Hungarian Helsinki Committee

SUBMISSION
BY THE HUNGARIAN HELSINKI COMMITTEE
REGARDING THE SIXTH PERIODIC REPORT OF HUNGARY

TO THE UN HUMAN RIGHTS COMMITTEE
FOR CONSIDERATION AT ITS
122ND SESSION (MARCH–APRIL 2018)

This submission follows the structure of the "List of issues prior to submission of the sixth periodic report of Hungary" (CCPR/C/HUN/QPR/6, 9 December 2015, hereafter: List of Issues) and primarily deals with the issues included therein. In some cases however it also draws attention to problems not explicitly formulated in the List of Issues but regarded by the HHC as being of particular importance, and also to issues that emerged after the List of Issues had been formulated. The submission in part repeats information included in HHC's "Suggestions for questions to be included in the List of Issues Prior to Reporting on Hungary"[1] submitted for the Human Rights Committee's (HRC) 115th session, and contains references to the "Concluding observations of the Human Rights Committee" regarding Hungary (CCPR/C/HUN/CO/5, 16 November 2010, hereafter: Concluding Observations 2010).

INSTITUTIONAL FRAMEWORK OF HUMAN RIGHTS PROTECTION
LIST OF ISSUES, §2

Since the elections in 2010, the governing party has systematically **undermined the rule of law** in Hungary, **disrupting the system of checks and balances**.[2] The adoption of the new constitution (the Fundamental Law) without the consent of the opposition and the widely criticized media regulation were followed by legislative steps weakening independent institutions.

WEAKENING THE CONSTITUTIONAL COURT[3]

The Constitutional Court's (CC) **competence has been restricted by the Fundamental Law in relation to laws on central budget and taxes**, shielding potentially unconstitutional laws from constitutional review even when budgetary problems have subsided, also criticized by the Venice Commission. In addition, as concluded also by the Venice Commission, it became the governing majority's "**systematic approach**" that **provisions** of ordinary laws which had been previously **found unconstitutional** and were annulled by the CC **were reintroduced on the constitutional level**, overruling the CC.[4]

As a result of amending the rules pertaining to the composition of the parliamentary committee nominating CC judges, the **parliamentary majority may nominate and elect CC judges without the support of any opposition party**. Furthermore, the number of CC members has been increased from 11 to 15. These amendments lead to a situation in which all of **the current 15 CC judges** were **nominated and elected**

[1] See: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HUN/INT_CCPR_ICS_HUN_21527_E.pdf.
[2] *An Illiberal State in the Heart of Europe*, 2017, http://www.helsinki.hu/wp-content/uploads/AnIlliberalState_online_final.pdf; *Disrespect for European Values in Hungary 2010–2014*, 2014, http://helsinki.hu/wp-content/uploads/Disrespect_for_values-Nov2014.pdf
[3] *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, 17 June 2013, www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e; http://helsinki.hu/wp-content/uploads/Main_concerns_regarding_the_4th_Amendment_to_the_Fundamental_Law_of_Hungary_13032013.pdf, pp 1–5.
[4] For examples of how the Fourth Amendment to the Fundamental Law overruled decisions of the CC, see: http://helsinki.hu/wp-content/uploads/Constitutional-Court-vs-Fourth-Amendment.pdf.

solely by the governing majority, with research showing that through the above **"court-packing"**, the government has succeeded in shaping the CC into a loyal body.[5]

THREATENING THE INDEPENDENCE OF THE JUDICIARY[6]

