortcomings of health care.

82. As an example, the County Prosecution Office of Hajdú-Bihar received 214 requests, 3 complaints and 7 reports in 1999, and the supervising prosecutor heard 382 detainees. Among the complaints received only 2 referred to torture or cruel or degrading treatment. One of the two complaints referred to mistreatment committed by a supervisor in the Hajdú-Bihar County Prison who hit a detainee in the neck during a walk, without causing corporal injury. The following investigation stated that the guard had applied corporal force against the detainee. The commander of the prison qualified the measure as unnecessary. The Investigation Office of the Prosecution Service of Hajdú-Bihar County ceased the proceedings for the offence of mistreatment during official procedure, because the statements of the defendant and the witnesses, as well as the opinion of medical experts, diverged, so the commission of the offence could not be properly proven.

83. As a consequence of CPT recommendations, the Deputy Prosecutor-General of Hungary has issued a circular ordering the control of legality at least once a month.

84. A staff sergeant of the Penitentiary for Juveniles was sentenced by the Military Senate of the Metropolitan Court No. KB.II.172/1999 for maltreatment during official proceedings and infringement of official duties to five months of alleviated prison with one year's probation. The grounds were that the supervisor had left his post without permission for another corridor, entered a cell and ordered the detainee to climb down from the window, to stop crying and to close the window. When the detainee refused to do so, the defendant grabbed his clothes, pulled him down to the corridor, pushed him into the corridor grating and again into the cell. The detainee was not injured.

85. In the police detention facility of Police Headquarters of Győr-Moson-Sopron County on 15 September 1999, a supervisor hit at the face of a detained juvenile through the eating slot and caused corporal injuries, which healed within eight days. Upon the indictment of the Prosecution Office of Győr, the Town Court of Győr sentenced the supervisor under No. B.2661/1999 to one year's probation for the offence of maltreatment during official proceedings and causing corporal injury.

86. An investigation into illegal detention was initiated against a staff sergeant-in-charge of subdivision II of the detention facilities of Metropolitan Police Headquarters who released a detainee at 4.50 p.m. on 18 April 1999 instead of 11.30 a.m. the same day. The investigation found that the defendant was busy, as he had had to register several offenders after a football match so he did not notice the expiration of the detention period. The detainee was afterwards promptly released. The commander of the detention facility warned the staff sergeant-in-charge, and the investigation was closed with a warning issued by the Prosecution Office of Districts V, VIII and XIII of Budapest.

87. In 1998, 1,734 examinations were carried out by supervising prosecutors and 1,951 in 1999 - including 804 visits in 1998 to police detention facilities and 788 in 1999. During the visits the prosecutors denied further investigation in 36.7 per cent of complaints.

88. In 261 cases in 1998 and in 332 cases in 1999 prosecutors examined extraordinary events complained of by detainees. Criminal proceedings were initiated against 24 supervisors in 1998 and against 26 supervisors in 1999.

89. All complaints relating to the treatment of detainees were examined. All complaints received by the prosecutors were examined. This had also proved false allegations that the prosecution service had failed to examine some complaints.

90. In general the treatment of detainees in detention facilities - with the exception of the sporadic infringements detected during the examinations - is in accordance with the requirements of international conventions and with the national legal provisions. The prosecution offices control the detention places and initiate the prompt cessation of the infringements detected.

91. The circumstances of placement in detention cannot be regarded as a part of treatment. However, it is to be emphasized that the number of detainees is continuously rising - especially in the prisons of counties where the arrested are located - and in some detention facilities overpopulation has reached 200 per cent. Such overcrowding is harmful for living conditions, for the treatment of detainees and for detention security as well.

92. It is of utmost importance to continue efforts to maintain the legality of treatment of detainees, first of all by confirming compliance with the requirements of international conventions. Therefore, it is a duty of all authorities involved to initiate proper measures to redress unlawful treatment and to prevent its occurrence with the instruments available.

93. It is also of fundamental interest to reinforce uniform practice in connection with disciplinary proceedings. For the proper execution of the legal provisions on disciplinary proceedings, the Prosecutor-General's Office - based on the conclusions of the examinations of chief prosecutor's offices - issued measures to the National Police Headquarters and to the National Headquarters of the Prison Administration of the Ministry of Justice. The Prosecutor-General's Office has initiated a nationwide examination of the legality of treatment of detainees since 1995 in every year for every chief prosecutor's office in order to control compliance with the requirements of international conventions and with internal legal provisions.

