



UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

STATEMENT UPON THE CONCLUSION OF ITS VISIT TO HUNGARY

(23 SEPTEMBER – 2 OCTOBER 2013)

I wish to make this presentation on behalf of the Chair-Rapporteur of the Working Group on Arbitrary Detention, Mr. El Hadji Malick Sow*, who led our delegation on this visit but could not be here today due to an urgent matter he had to return home to. I thank you for the opportunity to present our preliminary findings for this visit.

The United Nations Working Group on Arbitrary Detention was invited by the Government of Hungary to conduct a country visit from 23 September to 2 October 2013. The members, Mr. Sow and I, Vladimir Tochilovsky, were accompanied by two staff of the Working Group's Secretariat from the Office of the United Nations High Commissioner for Human Rights in Geneva and interpreters.

I would like to extend our gratitude and appreciation to the Government of Hungary for its quick and prompt response to the Working Group's request to visit the country. This is indeed something that needs to be highlighted as it displays the willingness of this Government to cooperate and facilitate our work. I also thank the Government for the support it has provided in organising the meetings we have requested and in ensuring unhindered access to the detention facilities that the Working Group requested to visit. The Working Group is also grateful for the opportunity to meet and interview detainees confidentially as required by its mandate.

Additionally, the Working Group wishes to thank colleagues at UNHCR for their valuable assistance as well as the various representatives of Hungary's civil society that met with our delegation and provided us with important information.

The Working Group benefited from various meetings held with State authorities and it appreciates the information they have provided. The delegation met with senior authorities from the executive, legislative and judicial branches of the State, including members of the Parliament Committee on Youth, Social, Family and Housing Affairs; members of the Parliament Committee on Human Rights, Minority, Civic and Religious Affairs; the State Secretary of the Ministry of Foreign Affairs; the Deputy State Secretary and Political Director at the Ministry of Foreign Affairs; the Deputy State Secretary for Ministry of Justice and Administration; the

Deputy State Secretary of the Ministry of Interior; the Deputy State Secretary of the Ministry of Human Resources (Social, Family and Youth Affairs), the Deputy State Secretary for Health; the General Director of the Office of Immigration and Nationality; the Deputy National Police Chief and the Independent Police Complaints Board. The Working Group was also able to meet with members of the judiciary including judges from the Constitutional Court, the Curia, and representatives from the Prosecutor-General's office in Budapest. In Szeged, it was able to meet with judges and the Chief County Prosecutor. The Working Group also had the opportunity to meet representatives from the Ombudsman's office and the President and members of the Hungarian Bar Association.

The Working Group visited detention facilities, including facilities for asylum seekers and migrants in an irregular situation. In Budapest it was able to visit the Judicial and Observation Psychiatric Institution (EMEI) and the Correctional Facility for Young Offenders. In Tokol, it was able to visit the Juvenile Prison facility. In the county of Csongrád, the delegation visited the alien policing facility and detention facility for asylum seekers in Nyírbátor as well as the Hajdú-Bihar Remand center. In the county of Békés, it visited the prison facility in Gyula and the detention facility for asylum seekers in Békéscsaba. In Szeged, it visited the Maximum Security Prison. Confidential interviews were held with detainees in these facilities.

GENERAL REMARKS

Hungary has been facing many difficulties and challenges and a series of legislative changes and reforms have been made. Some of these changes have various degrees of impact on the issue of deprivation of liberty. The Fundamental Law of Hungary provides for the protection of the right to freedom where it stipulates that "every person shall have the right to freedom...and no person shall be deprived of his or her liberty" except when it is in accordance to law. The Fundamental Law goes further to provide that a person suspected and/or arrested for committing an offence shall either be released or brought before a court as soon as possible and thereafter the court shall be obliged to give such person a hearing and immediately make a decision with a written justification on his or her acquittal or conviction. Hence, the right to be free from arbitrary deprivation of liberty is enshrined in the highest law of the land.

Regarding institutions that assist in the protection against arbitrary deprivation of liberty, it is positive to see the existence of an Ombudsman's office as a national human rights institution in Hungary. It is also good practice to allow civil society organisations access to visit detention facilities for monitoring purposes and to also speak with detainees who require legal assistance, something we also observed in existence in the country. We were informed that amendments are currently being discussed in relation to the criminal procedure code that could have positive impacts on the rights of those deprived of their liberty in the criminal justice system.

However, the Working Group would like to draw the Government's attention to several issues that need to be considered and effectively addressed.