As a result of a thorough re-regulation in 2011, the **administration of courts became centralised**: the former judicial body in charge was replaced by a one-person decision-making mechanism, the **President of the** newly established **National Judicial Office** (NJO). The model chosen and the **extensive powers** of the NJO's President were **criticized by the Venice Commission**, and it was stated that since the President of the NJO is "an **external actor** from the viewpoint of the judiciary, it cannot be regarded as an organ of judicial self-government". Following criticism, the powers of the NJO's President have been restricted (e.g. the unrestricted right to transfer/reassign hand-picked cases to hand-picked courts was abolished), but the basic concern that significant decisions affecting judges may be made by an "external actor" is still in place. Further concerns include the NJO President's powers in relation to the calls for judicial positions: if the President of the NJO would like to deviate from the established ranking of candidates for judicial positions, the National Judicial Council has a right to veto, however, the NJO President **may also declare the entire call for applications unsuccessful without reasoning,** which renders the National Judicial Council's disapproval moot in this respect.[7] It was reported that the NJO's President has made use of this possibility.[8]

Further steps threatening the independence of the judiciary include terminating the **mandate of the former President of the Supreme Court before the end of his regular term**. Concerns that instead of reorganizing, the President's mandate had been terminated because he publicly criticized legislative actions of the government were supported by Venice Commission and were confirmed in 2014 by the European Court of Human Rights (ECtHR) in the *Baka v. Hungary*[9] judgment. **Lowering the mandatory retirement age of judges in 2012**, which was found unconstitutional by the CC and with regard to which the Court of Justice of the European Union (CJEU) concluded that Hungary had failed to fulfil its obligations under Council Directive 2000/78/EC,[10] **resulted in replacing practically the entire leadership of the judiciary**.

OPCAT NATIONAL PREVENTIVE MECHANISM
LIST OF ISSUES, §3

After the ratification of the OPCAT, the Commissioner for Fundamental Rights (the Ombudsperson) was designated to be the National Preventive Mechanism (NPM) in Hungary. The NPM, which started its operation in 2015, has demonstrated a development in its methods of monitoring, recommendations included in recent reports became more specific and pragmatic, and international standards are duly referred to in its findings. However, the **monitoring methods demand further development** when it comes to thorough evaluation of facts and follow-up: Strict and direct follow-up is lacking even in cases when severe violations of the CAT are revealed by the monitoring visits. The publication of the reports is slow: it takes usually more than 6 months. The NPM has conducted **monitoring visits annually to 8–13 detention facilities, which is a low number,** considering that the NPM's mandate covers over 650 facilities, from penitentiaries to psychiatric institutions. Cooperation with the members of the Civil Consultative Body (CCB), including the HHC, has improved. At the same time, more substantive contribution of CCB members would improve the efficiency of the NPM. Also, the NPM **does not include legal experts of the CCB into its monitoring**

[5] For a summary of the research, see: http://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf.
[6] For further information, see:
Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, 19 March 2012, www.venice.coe.int/docs/2012/CDL-AD%282012%29001-e.pdf;
Opinion on the cardinal acts on the judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary, 15 October 2012, www.venice.coe.int/docs/2012/CDL-AD%282012%29020-e.pdf.
[7] Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 18 (3)-(4) and 19; Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103 (3) c)–d)
[8] See e.g.: http://hvg.hu/itthon/20130226_Kezi_vezerles_Hando_Tunde_leleptette_a_ne, https://index.hu/belfold/2017/10/05/az_a_biro_esett_handonak_akit_korabban_o_tuntetett_ki#.
[9] Application no. 20261/12
[10] *Commission v Hungary, C-286/12*

teams, although it could be a solution for problems deriving from the lack of capacity, and could facilitate the acceleration of the publication of reports and the increase of the number of monitoring visits per year.

ETHNIC PROFILING
LIST OF ISSUES, §5

It is widely alleged that **ethnic profiling affecting the Roma is practiced by the police,** and reports on bias among police officers towards Roma and homeless people shall also give rise to concerns. **Ethnic profiling** with regard to **ID checks** has been demonstrated by research,[11] while individual cases show the same with regard to **petty offences**.[12] In 2014, six **NGOs initiated the establishment of an NGO-police working group against ethnic profiling**, stating that cases of ethnic profiling have been reported to NGOs on a regular basis and the Independent Law Enforcement Complaints Board has also proceeded in a number of relevant cases. Nevertheless, the **National Police Chief rejected** the proposal, stating that ethnic profiling is not practiced by the police.

