



Hungarian Helsinki Committee

## COMPENSATIONS FOR INADEQUATE DETENTION CONDITIONS THREATENED BY THE HUNGARIAN GOVERNMENT

INFORMATION NOTE  
BY THE HUNGARIAN HELSINKI COMMITTEE  
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### WHY ARE DETAINEES IN HUNGARY ELIGIBLE FOR COMPENSATIONS?

In March 2015, the European Court of Human Rights issued a [pilot judgment](#) in the *Varga and Others v. Hungary* case **on detention conditions in Hungary**, condemning the country because

- the inadequate detention conditions of the applicants in the case amounted to the violation of the prohibition of inhuman or degrading treatment, and because
- the applicants' rights were violated also by the lack of effective preventive and compensatory remedies with respect to their detention conditions.

The European Court of Human Rights concluded that the **overcrowding of penitentiary institutions constituted a structural problem in the country, and set out that Hungary should** produce "a time frame in which to make appropriate arrangements and to **put in practice preventive and compensatory remedies**" in respect of the alleged violations. According to the judgment, the solution would be the reduction of the number of prisoners by more frequent use of non-custodial punitive measures and minimising the recourse to pre-trial detention – thus, the solution lies not in simply building new prisons.

As a result, **as of 1 January 2017, Hungary put in place a preventive and a compensatory remedy system**, namely a mechanism for complaints about conditions of detention and one to claim compensation in respect of conditions of detention violating fundamental rights. Furthermore, it [undertook](#) further measures to decrease prison overcrowding, such as creating additional prison capacity and the promotion of alternative, non-custodial sanctions.

### HOW DOES THE HUNGARIAN REMEDY SYSTEM LOOK LIKE?

- Detainees may file a complaint with the prison governor about the conditions of their detention. Based on the complaint, the governor shall take measures to improve the conditions. If this is not possible due to the general occupancy rate in the given prison, the governor shall contact the National Penitentiary Headquarters to initiate the transfer of the inmate into a non-overcrowded prison.
- If it is not possible to identify a less crowded prison to which the complainant could be transferred without negatively impacting their family ties, the National Penitentiary Headquarters refers the case back to the prison governor, who in such cases shall consider the granting of certain entitlements mitigating the effects of overcrowding (additional open-air time, additional visits, etc.).
- If the overcrowding problem cannot be solved either within the prison or through a transfer, and the effects of overcrowding cannot be mitigated either, the inmate shall be entitled to receive financial compensation. The compensation is awarded by the court; child support and damages awarded to victims of the crime is deducted from the compensation before it is paid to the inmate.

Thus, compensations are an integral part of the domestic remedy system, but were envisaged to be a "last resort". However, statistical data shows that the **complaints** about the conditions of detention (i.e. the preventive remedy system) **remain ineffective due to the lack of sufficient prison-capacity**. As a result, **in practice, compensation is the sole remedy available for many detainees** in Hungary for inhuman and degrading prison conditions. According to recent Government [statements](#), 12,000 court cases for compensation have been launched since January 2017.

## WHAT DID THE GOVERNMENT DO IN JANUARY 2020?

The recent series of related events started with a press conference on 9 January 2020, where the Hungarian **Prime Minister** [said](#) that it is an “impossible situation” that Hungary has to pay “millions” to “convicted criminals from the money of Hungarian taxpayers because their detention was not adequate”. He stated that **he had instructed the Ministry of Justice “not to pay a penny” to inmates** on this basis. Similar statements of high-level government officials followed the next week, one of them [alleging](#) that NGOs and their attorneys have built a “business” on compensation payments. The Prime Minister confirmed in an [interview](#) on 17 January 2020, that **the Government will “suspend” compensation payments to inmates, and they will initiate in the Parliament “immediately” that the respective rules are amended.** In the same interview, he attacked the attorneys representing detainees in compensation procedures, and talked about “prison business” as well in relation to the compensation scheme.

Finally, on 21 January 2020, **Resolution 1004/2020. (I. 21.) of the Government on the Immediate Action against Abusing the Compensation Procedures Launched due to Prison Overcrowding** was promulgated, with the following text:

*"It is the Government's position that certain convicted criminals and their aids use the compensation procedures launched with reference to prison overcrowding in an abusive manner, for their own enrichment, which justifiably violates the sense of justice of the society and, in particular, that of the victims of criminal offences, and so preventing this demands immediate action. To that end, the Government calls on the Minister of Justice*

1. *to suspend, without delay, the payment of compensations due to prison overcrowding in individual cases until the latest possible date under the [respective] laws;*
2. *To review, without delay, the regulation in force [...]."*

Thus, in practice, in contradiction of what the earlier official statements suggested, under the Government resolution compensation payments will still be paid (and will still be awarded), but the act of payment will be pushed to the latest date legally possible.