Observation of the Parliamentary Commissioner for Civic Rights

94. In the course of amending the Constitution of the Republic of Hungary in 1989, the institution of the Parliamentary Commissioner, reporting to Parliament and independent of administrative and judicial functions, was created to eliminate deficiencies in the self-control mechanism of the State, to supplement the safeguards of constitutional rights and to reinforce the control function of Parliament over administration. As an indication of the direct link of Parliamentary Commissioners to Parliament, they are elected by Parliament, and, pursuant to article 31/B (6) of the Constitution and article 27 (1) of Act LIX of 1993 on the Parliamentary Commissioner for Civic Rights (hereinafter: PC Act), they must report to Parliament annually on their work, in particular on the status of the protection of constitutional rights as relating to official procedures as well as on the reception and outcomes of their initiatives and recommendations. Such report must be submitted to Parliament by the end of the first quarter of the calendar year following the reporting year. Since the establishment of this function, the Parliamentary Commissioners have honoured this obligation in due time every year.

95. The Parliamentary Commissioner for Civic Rights has the duty to investigate, or provide for the investigation of anomalies encountered in the context of constitutional rights and to initiate general or case-specific measures to remedy them. The Act governing his activities provides that anyone can turn to the Parliamentary Commissioner if he considers that as a result of the proceedings of some authority or public service entity, a decision or measure taken, or failure to take measures, he suffered a grievance relating to his constitutional rights, or there is an impending danger of this happening. The amendment of the Act, which was necessitated pursuant to Decision No. 226/B/1999. of the Constitutional Court and which in effect came into force in 2002, clarified the scope of entities to be considered "other authorities" which fall within the competence of the Parliamentary Commissioners, and gave an exhaustive list of other authorities which the Commissioners may not investigate. As the most significant change, the amendment removed the public prosecutors' office (with the exception of investigative bodies of the prosecution) from the scope of inquiry, considerably narrowing the range of issues open for investigation by the Parliamentary Commissioners; this is also reflected in the drop in the number of complaints submitted.

96. Persons convicted or detained in custody may be subjected during the term of their detention only to the prejudice specified in the sentence or in law. The law also specifies the most important safeguards of the rights of convicted persons. The fundamental requirements of the treatment of convicted persons are set forth, inter alia, in accordance with the Convention against Torture and with European conventions on the same subject. When examining the complaints received from detained persons, the General Deputy of the Parliamentary Commissioner analysed whether the conditions of imprisonment and the practical application of rules and internal procedures applicable to detained persons are in line with the fundamental human and civic rights as provided in the Constitution.

97. The long-standing good relationship with the National Headquarters of Penitentiaries has contributed to the success of the inquiries of the General Deputy and the favourable reception of his findings and recommendations. The modernization of the institutional system is in progress in accordance with the plans of the Ministry of Justice and the National Headquarters, as a result of which the conditions of imprisonment have improved in several locations, even though the overcrowding of institutions has not improved noticeably. These changes are also apparent in the declining number of complaints received from inmates and in the circumstances underlying the complaints.

98. Overcrowding, which was criticized in previous years as well, also renders it difficult to separate inmates as required in law. In the case of under age inmates, the disregard of rules also poses security hazards. In the Metropolitan Penitentiary a 16-year-old accused was placed in a cell with mostly adult detainees of much stronger physical build. The under age person was beaten several times by four adult cellmates, various objects were taken from him, and he was sexually abused. In this case the prison staff violated the legal regulations concerning detention in penitentiaries and the criminal procedure and the special provisions to protect minors, and causing anomalies relating to the constitutional rights to life and to human dignity.

99. The majority of the complaints related to deficiencies of health care, medical treatment and hygienic conditions. Most of the inquiries concluded that the health service of the penitentiary system provides adequate standards of services to inmates. We mentioned the case

earlier where the penitentiary violated the right to the highest possible standard of physical and mental health because the health care of the inmate could have been assured only outside the penitentiary system, but the suspension of imprisonment was not initiated ex officio.

100. In the context of the right of inmates serving their prison sentences in penitentiaries to express their opinion and to the freedom of the press, one complainant objected to the fact that prior to interviewing an inmate, he had to conclude an agreement with the inmate specifying the conditions of the interview and undertaking to present the recording to the National Headquarters of Penitentiaries before it was broadcast, and to agree that only the version approved by them could be aired. According to the explanation of a decision of the Constitutional Court adopted in the meantime, the regulation and control of the relationship of the inmates with the media does not infringe the right to freedom of opinion and freedom of the press. However, fundamental rights can be curtailed only by law, and curtailment must pass the so-called necessity test. Upon the request of the General Deputy, the Commander put an end to the objected-to practice concerning the possibility of inmates giving interviews. However, as the legal ground for the protection of constitutional rights is incomplete, this may cause anomalies concerning the constitutional requirement of legal certainty; therefore, the General Deputy initiated the adoption of legislation with the Minister of Justice, who agreed with the recommendation.