In 2014, the HHC and "City is for All" challenged **profiling based on social status** (meaning that the police conduct ID checks on homeless or low social status persons unjustifiably more frequently) before the Equal Treatment Authority. In 2016, a settlement was reached in the case, based on which the Budapest police issued a circular to patrols to avoid discriminatory ID checks. However, apart from that the police **did not comply with its obligations undertaken in the settlement**.

RIGHT TO FAIR TRIAL
LIST OF ISSUES, §§13–14

CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

As referred to under §148 of the State Report, the **minimum age of criminal responsibility** regarding certain criminal offences has been **lowered to 12 years**, making children punishable also for **robbery** (e.g. taking a personal belonging from another exclusively with verbal violence[13]) or **plunder** (e.g. taking out a phone from a fainted person's pocket). **Children between 12–14 years can also be deprived of liberty**.

Contrary to §149 of the State Report, children do not finish their studies at the age of 12, since elementary school ends at the age of 14 the earliest. Furthermore, contrary to the argumentation of the State Report, research shows that children around 12–13 years of age do not perceive themselves as citizens who can be called to account for their behaviour by the state, and are **unable to respect the legitimacy of laws and legal procedures**.[14] The HHC is of the position that criminal justice procedures should not called into play instead of the child protection system in the case of children between 12–14 years. The fact that the latter system is impotent and dysfunctional is not a reason to substitute it with the **criminal justice system, which cannot deal with 12–14 years old children appropriately**.

In addition, the HHC is of the position that the Hungarian **government voluntarily misinterprets child-friendly justice**, and its measures predominantly concern victims and witnesses and not children in conflict with the law.

[11] 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, http://helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf
[12] For a related Equal Treatment Authority case, see: http://www.opensocietyfoundations.org/voices/fined-being-roma-while-cycling.
[13] The HHC represented a 17 years old juvenile committing this criminal offence and held in pre-trial detention for almost a year.
[14] Richard J. Bonnie – Thomas Grisso: Adjudicative Competence and Youthful Offenders. In: Thomas Grisso – Robert G. Schwartz (eds): *Youth in Trial – A Developmental Perspective on Juvenile Justice*, Chicago: University of Chicago Press, 2000.

PROCEDURAL RIGHTS OF DEFENDANTS

As stated also by §158 of the State Report, *participation* of a defence counsel is mandatory in the criminal procedure in certain situations, e.g. if the defendant is detained. However, the actual ***presence* of a defence counsel is not mandatory at the interrogations** during the investigation **even if defence is otherwise mandatory** – thus, if the notified counsel fails to show up on time for any reason, it will not prevent the police from interrogating the defendant. Practitioners also claim that **notification** about the first interrogation **is still often very short** (even less than an hour), or sent in a way that the chances of the lawyer to appear are practically non-existent.

The quality of **ex officio (legal aid) defence counsels'** performance is believed by stakeholders and shown by researches to be worse than that of retained counsels,[15] which is partly due to the fact that the **authorities are free to choose the attorney to be appointed**. As a result, some attorneys base their practice on appointments, and may become financially dependent on the police officer deciding on appointments. Apart from this system (which will be replaced, as of July 2018, with a system in which the bar associations will be appointing counsels), it also has negative impact that the **fee of appointed counsels is still way below market rates** and certain activities (e.g. preparation for the trial) are not compensated. In addition, there is **no individual and general quality assurance**, which contributes to the problem that **indigent defendants are often provided with less effective defence than those who can afford to retain a lawyer**.