ISSUES OF CONCERN

Excessive use of pre-trial detention

Under international human rights law, detention in custody of persons awaiting trial shall be the exception rather than the rule. However, we consistently received information that the excessive use of pre-trial detention is prevalent throughout the criminal justice system in the country. Hungary has a prison population of around 17,000 persons, 28 per cent of who are pre-trial detainees. We observed that even with legislation providing for alternative measures to detention, the recourse to use detention as a first resort rather than the last, has been commonplace. Hungary's prison population is currently at a 140 per cent overcrowding ratio, much of which can also be attributed to the common use of detention for those in the pre-trial regime.

In addition to the overuse of pre-trial detention, the prolongation process of the detention also raises serious questions in that it often leads to unnecessary and lengthy periods. The issue of proportionality was not often respected. In its interviews with detainees, the Working Group was informed of pre-trial detention periods that ranged from a few months to 18 months and in one case, the person was in pre-trial detention for over three years. Although alternatives to detention are stipulated in the relevant legislation, the "culture of detaining" a person while pending trial seemed to be evident throughout the country. Even though Hungarian law provides specific grounds for when a person can be subjected to pre-trial detention, the Working Group observed that many of the detainees it interviewed would have benefitted from alternatives to detention, also prescribed by law, because they did not fall into the criteria that rendered pre-trial detention necessary. For example, where home arrest can be justified and effectively implemented, the Working Group was informed that the person was placed in pre-trial detention nonetheless. The Working Group would also like to point out that if a person is denied alternative measures at the pre-trial stage, he or she should be tried as expeditiously as possible.

The delegation also observed that some of those interviewed were from a particular socio-economic background who were not well learned about their rights in the criminal justice system and who were not aware of basic legal rights such as the right to have a lawyer present during the initial interrogation at the police stations. In fact more than often, it is the police who recommended a lawyer that they knew from a list of lawyers in the community for the detainee to choose from. Some of the detainees also informed that they were taken into police custody and what they thought was a simple interrogation resulted in their pre-trial detention for months.

Adding further concerns to the problems faced by persons who are arrested and placed in pre-trial detention, the Working Group was consistently informed of the inequality of power between defence lawyers and prosecutors in criminal proceedings. Over 90 per cent of cases that were brought before the court in relation to pre-trial detention were approved in favour of the prosecution.

Pre-trial detention must be based on an individualized determination that it is reasonable and necessary. However, the Working Group observed the lack of individual assessments of cases has often meant that those in pre-trial detention find it overwhelmingly difficult to challenge the legality of their detention. Several of those interviewed stated that the motions of prosecutors enjoyed an almost automatic system of approval whereas defence lawyers were not

able to achieve the same results. This was also worsened by the fact that the defence has limited right to access to the material on the basis of which the detention is ordered. A defence lawyer, even one who is working hard to effectively represent his or her client, finds it enormously difficult to challenge and succeed in terminating a pre-trial detention or preventing it from being prolonged because often he or she cannot be privy to the relevant investigation material. These disparities concerning equality of arms have raised concerns for the Working Group because of the high number of detainees it has met with who have been in pre-trial detention for too long or even those who can clearly benefit from other alternatives to detention that are available in law.

The Working Group has been informed that the use of electronic devices as a means to assist with providing home arrest measures is currently being implemented and would like to emphasize the importance of exploring the use of such alternative measures.

The Working Group was informed that more than 10,000 children are in the criminal justice system. In the two centres for minors that the Working Group visited, there were 320 children in detention. The delegation visited the Juvenile Prison in Tokol where there were 50 minors in pre-trial detention and 24 had been detained for more than six months. The youngest detainee was 15 years old. The delegation also visited the Correctional Facility for Young Offenders in Budapest where there were 80 children aged between 14 and 18, submitted to a regime of re-education. Minors spent an average of 10 months in this facility. However, we found 20 minors had been detained in this place for more than 20 months. Under international human rights law, the pre-trial detention of minors should be avoided whenever possible. The Committee on the Rights of the Child stated in 2007 in its General Comment No. 10 that the reaction to an abuse of law made by a child shall be proportional with age, maturity, necessities, and circumstances of the child and has to take into account the long-term interests of society in education and reintegration and not mere punishment.

Lack of effective legal assistance

Of similar and grave concerns to the overuse of pre-trial detention, is the lack or absence of effective legal assistance for arrested persons. During its discussions with Government authorities, the Working Group reiterated that the obligation to provide free legal assistance belongs to the State. The right to have a lawyer present during a detained person's initial interrogation in the police and the right to have effective legal assistance provide strong protection against arbitrary deprivation of liberty. However, a number of detainees reported that they were interrogated without a lawyer present, as they did not realise the importance of legal advice at the time of the interrogation and the evidentiary character of the written statements which are later used in trial against them. Some of those that did have lawyers expressed the opinion that they did not feel that their cases were effectively defended.

