HUNGARY

SUBMISSION BY THE HUNGARIAN HELSINKI COMMITTEE FOR THE UN UNIVERSAL PERIODIC REVIEW

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The Hungarian Helsinki Committee (HHC) is an NGO founded in 1989. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantee the consistent implementation of human rights norms and promotes legal education and training in fields relevant to its activities, both in Hungary and abroad. The HHC's main areas of activities are centred on non-discrimination, protecting the rights of asylum-seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention, access to justice, the effective enforcement of the right to defence and equality before the law.

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1. LAW ENFORCEMENT AND CRIMINAL JUSTICE

1.1. In line with the earlier UPR recommendations, Hungary ratified the OP-CAT, and the Commissioner for Fundamental Rights (the Ombudsperson) was designated to be the National Preventive Mechanism (NPM) in Hungary. However, on the basis of the first year of the NPM's operation NGOs find that **the NPM's functioning** leaves much room for improvement and **does not fulfil all the requirements set by OP-CAT and the Paris Principles**. Especially the participation of NGOs with significant experience in monitoring detention is not substantively ensured in the work of the NPM; experts by experience are not involved at all. The budget available for the NPM is inadequate, hindering its effective operation. Given the present intensity of monitoring only in over 100 years would the NPM be able to visit all places of detention instead of the maximum 5 years recommended.

Recommendations:

- *Ensure that the NPM substantively involves NGOs in its work.*
- *Increase the budget of the NPM substantially in order to allow for its effective operation.*

1.2. The UPR recommendations to combat **overcrowding in prisons** and improve prison conditions have only been implemented partially. In the past years, the average number of detainees has constantly increased, until 2013 in parallel to the average overcrowding rate[1] – this was 141% in 2014,[2] but overcrowding may reach 200% in certain institutions. In a pilot judgment[3] delivered in 2015 the European Court of Human Rights (ECtHR) concluded not only that the detention conditions of the applicants – including the inadequate moving space per person – amounted to inhuman or degrading treatment, but also that overcrowding constitutes a structural problem in Hungary, and set out that Hungary should produce a plan to solve the issue. According to the judgment, the solution would be the reduction of the number of prisoners by the more frequent use of non-custodial punitive measures and minimising the recourse to pre-trial detention, however, the Government's communication shows that for the time being it wants to solve the situation solely by building prisons. Overcrowding is often accompanied by **unsatisfactory detention conditions**, such as toilets separated from the rest of the cell only by a textile curtain, inadequate number of toilets and sinks, widespread presence of bedbugs, and poor sanitary conditions in general.

Recommendations:

- *Ensure that moving space provided for detainees complies with international standards.*
- *Adopt measures to overcome overcrowding in penitentiary institutions with a view to comply with the pilot judgment of the ECtHR delivered in the Varga and Others v. Hungary case, including measures beyond building new prison facilities.*
- *Equip all prison cells with separated toilets and improve sanitary conditions in penitentiary institutions.*

1.3. Hungarian legal rules provide for the possibility of **actual life imprisonment**,[4] contradicting the recommendation of the CPT. In 2014, the ECtHR concluded[5] that by sentencing an applicant to actual life imprisonment, Hungary violated the prohibition of torture and inhuman or degrading treatment or punishment. Even though certain legislative changes were introduced after the above judgment, the procedure adopted still does not comply with the standards set out by the ECtHR.

Recommendation:

- *Abolish the institution of actual life imprisonment.*

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[1] The rise of the overcrowding rate was stopped only because in 2014 the capacity of the penitentiary system was slightly increased.

[2] For the respective statistics, see the website of the National Penitentiary Headquarters: http://bv.gov.hu/sajtoszoba.

[3] *Varga and Others v. Hungary* (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, Judgment of 10 March 2015)

[4] I.e. the law allows for life imprisonment without the possibility of parole.

[5] *László Magyar v. Hungary* (Application no. 73593/10, Judgment of 20 May 2014)

1.4. **Pre-trial detention** is still used excessively in Hungary:[6] even though the number of pre-trial detentions ordered dropped in 2014, 24.6% of the total prison population consisted of pre-trial detainees at the end of the year, contributing to the overcrowding of prisons. At the same time, alternatives such as house arrest are heavily underused. Courts accept the prosecution's motion for ordering pre-trial detention in over 90% of the cases, almost as an automatic routine, and decisions on pre-trial detention often fail to take into account individual circumstances of the defendants, as also pointed out by related judgments of the ECtHR.[7] The length of pre-trial detention is often still excessive. In 2013 the length of pre-trial detention became unlimited in certain cases, which raises serious concerns in light of the case law of the ECtHR.[8]

Recommendations:

- *Adopt measures aimed at decreasing the number of pre-trial detainees and encouraging the use of alternative coercive measures.*
- *Adopt measures aimed at decreasing the length of pre-trial detentions.*
- *Abolish the possibility of "unlimited" pre-trial detention in the case of criminal procedures conducted against the defendant for a criminal offence punishable with up to 15 years of imprisonment or life-long imprisonment.*
- *Adopt measures aimed at addressing the deficiencies of the practice pertaining to pre-trial detention decision-making as highlighted by ECtHR judgments.*

1.5. The UPR recommendation aimed at adopting measures to ensure impartial and effective investigation of cases of **ill-treatment by law enforcement personnel** has not been implemented. The independent medical examination of persons who claim to have been ill-treated by official persons is not ensured. Absence of law enforcement personnel at medical examinations is the exception and not the rule.[9] The success rate of reporting ill-treatment and forced interrogation, and that of related indictments remained low. Beyond the difficulties of proving such cases, this may be attributed to a certain degree of lenience on the part of the authorities, which can be demonstrated by the mild sentences even in the relatively few cases ending with convictions. Video or audio recording of interrogations is still not obligatory in general;[10] and there are very few police facilities where the recording of interrogations would be feasible.

Recommendations:

- *Ensure the access to independent medical examination of persons who claim to have been ill-treated by official persons and ensure that law enforcement personnel are as a main rule not present at medical examinations.*
- *Adopt measures to counter the low success rate of criminal cases launched into ill-treatment by officials and forced interrogation, the low success rate of related indictments, and the lenient sentencing in cases of ill-treatment and forced interrogation.*
- *Make the video recording of interrogations in criminal procedures obligatory and free of charge and increase the number of police facilities where such recording is feasible.*

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[6] For the related statistics, see e.g.: *Suggestions for questions to be included in the List of Issues Prior to Reporting on Hungary for consideration by the Human Rights Committee at its 115th session in October 2015,* http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HUN/INT_CCPR_ICS_HUN_21527_E.pdf, pp. 22-26.

[7] The ECtHR established recently e.g. in the following cases that Hungary violated Article 5 of the European Convention on Human Rights: *X.Y. v. Hungary* (Application no. 43888/08, Judgment 19 March 2013), *A.B. v. Hungary* (Application no. 33292/09, Judgment of 16 April 2013), *Baksza v. Hungary*, App 59196/08, 23 April 2013; *Hagyó v. Hungary*, (Application no. 52624/10, Judgment of 23 April 2013).

[8] Under Article 132 (3a) of Act XIX of 1998 on the Code of Criminal Procedure, no upper time limit applies to pre-trial detention if the criminal procedure is conducted against the defendant for a criminal offence punishable with up to 15 years of imprisonment or life-long imprisonment, pending a first instance judgment. For an English summary of the issue, see: http://helsinki.hu/wp-content/uploads/UNWGAD_HUN_HHC_Addendum_25November2013.pdf.

[9] This is in contradiction with the CPT's respective recommendation that "all medical examinations are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of police officers". See: *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009,* CPT/Inf (2010) 16, § 15.

[10] Recording is obligatory only if the defence or the victim requests it and advances the related costs.

1.6. The UPR recommendations aimed at bringing the juvenile justice system fully in line with the relevant conventions have not been implemented. **Juveniles** may still be taken into **petty offence confinement,** which is not applied only as a measure of last resort.[11] If a petty offence fine is not paid, it may also be transferred to confinement. The petty offence confinement of juveniles shall be executed in penitentiary institutions instead of juvenile reformatories (having a less strict regime).[12]

Recommendation:

- *Abolish the possibility of petty offence confinement of juveniles.*

1.7. **Ethnic profiling by the police affecting the Roma** with regard e.g. to ID checks[13] and petty offences[14] has remained a problem, while the National Police Chief rejected an NGO proposal to establish a working group to counter the phenomenon.[15]

Recommendation:

- *Take measures to combat ethnic profiling by the police affecting the Roma.*

1.8. The **investigative rights of the Independent Law Enforcement Complaints Board** (investigating violations and omissions committed by the police substantively concerning fundamental rights) **are restricted**, undermining its efficiency. The board is still not vested with the right to hear the police officers concerned by the complaint. Moreover, it does not have regional offices, and with the limited number of its personnel it cannot carry out investigations on the spot.[16]

Recommendation:

- *Extend the investigative rights and increase the budget and staff of the Independent Law Enforcement Complaints Board.*

1.9. The quality of **ex officio (legal aid) defence counsels'** performance is believed by stakeholders to be worse than that of retained counsels, which is partly due to the fact that the authorities are free to choose the lawyer to be appointed. As a result, some attorneys base their practice on appointments, and so they may become financially dependent on the police officer deciding on the appointments, resulting in a severe threat to effective defence.[17] The **presence of a defence counsel is not mandatory at the interrogations** during the investigation even if defence is otherwise mandatory in the case. Practitioners also claim that the **notification** given e.g. about the defendant's first interrogation is often very **late**, or sent in a way that the chances of the lawyer to appear are practically non-existent.