Information on the rights of defendants' (including the right to defence) is first provided at the beginning of the interrogation orally, written information is given only after the interrogation is over (as a standard part of the minutes), and then further Letters of Rights are provided to the suspect in the police jail and/or in the penitentiary. **None** of these documents **cover in full the rights prescribed by Articles 3–4 of the Directive 2012/13/EU on the right to information in criminal proceedings**. Hungarian police officers are not provided with methodology to ascertain comprehension, they rely solely on their instinct and communication skills, while the HHC's recent quantitative research[16] has shown that the **current Letters of Rights are not accessible**.

The recommendation in Concluding Observations 2010 that Hungary should "provide free video-recording services so that indigent suspects are not deprived of their rights by virtue of their economic status" (§13) has not been fulfilled: recording the interrogation is mandatory upon the defendant's request only if he/she advances the costs. There are **very few interrogation rooms where recording is feasible** (in 2014, this ratio was 3%), and **interrogations are recorded extremely rarely** by the police: e.g. in 2014 only 0.026% of the interrogations were recorded.[17]

PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT AND THE RIGHT TO LIBERTY

PETTY OFFENCE SYSTEM

LIST OF ISSUES, §§ 15 AND 19

In the past years the **legal framework on petty offences became more severe**: Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereafter: Petty Offence Act) upheld an extended list of offences punishable with confinement (to be executed in penitentiaries), and made confinement possible for the third petty offence within 6 month even if none of the offences would be otherwise punishable by confinement.[18] The law allows for converting a fine or community service into

[15] See also: *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 3 to 12 April 2013*, 30 April 2014, (hereafter: CPT report 2013), §24.
[16] See: https://www.helsinki.hu/en/research-report-on-the-accessiblity-of-letters-of-rights-in-hungary/.
[17] Response of the National Police Headquarters to the HHC's FOI request, 3 November 2014
[18] Petty Offence Act, Article 23

confinement without hearing the offender in case he/she fails to pay the fine or carry out the work,[19] which violates the European Convention on Human Rights (ECHR). Although in some cases non-custodial sanctions are provided by law, community service and mediation are heavily underused as independent sanctions.[20] Extremely strict deadlines and lack of plain language in official papers hinder the conversion of fines into community service instead of confinement.

Juveniles may also be taken into petty offence confinement, which, in violation of Article 37 of the 1989 Convention on the Rights of the Child is not applied only as a measure of last resort. Confinement of juveniles shall be **executed in penitentiary institutions** instead of juvenile reformatories (having a less strict regime), going also against the Beijing Rules.

Overruling Decision 38/2012. (XI. 14.) of **the Constitutional Court**, which stated that criminalizing the status of homelessness is unconstitutional since it violates human dignity, and despite criticism by the UN Special Rapporteurs on extreme poverty and human rights and on adequate housing,[21] the **Fourth Amendment to the Fundamental Law enabled the Parliament or local governments to criminalize homelessness,** as presented in §162 of the State Report. Accordingly, in 2013 the Parliament **introduced petty offences criminalizing homelessness**, such as rough sleeping.[22] Due to the inability of paying the fines, the most likely scenario for homeless persons is that their fines are converted to confinement. Community service is not an available alternative for them, because the cost of medical examination, a precondition of community service, should be covered by the person sentenced.

ILL-TREATMENT BY OFFICIAL PERSONS

LIST OF ISSUES, §§16–17

Even though the Concluding Observation 2010 also set out that Hungary "should ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted" (§14), data show that the **success rate of reporting ill-treatment and forced interrogation has remained low**, between 0% and 6.56% in the past seven years. In comparison, reports on "violence against an official person" resulted in an indictment in 60% to 72% of the procedures in the same period.[23]

Ill-treatment in official proceeding						
	Rejection of the report		Termination of the investigation		Indictment	
2011	173	20%	667	76%	33	4%
2012	197	22%	649	72%	36	4%
2013	219	23%	709	74%	21	2%
2014	289	29%	690	68%	29	3%
2015	208	25%	600	72%	21	3%
2016	186	25%	520	70%	30	4%
2017	104	17%	487	80%	18	3%

[19] Petty Offence Act, Articles 12 and 15
[20] According to the National Penal Statistics, in 2017 from 703,521 cases only 1,406 ended with community service as an independent sanction.
[21] *Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing*, 15 February 2012, http://www.europe.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9994&LangID=E
[22] For further information, see: http://helsinki.hu/en/criminalization-of-homelessness-in-hungary.
[23] Source: Chief Prosecutor's Office. For further data, see: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HUN/INT_CCPR_ICS_HUN_21527_E.pdf, pp. 18–19.