According to statistics obtained during the visit, is not uncommon for police investigators to select a lawyer for the detainee. In some municipalities the police investigators select the same lawyer in 50-70 per cent of the cases. In some instances, the defence lawyers did not show up for the interrogation because the police would wait for the last possible minute to notify the lawyer knowing that it was the evening or the weekend, making the lawyer's presence difficult or impossible. As one of the experienced lawyers put it, the first 72 hours of arrest is such a crucial period for the arrested person and yet, lawyers are often not present. This is particularly worrying as the Working Group came across cases where statements were reportedly extracted

under duress or severe pressure. In such instances, the absence of a lawyer provides opportunities for violations of the detainees' rights. The Working Group raises these issues because effective legal assistance is not only a shield against arbitrary detention, but it also wishes to highlight the difficulty of having effective legal assistance being provided. This does not mean that defence lawyers are necessarily responsible for this situation as it is aware of the difficulties of having to provide legal assistance with very little resources to do so.

The Working Group was informed that defence lawyers assigned and paid by the Government have to do so with an earning of around 1000 forint per hour (approximately 3 to 4 euros). Defence lawyers have to often travel long distances to provide assistance to clients and have to deal with the inequalities mentioned between the accesses to case materials as opposed to prosecutors. These various dynamics provide a difficult environment in which effective legal assistance cannot be guaranteed and we note this as also a contributor to the high number of those in pre-trial detention. In the context of all these difficulties and without the proper safeguards, an arrested person is under serious risk of being arbitrarily detained.

We are however pleased that there is legal assistance being offered by certain civil society organisations and that the presence of their legal advisors can be found throughout the country and not just in the capital.

Detention of asylum seekers and migrants in an irregular situation

The mandate of the Working Group was expanded by the former Commission on Human Rights in 1997 to cover the situation of migrants in an irregular situation and asylum seekers who are held in prolonged administrative custody without the possibility of administrative or judicial remedy. Our delegation has had the possibility of visiting two detention facilities for irregular migrants and asylum seekers in Nyírbátor and Békéscsaba. We understand the pressure and challenges face by Hungary as a transit country having seen a radical increase in the numbers of asylum seekers in the last year alone. We have been informed that in 2012, a total of 2,157 asylum seekers' applications were registered and in 2013, an estimated 15,000 were registered. The huge wave of border crossings has created a sense of urgency within the Government. The Working Group was able to meet with immigrants of different nationalities to assess the situation in relation to its mandate.

From the outset, we note that the Government has responded in the last few years with different approaches to the influx of people crossing Hungary's borders. Legislative changes and policies have been initiated to manage the situation. The legislative changes to the Asylum Act that came into effect in July of this year have some positive changes such as an asylum detention having to be based on individual assessment; introduction of alternatives to detention such as bail and benefits such as the availability of social workers to assist with those in detention. Unaccompanied minors remained exempted from detention. However, there has been a significant focus on detaining asylum seekers which has been worrying.

The Working Group has been informed that in practical terms, there are many issues raising concerns of various violations despite the current legislation providing for certain positive measures. The issue of prolonging the detention of an asylum seeker and the lack of proper judicial review were consistently raised during interviews. Although the law provides for a complaint or an objection which can be submitted against a detention order, an important tool

against challenging a detention that may be arbitrary, this right is not often explicitly communicated to those who are being detained. This is further complicated by language difficulties faced by detainees who are of various different nationalities. Furthermore, when the lawyer representing the person in detention files a complaint against the detention, there was a system of extending the detention without proper regard for the lawyer's submission and the individual circumstances of the detainee. In the last year, around 8000 such submissions for release were made, out of which only three were successful. Hence, the lack of effective legal remedy against detention orders and their prolongation is worrying as it has resulted in detentions for periods that can last up to 12 months. The regime for asylum seekers in places such as Nyírbátor for instance seemed to be tougher than its next door regime for migrants awaiting deportation. It was often unclear how persons were selected as asylum seekers and who would be placed in the alien policing jail. In some instances, a person who was seeking asylum was placed in the alien policing jail without proper reasoning or justification.

The Working Group would like to point out that in situations where a delay in a case is not attributable to the detainee, the person should not be unduly detained for a prolonged period. This is the case where certain persons were held in detention and clarifications were necessary with regard to issues such as identity and the difficulties were due to the authorities involved in the case, such a person was not given any other option but to remain in detention.

The Working Group notes with concern that for acts that are not considered a crime, persons who have entered the country without authorisation find themselves in situations similar to a penitentiary system and equally without proper guarantees of their rights.

Although the Working Group understands the difficulties faced by the Government in dealing with the rapid rise of border-crossings, the situation of asylum seekers and migrants in irregular situations need robust improvements and attention to ensure against arbitrary deprivation of liberty. The positive measures introduced by the recent law should be implemented in a clear and defined manner. Detention should not be the common and first resort and should be for the shortest possible duration especially when genuine asylum seekers may be overlooked or detained unnecessarily without proper justification. The problem relating to effective legal remedy is worsened with the severe lack of effective legal assistance to these vulnerable persons. Most of those that we interviewed stated that they did not have legal assistance and those that did have a lawyer stated that it was someone from a civil society organisation rather than one provided by the Government.