## WHAT IS THE PROBLEM WITH THE STEPS AND STATEMENTS OF THE GOVERNMENT?

From the perspective of Hungary's [international obligations](#):

- The **Committee of Ministers of the Council of Europe has continuously supervised the execution of the pilot judgment** since 2015. The Government's [latest action plan](#), submitted in March 2019 in the framework of this supervision process, did not indicate in any way that the Government intends to disrupt the existing remedy system. Accordingly, the Government resolution constitutes **a blatant disregard of the supervision process, and goes against the spirit of the European Convention on Human Rights.**
- This is especially worrying because **Hungary has an [extremely poor record](#) on the implementation of judgments of the European Court of Human Rights.** Of the “leading” judgments concerning Hungary from the last 10 years – i.e. those that demonstrate a significant or structural problem –, 74% have not been implemented. The *Varga and Others v. Hungary* case was one of the few ones where there has been significant development, but the latest developments put satisfactory execution of the pilot judgment in jeopardy.
- Moreover, the wording of the resolution and of the Government's statements **clearly foreshadows the envisaged direction of future amendments** to the remedy system, i.e. **the cutting back (or even the complete elimination) of the domestic system of remedies** to be provided to detainees for substandard prison conditions. This would be in contradiction with the pilot judgment and the decisions of the Committee of Ministers reached in the supervision process.

From a [domestic policy](#) perspective:

- The **compensation system** was put in place by the current governing majority as a “last resort”. It **should have been a temporary solution**, applied until prison conditions in the country reach

a satisfactory level and/or rights violations can be handled via the preventive remedy (complaint) system. **The reason behind the high number of compensation procedures is that even though prison conditions undeniable improved, overcrowding and inadequate detention conditions remain a problem in Hungary** – and continue to be in breach of the standards established by domestic law, adopted by the current governing majority.

- Reasons behind the persisting problem of inadequate detention conditions include that the **Government has not made sufficient use of alternative, non-custodial sanctions, and has not reviewed criminal policy** e.g. as far as the severity and length of sentences and possible over-criminalization is concerned. Furthermore, Hungary **has not built any of the new prisons promised** in the supervision process. Instead of “suspending” compensations, the Government should focus its efforts to tackle these issues.
- Furthermore, the Government resolution and the preceding statements **created an unnecessary uncertainty** not only among detainees, but **also among victims**, whose damages are deducted from the compensations, and can cause **unnecessary delays in the payments of damages**.

From a communication perspective:

- The wording of the statements and the resolution is **capable of creating a hostile environment towards detainees, and signals the possible launch of the Government’s newest hate campaign** – similarly to those lead against migrants and asylum-seekers, or NGOs.
- The Government’s statements not only tie into the ongoing hate campaign against human rights NGOs, such as the Hungarian Helsinki Committee – which is active in the protection of detainees’ rights –, but **also attack attorneys simply for using Hungarian law**.

## RECOMMENDATIONS

Due to the above, the Hungarian Helsinki Committee is of the view that the Government of Hungary should

- **address prison overcrowding and mitigate the harmful consequences of inadequate detention conditions by reviewing its criminal policy (invest in the sufficient use of alternative, non-custodial alternatives to detention) and by focusing its efforts on long-term strategies for crime prevention and reduction;**
- **make it clear both to the general and professional public that compensation payments will continue to be paid to inmates detained under inhuman and degrading detention conditions;**
- **and enter into a constructive dialogue with the Committee of Ministers on any future plans to amend the compensation and preventive remedy scheme.**

Furthermore, the HHC respectfully calls on the Committee of Ministers of the Council of Europe

- to debate the *Varga and Others v. Hungary* group of cases at the 1369<sup>th</sup> (Human Rights) meeting of the Ministers’ Deputies in March 2020; and
- **to adopt an interim resolution, making it clear that the Hungarian Government’s recent actions go against the spirit of Convention system, and in particular the expectation to cooperate with the Committee of Ministers in terms of the execution of judgments by the European Court of Human Rights.**

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*For more information on the recent developments in English, see the Hungarian Helsinki Committee’s January 2020 submissions to the Committee of Ministers of the Council of Europe [here](#) and [here](#).*

*For a summary of the status of the execution of the pilot judgment in the *Varga and Others v. Hungary* group of cases, see the [website](#) of the Committee of Ministers.*

*For further information, please contact the Hungarian Helsinki Committee at [helsinki@helsinki.hu](mailto:helsinki@helsinki.hu).*