Forced interrogation						
	Rejection of the report		Termination of the investigation		Indictment	
2011	44	26%	126	74%	0	0%
2012	68	34%	128	63%	5	2%
2013	77	36%	133	62%	2	1%
2014	83	37%	139	62%	3	1.33%
2015	88	39%	136	60%	1	0.44%
2016	68	42%	95	58%	0	0%
2017	31	25%	83	68%	8	6.56%

Furthermore, even when an indictment takes place, the **success rate of the prosecution** (which on average exceeds 95%) **remains low**: it was e.g. only 69.53% in the first six month of 2014 in cases of abuses committed by official persons. Beyond the difficulties of proving such cases, this may be attributed to a certain degree of lenience on the part of the authorities, shown also by the **mild sentences**, in spite of the Concluding Observations 2010 setting out that Hungary should ensure that if alleged perpetrators of torture and ill-treatment are convicted, they are "punished with appropriate sanctions" (§14).

In addition, since 2012, the Minister of Interior is entitled to decide upon the eligibility of police officers sentenced to suspended imprisonment, thus, to **allow police officers to continue their work even if they have been convicted for ill-treatment**,[24] a power which has been used by the Minister several times.

The recommendation of the Concluding Observations 2010 that Hungary "should consider establishing an independent medical examination body mandated to examine alleged victims of torture" (§14) has not been implemented: **detainees making allegations of ill-treatment by police officers do not have the right to be examined by an independent physician**.[25] Even though the Concluding Observations 2010 also expressed concerns with regard to "the presence of law enforcement personnel during the conduct of medical examinations even when such presence is not requested by the examining medical personnel" (§14), **the presence of police officers at medical examinations became the main rule**.[26]

INDEPENDENT LAW ENFORCEMENT COMPLAINTS BOARD (ICB)

LIST OF ISSUES, §17

The **investigative rights of the ICB** (investigating violations and omissions committed by the police substantively concerning fundamental rights) **are restricted**, undermining its efficiency. The ICB is not vested with the right to hear the concerned police officers, it does not have regional offices, and with the limited number of its personnel it cannot carry out investigations on the spot. ICB shall submit its opinion to the National Police Chief, who then delivers its own the decision, which may divert from the ICB's opinion. Judicial review of this latter decision is available, but the court can only quash the decision of the National Police Chief, thus it cannot amend it and deliver an in-merit decision instead. **Incompatibility of ICB members is not regulated properly**: e.g. MPs may be elected as members (the current President of the ICB was for a time an MP and at the same time a member of the ICB), which undermines the perceived independence of the body.

[24] Act XLIII of 1996 on the Status of Members of the Armed Forces, Article 56 (6a)
[25] See also: CPT report 2013, §25.
[26] See also: CPT report 2013, §15.

PRE-TRIAL DETENTION
LIST OF ISSUES, §18

Contrary of §174 of the State Report, Act CLXXXVI of 2013 brought along an important change: it made the **length of pre-trial detention unlimited** in case the procedure against the defendant is conducted because of a criminal offence punishable by a prison term of up to 15 years or life-long imprisonment, which raises serious concerns in light of the case-law of the ECtHR and Article 9(3) of ICCPR.[27] In 2015 the Ombudsperson initiated before the CC to abolish the respective provisions, decision is pending.