101. In the course of an inquiry also covering police station houses, the General Deputy concluded that in the legal meeting room of several penal institutions a lawyer and his client may not directly exchange documents. According to the International Covenant on Civil and Political Rights everyone has full and equal rights to have adequate time and opportunity to provide for the preparation of his defence and to contact the defence lawyer of his choice. The term "adequate contact" in the Covenant comprises the conditions assuring effective and timely defence, which substantively includes free and uncontrolled contact with the defence lawyer, including the direct exchange of documents. The absence of this hinders timely and effective defence, thereby jeopardizing the right to defence and resulting in an anomaly.

102. Children born in penitentiaries represent a special problem. In connection with a new complaint relating to a previously concluded inquiry the General Deputy found that it causes anomalies relating to the right to adequate physical, mental and moral development of children born in penal institutions and temporarily residing with their mothers if, as a result of the procedure of the Ministry of Social and Family Affairs and the omission of the Central Hospital of Penitentiaries, the parents are unable to exercise their right to family allowance in respect of such children.

103. The legal regulations governing the mode and conditions of imprisonment have special constitutional significance. These provisions set the limits within which the restriction of freedom entailed in imprisonment is constitutionally allowed, necessary and proportionate. According to the position of the Constitutional Court relating to the protection of the right to life, the obligation of the protection of certain fundamental rights as legal institutions is unconditional, and it cannot be "postponed" until conditions are more favourable. Thus, the constitutional anomaly is not mitigated if the penitentiary or organization did its best to prevent injuries, but nevertheless failed to do so to the minimum extent required by law. Without appropriate targeted State action the danger of the re-emergence of anomalies is reproduced in penal institutions.

104. As a recurring problem, despite the clear provisions in the Police Act, occasionally arrested persons are not allowed to contact their relatives or other persons, and the competent police body also does not notify them. Notification is especially important in case of actions against minors or foreign nationals, because of their more vulnerable position. The police have an obligation in the latter respect under the Vienna Convention on Consular Relations and the bilateral treaty with the United States. Failure to comply with this requirement causes anomalies relating to the legal certainty derived from the rule of law and to a fair procedure.

105. Even though some of the complaints relating to imprisonment were unfounded, the outdated condition of central prisons in Budapest remains a problem. The absence of toilets, the limited opportunity for fresh air and the unhygienic conditions violate the rights of the inmates to human dignity and to the highest possible standard of physical and mental health. The fundamental requirement of the safety of the inmates is violated if the location of some of the bars, window latches and radiators in the arrest premises, bath facilities and cells directly provides occasion for suicide by hanging. The General Deputy encountered such examples in the prisons of Győr-Moson-Sopron county.

106. Torture and inhuman and unusual punishment is prohibited by several international conventions as well as the Police Act and the Criminal Procedure Code. Such acts, though fortunately rare, not only constitute a crime but also cause severe anomalies relating to the constitutional right to life and human dignity. This happened in a police station under the Kapuvár Police Office, where policemen assaulted young people accused of burglary. Acting upon the action initiated by relatives, the court also established the criminal liability of the policemen for the crime of torture to extract confessions. Following the action filed against the policemen, the number of tickets for offences issued in the territory of the police station increased to almost three times the national average and some of the actions were directed specifically against the persons who had filed the action or their relatives. The General Deputy found that the unjustified measures after the action was started against the police who had committed the assault violated the constitutional principle of the rule of law.

II. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

107. The Committee proposed, in its conclusions and recommendations adopted upon examination of the previous report, that a thorough review of section 123 of the Criminal Code and the adaptation of the text to the provisions of the Convention be undertaken.

108. It is the opinion of the Government of Hungary, however, that amendment of section 123 is not inevitable. The jurisprudence based on the correct interpretation of this legal provision does not violate article 2, paragraph 3, of the Convention, especially when put into the context of the related regulations in force, as well as the relevant practice of Hungarian criminal courts.

109. Section 123 of the Criminal Code provides:

> (1) A soldier may not be punishable for his act executed upon order, except for the case if he knew that he commits a crime by the execution of that order.

(2) The person giving the order shall be liable for the crime committed upon order as perpetrator.

This provision is to be found in the General Part of the Criminal Code (Act IV of 1978), in chapter VIII, which relates to soldiers. For the purposes of the Criminal Code current members of the armed forces (army, border guards) and the official members of the police, penitentiary institutions and civil security services are to be regarded as soldiers. For the purposes of the Convention it is the legal provisions governing the police, the border guards and the penitentiary institutions that have relevance, owing to the investigative and penitentiary powers granted to these organizations.

