



Hungarian Helsinki Committee

## OVERCROWDING AND PRISON CONDITIONS – AN UPDATE ON THE *VARGA AND OTHERS V. HUNGARY* CASES

Information update by the Hungarian Helsinki Committee (HHC)

27 August 2020

The European Court of Human Rights (ECtHR), partly on the basis of complaints submitted by the HHC's clients, [ruled](#) on 10 March 2015 in the *Varga and Others v. Hungary* cases that **overcrowding of penitentiaries in Hungary constituted a structural problem.**

The HHC has been working to contribute to the tangible improvement of prison conditions, which, as of today, qualifies as inhuman, degrading treatment.

On 1-4 September 2020 the Committee of Ministers of the Council of Europe will decide on the execution of the 2015 pilot judgment on inadequate detention conditions in Hungarian prisons and the related compensation system.

On 13 July 2020, the Government [announced](#) that places for altogether 2,750 new detainees are being constructed using light-weight technology. Reducing overcrowding by building **prisons using light-weight technology might seem to work on paper, but crucial issues will remain unresolved. The HHC calls on the Committee of Ministers to continue to examine the cases related to overcrowding and prison conditions.** The HHC is of the view that the Hungarian Government should be under strict scrutiny while carrying out its announced review of the system of compensations for prison overcrowding.



The occupancy rate of Hungarian prisons is decreasing as data suggest (data for 2019 shows the average of the period between 1 January and 30 November 2019).

	2013	2014	2015	2016	2017	2018	2019
<b>Average annual number of inmates</b>	17 517	18 042	17 792	18 023	17 944	17 000	16 676
<b>Average annual operational capacity</b>	12 573	12 584	13 209	13 774	13 922	14 149	14 870
<b>Average annual occupancy rate</b>	<b>139%</b>	<b>143%</b>	<b>135%</b>	<b>131%</b>	<b>129%</b>	<b>120%</b>	<b>112%</b>

It is to be pointed out that despite the decrease of the overall population certain individual penitentiaries have remained severely overcrowded. Even in 2019, there were **four penitentiaries** where (up until 30 November 2019) the **average occupancy rate was still higher than 130%** and five other prisons where it was between 120 and 130%.

The announced expansion of places through containers **is expected to bring the total occupancy rate of the Hungarian prison system close to 100%**. While the reduction of the overall level of occupancy is welcome, many issues remain unresolved. Such as:

- i) the **physical detention conditions** other than personal space are largely disregarded;
- ii) the **uneven occupancy rates** of certain penitentiaries (on a randomly selected day in 2019, the occupancy rate exceeded 160% in one penitentiary, while almost half of the institutions had 30% or higher rates of overcrowding),
- iii) the **weakened protection of detainees' rights** due the termination of HHC's prison monitoring program,
- iv) the problems of the **compensation scheme** and the suspension of compensations, such as:
  - the unjustified suspension of the execution of final and binding judicial decisions,
  - the difficulty to access the procedure for indigent inmates who cannot afford to retain a lawyer,
  - the lack of the equality of arms in the compensation procedure,
  - the low ratio of alternative measures,
  - or the unreasonable length of the proceedings in the case of certain categories of detainees.

A very **restrictive policy regarding visits** was introduced in 2017-2018: any physical contact between inmates and visitors was gradually prohibited. Restriction on visitation was taken even further in 2019 when high transparent plastic screens were installed in the visitation rooms of all penitentiaries thus eliminating the possibility of any physical contact between inmates and their families irrespective of the actual risk level of the individual inmates. The deposit for penitentiary administered mobile phones constitute a serious financial difficulty for most inmates. Phone rates are fixed and are around 5-10 times higher than the commercial tariffs available at any outside service provider, making the maintaining of contacts with the outside world increasingly difficult. Currently all personal contact with the family members is forbidden because of the risk of infection due to COVID-19.

**Prison overcrowding became the focus of political communication** characterised by intensive penal populism, and the government's approach took a serious turn with a clear intent to restrict prisoners' right to compensation, thus reversing many years of progress. The problem of rising compensation claims has been rebranded as prison business, one of the largest threats to the integrity of the state posed by 'Soros-funded NGOs'. In the state and pro-government media numerous stories have been published, framing the situation as a collision between unjust compensations for inhuman conditions and the compensation paid to the victims of crimes.

Building new prisons is not a solution to the above problem. Not only because it is expensive, but also because evidence suggests that increasing the system's capacity is often accompanied by the growth in the number of detainees. Overcrowding cannot be decreased permanently without decreasing the number of detainees, and in order to achieve that, a **turn in criminal policy is required**. A reasonable criminal policy does not want to criminalize all deviant behaviors and does not want to put every person breaking the rules behind bars. Instead, it strives to ensure, where possible, that the aim of the punishment is achieved not through imprisonment but by other sanctions.

Prison overcrowding is bad for everybody, both for the detainees and the penitentiary staff. In addition, everyone else will have to bear the consequences of inadequate physical conditions and the consequent frustration of detainees, since most of them will eventually be released and will continue their lives in the society.

The HHC ran a detention-monitoring program for over two decades between 1995 and 2017, during which it carried out 1237 monitoring visits at police jails, 48 visits at penitentiary institutions and made 51 inspections at places of immigration detention. The HHC submitted numerous communications to various international forums in related subject matters. Its lawyers have litigated cases related to the conditions of and treatment in detention in Hungarian prisons before domestic courts and the European Court of Human Rights. Three out of the six applicants in the *Varga and Others v. Hungary* case were represented by HHC's lawyers. As one of HHC's aims is to contribute to the tangible improvement of prison conditions, two communications were submitted to the Committee of Ministers on [20 January](#) and [21 January](#) and a submission [in April 2020](#). Our latest addendum on recent developments was published earlier in [August 2020](#).