The number of pre-trial detention orders and prosecutorial motions seeking court orders are on the decrease, but **prosecutorial motions** during the investigative phase still have a success rate of over 90% in many counties, with a **national success rate of 86.6%** in 2016. Court decisions on pre-trial detention are often **abstract**, **fail to assess** the defendant's **individual circumstances**, and **fail to consider the possibility of applying alternative coercive measures**. The **prosecution's arguments are more frequently accepted** than those of the defence, which is coupled with the frequent lack of adequate reasoning in general.[28] Also, courts often fail to consider applicable ECtHR case-law. **Second instance courts** deciding on appeals against pre-trial detention orders **never meet the defendant in person**, which may be a violation of ECtHR standards (cf. also HRC's General comment No. 35, on individuals be brought to appear physically before the judge).

Alternatives are heavily underused: in 2015, prosecutors motioned pre-trial detention in the investigative phase in altogether 5,075 cases, while house arrest was motioned in 186 cases and a geographical ban in 216 cases.[29]

LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE
LIST OF ISSUES, §21

As presented in §§186–187 of the State Report, in 2014, the ECtHR concluded in the *László Magyar v. Hungary*[30] case that by sentencing an applicant to life imprisonment without the possibility of parole, Hungary violated the prohibition of torture and inhuman or degrading treatment or punishment (cf. also Article 10(3) of ICCPR). Hungary introduced a "mandatory clemency procedure" after the above judgment, but **the law maintains the President's discretionary power to decide on pardons and still does not comply with the standards set out by the ECtHR.**[31] This was **confirmed by the ECtHR** in its judgment issued in the case *T.P. and A.T. v. Hungary*[32] in 2016, concluding that "in view of the lengthy period [40 years] the applicants are required to wait before the commencement of the mandatory clemency procedure, coupled with the lack of sufficient procedural safeguards" with regard to the procedure of the President, the violation of Article 3 of the ECHR remains.

PRISON OVERCROWDING
LIST OF ISSUES, §22

Since the pilot judgment delivered in the *Varga and Others v. Hungary*[33] case by the ECtHR in 2015, concluding that prison overcrowding constitutes a structural problem in Hungary, the **average occupancy rate has been on the decrease**: as compared to 141% in 2014, it was 135% in 2015 and 131% in 2016

[27] For further information, see: *Update to the briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights*, 25 November 2013, http://helsinki.hu/wp-content/uploads/UNWGAD_HUN_HHC_Addendum_25November2013.pdf.
[28] Tamás Fazekas – András Kristóf Kádár – Nóra Novoszádek: *The Practice of Pre-Trial Detention: Monitoring Alternatives and Judicial Decision-Making. Country report – Hungary,* October 2015, http://www.helsinki.hu/wp-content/uploads/PTD_country_report_Hungary_HHC_2015.pdf; Report of the Curia's Judicial Analysis Group (2017)
[29] Source: Chief Prosecutor's Office (http://ugyeszseg.hu/repository/mkudok8724.pdf, p. 48.; response to the HHC's FOI request, 24 May 2017).
[30] Application no. 73593/10
[31] For further information, see the HHC's communication submitted to the Council of Europe in 2016: http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E.
[32] Application nos. 37871/14 and 73986/14
[33] Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13

(although the average number of detainees increased from 17,792 in 2015 to 18,023 in 2016).[34] However, it is to be added that a **new methodology was introduced for calculating the capacity** of penitentiaries: as of January 2017, capacity is determined based on the overall floor area (save for toilets), whereas earlier the area of the furniture was deducted from the overall floor area.[35] This **increased the capacity** of the penitentiary system **only on paper**. Also, without further steps to control and reduce the influx of detainees into the prison system, even a substantial prison-construction project as planned by the government may not yield lasting results. Overcrowding is still 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, and bedbugs.