110. Members of the police are regulated by Act XXXIV of 1994 on the Police (Rtv) and order 3/1995 of the Minister of the Interior on the regulation of service. Members of the border guards are regulated by Act CX of 1993 on national defence (Hvt) and order 6/1987 of the Minister of Defence. Members of the penitentiary system are governed by Act CVII of 1995 on the organization of penitentiary institutions (Bvszt) and order 21/1997 of the Minister of Justice on the regulation of service in penitentiary institutions.

111. The armed forces, the police, the penitentiary system and the civil security services are only able to perform their duties if a strict hierarchy exists between their members qualifying as soldiers. Section 25, subsection 1, of Act CX of 1993 on national defence (Hvt) provides that in the system of hierarchy those whose rights and obligations extend to instructing other soldiers are superiors and those to whom superiors' competence extend are subordinates. Superiors shall enforce their will through orders and measures. According to section 26, subsection 1, an order is an individual instruction to perform an activity or to accomplish a task. Subsection 2 provides that orders shall be issued to a definite person or a well-defined circle of persons.

112. The scope of Act XLIII of 1996 on the service of official members of the armed bodies extends to the service relations of official members of the armed forces (army and border guards), of organs of public order (the police, the civil defence, the customs and finance guards, the penitentiary organization, State- or local government-owned fire guards) and of civil security services.

113. Section 68 of Act XLIII of 1996 provides as follows:

"Section 68, subsection 1: Members shall be liable:

(a) To appear at the required place in the required time in a state fit for service and to perform their task or to be ready for performing it;

(b) To perform their tasks pertaining to service in compliance with lawful prescriptions, orders or measures - if necessary by facing danger - and by showing such professional skills, care, impartiality and equitability that can be expected from them;

(c) To cooperate with their colleagues, to perform their task and generally to behave in a manner which shall not endanger other people's health or bodily integrity nor cause damages - unless the successful performance of the task makes such conduct inevitable;

(d) To enrol in courses/training prescribed for them and to take the required exams;

(e) To comply with the medical, psychiatric and physical requirements needed for the profession;

(f) When being off duty, to perform a conduct worthy of members of the armed bodies.

"Subsection 2: Members of the armed forces shall keep State and service secrets and shall observe the rules on data protection.

"Subsection 3: Members of the armed forces shall not accept remuneration for public appearances."

114. Section 69 provides as follows:

"Subsection 1: In performing duties members of the armed forces shall comply with the orders and instructions of their superiors unless they would commit criminal offence by complying.

"Subsection 2: With the exception set forth in subsection 1, members of the armed forces shall not deny compliance with unlawful orders or instructions.

"If the unlawfulness of the order or instruction is evident for the member of the armed forces he shall promptly call his superior's attention to this fact. If upon that the superior still insists on issuing his order he shall put it in writing upon request to this effect by the subordinate. For the execution of unlawful order or instruction that person who has issued the order or the instruction shall be liable."

115. Superiors shall issue their orders firmly. Orders shall be unambiguous and addressed to persons capable of executing them.

116. Section 12, subsections 1 and 2, of the Police Act contains similar provisions:

"Section 12, subsection 1: In the course of performing their tasks members of the police shall comply with the instructions of their superiors. They shall deny compliance if thereby they would commit criminal offence.

"Subsection 2: With the exception set forth in subsection 1, members of the police shall not deny compliance with unlawful orders or instructions, however, if the unlawfulness of the order or instruction is evident for the member of the police he shall promptly call his superior's attention to this fact. If upon that the superior still insists on issuing his order he shall put it in writing upon request to this effect by the subordinate. Denial or postponement of putting the order into writing shall be announced to the direct superior of the person who has issued the order. The exercise of this right, however, shall not have delaying force for compliance with the order."

117. According to section 8, subsection 6, of the service regulation of penitentiary institutions, the obligation of members of penitentiary institutions to comply with orders shall be governed by sections 68 and 69 of Act XLIII of 1996 on the service regulation of official members of armed forces, applied appropriately.

118. Soldiers (within the meaning of the Criminal Code) who do not comply with orders are in violation of section 354 of the Criminal Code governing disobedience to orders.

119. With the exceptions specified above, soldiers shall not deny unlawful orders.

120. From these legal provisions it follows that within the circle of persons qualifying as soldiers subordinates shall be under the obligation of complying with orders unless they positively know that compliance would constitute a criminal offence. They shall not be punishable if they do not know that by complying with the order they commit a criminal offence since section 123 of the Criminal Code excludes the punishment of such persons. In that case, the person who has issued the order shall be liable. If the subordinate has recognized that by complying with the order he would commit a criminal offence and nevertheless still complies with the order, he shall be liable for the offence as perpetrator.