Recommendations:

- *Reform the system of ex officio appointments and enhance the quality of the performance of ex officio defence lawyers.*

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[11] The fact that detention is not applied only as a measure of last resort is in violation of Article 37 of the 1989 Convention on the Rights of the Child.

[12] This solution is in contradiction with Article 19 of the Beijing Rules.

[13] See e.g.: András Kádár – Júlia Körner – Zsófia Moldova – Balázs Tóth: *Control(led) Group – Final Report on the Strategies for Effective Police stop and Search (STEPSS) Project.* Hungarian Helsinki Committee, Budapest, 2008, available at: http://helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf.

[14] For an English article of a related case before the Equal Treatment Authority of Hungary, see: http://www.opensocietyfoundations.org/voices/fined-being-roma-while-cycling.

[15] The letter of the six human rights NGOs initiating the establishment of a working group against ethnic profiling from July 2014 is available here: http://tasz.hu/files/tasz/imce/orfkszabsertmunkacsop0715.pdf. The letter of the National Police Chief rejecting the above proposal in August 2014, stating that ethnic profiling is not present in the sanctioning practice of the police, is available here: http://police.hu/sites/default/files/document.pdf.

[16] For details, see: *Suggestions for questions to be included in the List of Issues Prior to Reporting on Hungary for consideration by the Human Rights Committee at its 115th session in October 2015,* http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HUN/INT_CCPR_ICS_HUN_21527_E.pdf, p. 6.

[17] For the latest research report of the HHC in this regard, see: András Kristóf Kádár – Nóra Novoszádek – Adrienn Selei: *Ki rendelt itt védőt? – Egy alternatív védőkirendelési modell tesztelésének tapasztalatai*, Magyar Helsinki Bizottság, Budapest, 2012, available in Hungarian at: http://helsinki.hu/wp-content/uploads/MHB_Ki_rendelt_itt_vedot_2012.pdf.

- *Make the presence of defence counsels mandatory at first interrogations if defence is mandatory in the case.*
- *Ensure that defence counsels are notified about procedural acts in due course.*

2. MIGRANTS, REFUGEES AND ASYLUM-SEEKERS

2.1. The UPR recommendation that Hungary should proceed to forced expulsions only in strict compliance with international and regional standards has only been partially implemented and there was a significant change in this regard since the mid-term report. As of July 2015, **Serbia** is again **designated as a safe third country** in a new national list of safe countries, despite the clear contrary position of the UNHCR and the Hungarian Supreme Court. This designation allows the Office of Immigration and Nationality (OIN) to reject as inadmissible almost all asylum claims, as over 99% of asylum-seekers (over 75% of whom flee from war and terror in Syria, Afghanistan and Iraq) enter Hungary through Serbia. As Serbia provides no access to effective international protection, Hungary by applying this rule will violate its obligation of non-refoulement and indirectly expose vulnerable asylum-seekers to a risk of torture, inhuman or degrading treatment.

Recommendation:

- *Following the recommendations of the UNHCR, delete Serbia and the FYRO Macedonia from the national list of safe third countries.*

2.2. The UPR recommendations aimed at improving the **living conditions of asylum-seekers** have not been implemented and there has been a serious deterioration in this regard since the mid-term report. Notwithstanding an ever-increasing influx of asylum-seekers since 2013 and significant amounts of EU-funding, the Hungarian government has failed to properly extend the country's reception capacities. The open reception centres for asylum-seekers have become extremely overcrowded which resulted in seriously inappropriate hygienic and other conditions (asylum-seekers sleeping on corridors and in community areas, or even outside, lack of showers, lavatories, medical and psycho-social services). In addition, a legal provision in force since August 2015 enables the OIN to specify merely the territory of a county as the designated place of stay of the asylum-seeker, instead of a reception or detention centre, thus converting the obligation of providing a shelter for those in need into a mere option. This change is likely to increase the danger of homelessness among asylum-seekers in Hungary.

