



HUNGARIAN HELSINKI COMMITTEE

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REMARKS TO THE INFORMATION PROVIDED BY THE REPUBLIC OF HUNGARY

TO THE LIST OF ISSUES OF THE COMMITTEE AGAINST TORTURE IN RELATION TO THE CONSIDERATION OF THE FOURTH PERIODIC REPORT OF HUNGARY AT THE OCCASION OF THE 37TH SESSION OF THE COMMITTEE AGAINST TORTURE

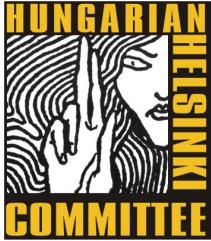
The HHC appreciates the detailed response of the Government to the List of Issues formulated by the CAT. We regard the material as informative and useful for the purposes of assessing the Hungarian situation. There are a few points, however, to which we would like to call the Committee's attention.

Paragraphs 7-8: The description of the legal framework concerning the appointment of a lawyer for detained persons is accurate, however, the document fails to give an account of the actual practice. As only the appointment and not the presence of a lawyer is mandatory, in a high proportion of cases lawyers are not present at the initial interrogation. Some of them in fact never meet their client before the trial. The main reason for this (besides the low fees of ex officio appointed defense counsels) is that lawyers are selected by the investigating authority, which is not really interested in efficient defense work. The Hungarian Helsinki Committee ("HHC") is of the opinion that appointment of ex officio defense counsels should be done by an independent entity. For more information on practice, please see pages 24-26 of the HHC shadow report.

Paragraph 24: The main criticism voiced by women's rights organizations concerning the regulation of restraining orders is that since the restraining order has to be ordered by a judge, it takes some time before it can be applied. NGOs recommended that the police and/or the prosecutor should be authorized to issue a restraining order for a limited period of time, which than could be maintained by the court. This is how initial custody (for a maximum of 72 hours) and subsequent pre-trial detention (for a maximum period of three years) is regulated, hence such a solution would not be unknown in the criminal system.

Paragraph 27: This solution is contrary to the Convention on the Rights of the Child, which states that children (in the Convention's interpretation: persons under 18 years of age) should be detained separately from adults (persons older than 18). In the HHC's view the Hungarian legislation should be amended to comply with the Convention in this regard. The fact that the Government has also realized this need is corroborated by the Draft Penitentiary Code, which contains this obligation of separation. However, the Draft's coming into force is uncertain, so the presently effective regulation should be changed.

Paragraph 77: The document does not indicate whether the 6 sentences of imprisonment were suspended or effective sentences. This issue however is truly relevant because in a case of suspended imprisonment the court has the legal possibility to exempt the convicted perpetrator from the consequences of an unclear criminal record. This in turn means that the convicted police (or penitentiary) officers can remain on the force. If no such exemption is given, even a suspended imprisonment prevents the perpetrators from keeping their jobs with the police. This happened in one of the HHC's cases: two police officers who had ill-treated a detained person so badly that three of the victim's ribs had been broken were sentenced to 1 year and 8 months of suspended imprisonment respectively, however, they were exempted by the court, and continue to work as policemen even today. In the case, the competent police unit fully refused the victim's request for financial



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compensation on the basis that his undisciplined behavior had triggered the beating. A civil lawsuit for damages is currently in progress.

Paragraphs 112-115: The proportions and sanctions set out with respect to criminal proceedings into cases of ill-treatment committed by prison staff (1 warning and 1 minimal fine: EUR 200 or USD 250) corroborate the Hungarian Helsinki Committee's concern: even in the few cases when responsibility for ill-treatment is indeed established, the sanctions applied by courts are very mild. As to the conclusion set out in Paragraph 115 (namely that the low indictment rates are because inmates submit ill-founded or false complaints), the HHC would like to call attention to Paragraph 110, which states that one of the main reasons for low indictment rates in police ill-treatment cases is the difficulty of proving such violations. In our view, the same is also true for ill-treatment committed in penitentiary institutions. Hence, this factor should also be considered as one of the possible explanations, especially because it draws attention to the increased responsibility of the prison leadership in taking firm action against torture committed by prison staff.

Paragraph 220: HHC would like to express its doubts about whether the Public Prosecution Service meets all the requirements of the Optional Protocol to the CAT for the national preventive mechanism (NPM). The Prosecutor's Office is not perceived as fully impartial by the public and especially by detainees, as in its main function (representing the charge in criminal proceedings) it works in close cooperation with the police, and its procedural interests are in fact contradicting those of the defendants. Furthermore, although it is true that the Public Prosecution Service carries out the monitoring of places of detention, it does not possess the necessary expertise in all areas fundamental to the NPM, such as medical and psychiatric skills. We would also like to call attention to the importance of consultation with civil society before the Governmental decision on designation the NPM is made.