121. Section 16, subsection 3, of the Police Act and section 11, subsection 3, of Act CVII of 1995 on the organization of penitentiary institutions expressly prohibit torture and inhuman treatment.

122. Section 16, subsection 3, of the Police Act provides: "Members of the police shall not use torture, forced interrogation, cruel, inhuman or degrading treatment. They shall deny compliance with orders to this effect. In order to prevent such conduct members of the police shall take measures against the performer of such conduct without regard to post, rank or person."

123. Section 11, subsection 3, of Act CVII of 1995 on the organization of penitentiary institutions provides: "When taking measures members of the penitentiary shall not use torture, forced interrogation, inhuman or degrading treatment. They shall deny compliance with orders to this effect. Members of the staff shall call upon the performer of such conduct to stop his conduct immediately, they shall be entitled to take measures or report to the person authorized to take measures."

124. Torture within the meaning of the Convention violates section 226 (ill-treatment in official proceedings) or 227 (forced interrogation) of the Hungarian Criminal Code. If in addition to these offences bodily assault is also committed, the conduct is evaluated as constituting a cumulative crime.

125. The texts of the legal provisions governing the above-mentioned offences are as follows:

> "Maltreatment in official proceedings:
>
> "Section 226: The official person who commits assault upon another person during his proceedings, commits a misdemeanour, and shall be punishable with imprisonment of up to two years."

"Forced interrogation:

"Section 227: The official person who - with the aim of forcing a confession or declaration - applies violence, menace, or other similar methods, commits a felony and shall be punishable with imprisonment of up to five years."

126. In respect of such conduct, or the use of unauthorized bodily force, or orders calling for the commission of bodily assault, it has to be mentioned that official members of the armed forces and the police are supposed to know the legal provisions that govern their operation, rights and obligations. In the case of such offences, a subordinate member of the police or the armed forces shall not successfully allege that he acted upon an order. A knowledge of the above-cited legal provisions and regulations and of the relevant provisions of the Criminal Code is a prerequisite for admission into the service for official members. Therefore, in practice, official members of the police or the armed forces shall not use an excuse of non-familiarity with the relevant laws.

127. The Military Committee of the Budapest Regional Court regarded the order of a sub-officer who had instructed his subordinates, themselves official members of the army, to remove articles in the value of 52,000 HUF from a bus with a foreign registration number that had stopped on the highway because of technical problems as manifestly aiming at the commission of a criminal offence. The court rejected the defence of the accused that they had acted upon order (Military Committee of Budapest Regional Court No. VIII 437/1993).

128. The Supreme Court found a subordinate policeman guilty of abetting the offence of forced interrogation because he was present throughout an interrogation during which his superior ill-treated the interrogated person. The superior first asked the plaintiff about the thefts of bicycles the number of which had grown at that time. The plaintiff denied that he had committed the thefts. After that the superior ill-treated him in the street and ordered him to appear at the constabulary, where the subordinate policeman met him. Without asking or knowing anything about the case the subordinate policeman called upon the plaintiff to plead guilty. At that, the superior informed his subordinate about the thefts and requested his help. In the presence of the subordinate the superior again addressed questions to the plaintiff and upon his again denying having committed the thefts, the superior asked for the subordinate's truncheon and hit the plaintiff's head and upper body with it several times. The subordinate policeman was present throughout the ill-treatment but "he failed to ask his superior to stop his conduct, the unlawful nature of which the subordinate was fully aware". The Supreme Court found that:

"It is undoubtedly correct to argue that passive presence on the spot of the criminal offence in itself shall, in the majority of cases, not be suitable for establishing psychic abetment since such presence does not necessarily reinforce the intention of the person who performs the conduct of the criminal offence."

At the same time,

> "... from a member of the police it can definitely be expected, even if it is his superior who is committing the criminal offence, to attempt stopping his superior from continuing to perform his unlawful conduct by inviting him to this effect. Only such an invitation may be suitable to express one's disagreement with his colleague and only such an invitation may induce the perpetrator to stop performing his unlawful conduct. Therefore, in the given case the conduct of the accused of the II. order amounted to psychic abetment: his presence during the plaintiff's ill-treatment and his handing over the truncheon to his superior upon the latter's request - which goes beyond passivity - actually reinforced the intention of the accused of the I. order" (Court Decisions, 1983/223).

129. Section 5 of the Military Criminal Code of the Federal Republic of Germany contains a similar regulation as section 123 of the Hungarian Criminal Code.
