



Hungarian Helsinki Committee

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Hungarian Helsinki Committee UPR Fact sheet 3

CRIMINAL POLICY AND ISSUES RELATED TO DETENTION

1. Actual life sentence: Hungary is one of the few European countries where life imprisonment without the possibility of parole exists. Despite the view of the CPT¹ and numerous Hungarian experts and NGO's that this form of punishment is degrading and poses serious security problems for the penitentiary system, there is no intention to amend the relevant provisions. Furthermore, the new Constitution of Hungary, which is going to enter into force on 1 January 2012, expressly sets out the possibility of definitive deprivation of an individual's personal freedom.

2. The "three strikes" rule – mandatory life sentence: The Penal Code's amendment passed in 2010 has made it mandatory for judges to sentence suspects to life imprisonment if certain conditions are met. While this infringes the principle that criminal sanctions shall be individualized, the conditions for mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face the same sanction. Moreover, the amendment was not validated by criminal statistics and was lacking well established rational justification as well.

3. As a result of these restrictive tendencies in criminal policy (which are in contradiction with the National Report's statement under § 64), Hungary's penitentiary system faces a severe problem of overcrowding: **the average overcrowding rate is approximately 140%**. The Government responds to the problem of overcrowding by amending the respective law instead of decreasing the number of detainees: according to amendments adopted in 2010, the minimal living space for detainees – which is 3 m² for men and 3.5 m² for women and juveniles – should be ensured only "if it is possible".

4. Grade 4 prisoners placed in special security units or cells: Grade 4 prisoners are inmates who are regarded extremely dangerous. They suffer severe disadvantages and restrictions even compared to fellow inmates (some of them are held in significant isolation). Such prisoners are as a rule not provided with a written decision on the reasons for their placement in the Grade 4 group. Due to the lack of any justification which he/she could challenge, **the effectiveness of the defendant's general right to remedy is severely restricted.**

5. Detention of juveniles: The relevant investigations of the Ombudsman revealed **severe deficiencies** in the detention of juveniles. He found the physical conditions unacceptable in two out of the four juvenile penitentiary institutions and voiced criticism with regard to the high number of violent acts among inmates in these institutions, which he attributed – among other factors – to the insufficient staffing. He also pointed out that some of the remand prisons where juvenile pre-trial detainees are held are unbearably overcrowded with no cultural and sports activities available for the inmates.

6. Confinement of juveniles in petty offence proceedings: Recent amendments have led to a situation in which juvenile offenders committing petty theft (in a value less than EUR 70) almost inevitably end up in confinement for up to 45 days. Alternative sanctions (e.g. labour in the public interest or mediation) are not applicable in petty offence proceedings. The problem is aggravated by the fact that those who commit a petty offence punishable with confinement, if caught in the act, can be taken into short-term detention (up to 72-hours) by the Police automatically. This is in contradiction with the relevant provisions of the Convention on the Rights of the Child according to which detention shall be a last resort.

7. Hungary's failure to sign and ratify OPCAT: Hungary has not signed and ratified the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

¹ See: <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.pdf>



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8. The situation of short-term arrestees: The legal framework regulating the status of persons under short-term arrest for up-to 12 hours **is unclear**, with only a handful of very basic provisions pertaining to the rights of arrestees. This practice was criticized by the UN HRC in its latest concluding observations under the ICCPR.

9. Alternatives of pre-trial detention: Statistics on the practice of pre-trial detention show that the existing alternatives to pre-trial detention **are heavily underused**, and that in a very high percentage of cases the courts accept the prosecution's motion for pre-trial detention.

? Questions:

- Does Hungary intend to eliminate the possibility of lifelong imprisonment without the possibility of parole, an institution which was which severely criticized also by the CPT?
- What kind of measures will be taken in order to decrease the overcrowding in penitentiaries? Do these measures include promoting the use of alternative punishments?
- What kind of measures will be taken in order to ensure that Grade 4 prisoners are able to challenge the decision concerning their placement in the Grade 4 group?
- What kind of measures will be taken in order to improve the detention conditions of juveniles?
- Does Hungary intend to eliminate the possibility of confinement of juveniles in petty offence proceedings, given that it constitutes a violation of Hungary's international obligations as set out by the UN Convention on the Rights of the Child?
- When will Hungary sign and ratify the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and designate a National Preventive Mechanism?
- What kind of measures will be taken in order to regulate the situation of short-term arrestees?
- What kind of measures will be taken in order to enhance the use of alternatives to pre-trial detention, such as house arrest, geographical ban and bail?

! Recommendations:

- 'Actual life imprisonment' (i.e. life long sentence without the possibility of parole) should be eliminated, conditional release should be made available to all prisoners.
- Overcrowding in penitentiaries should be decreased by a change in criminal policy and the use of alternative punishments.
- Grade 4 prisoners should be provided with a decision including the reasons of their placement in the Grade 4 group, and their right to appeal against the decision on their placement should be ensured.
- The conditions in juvenile penitentiary institutions should be improved and effective steps should be taken in order to reduce the number of violent acts among inmates in these institutions.
- The possibility of sanctioning juveniles with a confinement in case of petty offences should be eliminated and it should be ensured that alternative sanctions are applicable in petty offence proceedings against juveniles.
- The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment should be signed and ratified, and the National Preventive Mechanism should be designated.
- The rights and situation of those under short-term arrest shall be regulated in an adequate manner.
- The existing alternatives to pre-trial detention should be used more often by the competent authorities.