Recommendations:

- *Elaborate a national plan to reform the reception structure, based on good practices from other states and on the strong involvement of civil society and charitable organisations.*
- *Establish a reception structure that is based on smaller units and involves local communities to the maximum extent.*
- *Amend the legislation so that it provides an obligation for the Office of Immigration and Nationality to ensure the accommodation of asylum-seekers during the entire asylum procedure (in case they are not able to pay for their own accommodation).*

2.3. Both **asylum and immigration detention** continues to be of concern in Hungary. In October 2014, the Supreme Court published a guiding opinion on various asylum-related matters, which severely criticised the periodic judicial review system of "asylum detention" in Hungary, qualifying it as ineffective. The Supreme Court put forward a number of concrete recommendations, including structural ones that belong to the competence of the legislative power (and not to the judiciary). Very similar criticism and recommendations were formulated by the Supreme Court with regard to immigration detention in September 2013. To date, none of these recommendations have been implemented, thus maintaining an ineffective judicial review system, highly questioning the lawfulness of these two forms of detention in Hungary. Also, the amended asylum decree (as in force since August 2015) explicitly allows the OIN to tolerate overcrowding in asylum jails, converting the

minimum standard regarding the moving space for each detainee into a mere recommendation, despite the fact that a similar provision with regard to convicts and pre-trial detainees has already been quashed by the Constitutional Court as unconstitutional.

Recommendations:

- *Implement without delay the guidance of the Supreme Court (including the structural reform of the review system) in order to render the judicial review of asylum and immigration detention effective in Hungary and thus avoid unlawful detention.*
- *Amend the Asylum Government Decree in order that it includes a mandatory minimum standard regarding the moving space for each detainee in "asylum jails" (cancel the recent amendment).*

2.4. **Lack of effective remedy in asylum procedure:** The amended Asylum Act[18] introduces new rules for the judicial review of asylum decisions. These provisions are likely to render the judicial review of first-instance asylum decisions ineffective. In the case of inadmissibility decisions and accelerated procedures (which are likely to cover up to 99% of asylum cases), the 3-day time limit to submit a judicial review request is insufficient. Without a functioning and professional legal aid system available for asylum-seekers, the vast majority of them have no access to legal assistance when they receive a negative decision. The 8-day deadline for the judge to deliver a judgment is insufficient for "a full and ex nunc examination of both facts and points of law" as prescribed by EU law. 5 or 6 working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter.

Recommendations:

- *Ensure reasonable time for the asylum-seekers to exercise their rights to an effective remedy and for the judges to deliver an established judgement.*
- *Ensure available and high quality legal assistance for asylum-seekers during the entire procedure.*

2.5. **Lack of personal hearing during the judicial review:** The personal hearing of the applicant is a crucial safeguard in the judicial review of asylum decisions, especially in a single-instance procedure (such as in Hungary), where the first-instance judge delivers a final, non-appealable decision. The unreasonably short time limit and the lack of a personal hearing may reduce the judicial review to a mere formality, in which the judge has no other information than the one provided by the first-instance authority.

Recommendation:

- *Amend the legislation so that it provides an obligation for holding a personal hearing which enables asylum-seekers to present their case in front of a judge.*

2.6. The **lack of an automatic suspensive effect** on removal measures is in violation of the principle established in the consequent jurisprudence of the ECtHR, according to which this is an indispensable condition of an effective remedy in such cases. The lack of an automatic suspensive effect may raise compatibility issues with the EU Charter of Fundamental Rights. The lack of an automatic suspensive effect is also in clear violation of EU law with regard to standard procedures, as the Asylum Procedures Directive allows for this option only in certain specific (for example accelerated) procedures. The amended legislation lacks any additional safeguards for applicants in need of special procedural guarantees with regard to the automatic suspensive effect, although this is required by EU law.

[18] An information note prepared by the HHC, presenting the main amendments of asylum laws, policy changes, as well as the concerns related thereto, is available here: http://helsinki.hu/wp-content/uploads/HHC_Hungary_Info_Note_Sept-2015_No_country_for_refugees.pdf (see also Annex 1).

Recommendation:

- *Amend the legislation so that it provides an automatic suspensive effect on removal measures.*

2.7. **No access through closed borders:** The amended rules allow for the construction of so-called transit zones in a maximum distance of 60 metres from the frontier. The transit zone is where immigration and asylum procedures are conducted and where buildings required for conducting such procedures and housing migrants and asylum-seekers are located. According to government statements, on 15-16 September 2015 only 185 asylum-seekers were allowed to enter the transit zones, while in Röszke thousands other mainly Syrian war refugees were waiting outside, without any services (food, shelter, toilets etc.) provided by either the Serbian or the Hungarian state. The information received by the HHC from various sources indicates that the transit zones are only able to register a maximum of 100 asylum claims per day. This policy hinders access to the asylum procedure for most asylum-seekers arriving at this border section of the EU.

Recommendation:

- *Ensure substantive possibility for asylum-seekers to apply for international protection in Hungary.*