Deprivation of liberty under the Law of Misdemeanours

The Working Group interviewed a number of detainees who were serving time in confinement for offences such as not wearing a seatbelt, having a broken bicycle light, jay walking, walking across the street under the influence of alcohol and so forth. We noted that most of these offenders were also unemployed or without regular work. A common reason for not being able to pay a fine was due to financial limitations. The time being served in confinement ranged from 10 days to 38 days and when questioned about having a lawyer, we received similar information that it was not easy to obtain one or that confinement was issued against them without them being able to challenge this decision in court. It seemed that an automatic conversion of a fine to confinement took place without the offender being in court to challenge the confinement. This automatic system of conversion concerns the Working Group as

a person should be able to challenge any deprivation of liberty particularly in light of one's own and unique circumstance for instance where family or financial situations can be explained to a judicial authority to shed light on the inability to pay a fine. This situation is aggravated by the fact that it is only a particular section of the population which is unfairly disadvantaged because it involves those who are poor or those who may not have the means to provide financial assurance against confinement. We note that in 2012, there has been a drastic increase in the conversion of non-payment of fines to confinement. The principle of proportionality is necessary to be applied in these situations and importantly, alternative measures to confinement such as community work should be utilised. We note that with regard to juvenile offenders, this is a grave issue that needs to be assessed as confinement of this group is also provided for and the possibility of converting a fine into confinement possible.

These are the issues that we would like to raise as preliminary findings in the conclusion of our visit today. A final report on the visit will be presented to the Human Rights Council in 2014. In its report, the Working Group will submit several recommendations to the Government.

Once again, on behalf of the Working Group, I would like to thank the Government of Hungary for its excellent co-operation. We thank the Government for its willingness to engage in open and frank discussions regarding our mandate and its concerns. We know that the issues we have raised are not easy. We encourage the Government to continue in this spirit of openness and we look forward to continuing this dialogue in order to improve the situation of deprivation of liberty in the country.

Thank you very much.

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EGYESÜLT SZERVEZETE

NEMZETEK

ÖNKÉNYES FOGVATARTÁSSAL FOGLALKOZÓ MUNKACSOPORT

ZÁRÓKÖZLEMÉNY A MUNKACSOPORT MAGYARORSZÁGI LÁTOGATÁSÁRÓL

(2013. SZEPTEMBER 23 – OKTÓBER 2.)

Beszámolómat az ENSZ Emberi Jogi Tanácsa önkényes fogva tartással foglalkozó munkacsoportjának elnök-referense és delegációnk vezetője, El Hadji Malick Sow* úr nevében tartom meg, aki nem tud ma itt lenni, mert sürgős ügy miatt haza kellett térnie. Köszönöm a lehetőséget, hogy beszámolhatok Önöknek a látogatásunk során tett előzetes megállapításainkról.

Az ENSZ Emberi Jogi Tanácsának önkényes fogva tartással foglalkozó munkacsoportja a magyar kormány meghívására tett országlátogatást Magyarországon 2013. szeptember 23. és október 2. között. A delegáció tagjai, Sow úr és én, Vladimir Tochilovsky, a munkacsoport titkárságának két munkatársa és tolmácsok kíséretében az Egyesült Nemzetek genfi székhelyű Emberi Jogi Főbiztosságának képviselőjében jártunk el.

Szeretném kifejezni hálánkat és elismerésünket a magyar kormánynak a munkacsoport országlátogatásra irányuló kérésére adott példásan gyors válaszáért. Ez valóban külön méltánylást érdemlő körülmény, mivel jól tükrözi a magyar kormány készségét arra, hogy együttműködjék velünk és megkönnyítse munkánkat. Szeretném továbbá megköszönni a magyar kormánynak az általunk kért találkozók megszervezésében és annak biztosítása érdekében nyújtott támogatását, hogy akadálytalanul bejuthassunk a munkacsoport által felkeresni kívánt fogva tartó létesítményekbe. A munkacsoport háláját fejezi ki azért a lehetőségért is, hogy küldetésünknek megfelelően bizalmas körülmények között találkozhattunk az általunk megkérdezett őrizeteseikkel.

Ezen túlmenően, a munkacsoport köszönetet kíván mondani az ENSZ Menekültügyi Főbiztossága munkatársainak felbecsülhetetlen értékű segítségükért, valamint a magyar civil társadalom különböző képviselőinek, akikkel alkalmunk volt találkozni, és akik fontos információkkal láttak el bennünket.