As presented by §§190–191 of the State Report, the pilot judgment finally prompted the Hungarian Parliament to introduce a domestic remedy (complaint) and compensation procedure for persons detained in overcrowded cells, which meant a significant progress, but the HHC is of the view that the solution chosen is not ideal. The **system of complaints** on detention conditions to be submitted to the prison governor, which should primarily result in the transfer of the detainee to a not overcrowded cell or institution, **is ineffective** due to the lack of sufficient prison capacity. Concerns regarding the compensation procedure include that it is a precondition to submit a complaint to the prison governor for claiming compensation, that the amount of daily compensation is low as compared to the just satisfaction granted by ECtHR, that the compensation procedure is not adversarial, and that compensation claims are overburdening the penitentiary and the judicial system. Repercussions against detainees submitting complaints have been also reported.[36]

REFUGEES, ASYLUM-SEEKERS

LIST OF ISSUES, §23

NEW AMENDMENTS TO THE ASYLUM LEGISLATION AND THEIR IMPLEMENTATION

Between 2016 and 2018 the asylum legislation was significantly amended several times. **Contrary to §209 of the State Report**, **the amendments of 2016 were fundamental:** the Asylum Act,[37] its implementing Asylum Government Decree,[38] and the State Borders Act[39] were affected. The most important changes, in chronological order of their entering into force, are listed below.

As of 1 April 2016:

- Termination of monthly cash allowance of free use to asylum-seekers (7,125 HUF / 24 EUR);[40]
- **Termination of school-enrolment benefit** previously provided to asylum-seeking children.[41]

As of 1 June 2016:

- **Termination of the specific support scheme facilitating the integration** of recognised refugees and beneficiaries of subsidiary protection;[42]
- Introduction of a **mandatory and automatic revision of refugee status** at minimum **3-year intervals** following recognition or if an extradition request was issued;[43]
- Reduction from 5 to 3 years following recognition the mandatory interval for reviewing the status of beneficiaries of subsidiary protection;[44]

[34] Review of Hungarian Prison Statistics, 2017/1, http://bv.gov.hu/download/0/fc/f1000/REVIEW_OF_HUNGARIAN_PRISON_STATISTICS_2017_1.pdf, pp. 3 and 6
[35] Decree 16/2014. (XII. 19.) of the Ministry of Justice, Article 121
[36] For more information, see the HHC's communication submitted to the Council of Europe: http://www.helsinki.hu/wp-content/uploads/HHC_communication_Varga_and_Others_v_Hungary_082017.pdf.
[37] Act LXXX of 2007 on Asylum (hereafter: Asylum Act)
[38] Government Decree 301/2007. (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum
[39] Act LXXXIX of 2007 on State Borders
[40] Former Article 22 of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum, repelled by Article 8 (ab) of Government Decree 62/2016. (III. 31.)
[41] Former Article 30 of Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum, repelled by Article 8 (e) of Government Decree 62/2016. (III. 31.)
[42] Former Chapter VI/A of the Asylum Act, repelled by Article 90 (c) of Act XXXIX of 2016 on the Amendment of Certain Acts on Migration and Related Acts
[43] Article 7/A of the amended Asylum Act

- Reduction of the **maximum length of stay in open reception centres** following recognition as a beneficiary of international protection **from 60 to 30 days;**[45]
- Reduction of the automatic **eligibility period for basic health care** services following the recognition of an international protection status **from 1 year to 6 months.**[46]

As a consequence, refugees and beneficiaries of subsidiary protection are obliged to move out from the reception centre where they are accommodated already a month after their status has been granted, and **do not receive any support for their integration** (financial benefits, housing allowance, language course, etc.). These provisions immediately force most of those who actually receive international protection in Hungary **to homelessness and destitution**, thus fundamentally **questioning the effectiveness of the protection status** granted.

As of 1 July 2016:
- Reduction of the period during which family members of recognised refugees can apply for **family reunification under preferential conditions from 6 to 3 months** after the recognition of the sponsor's status.[47]

As of 5 July 2016:
- The Hungarian **police** were obliged to **automatically push back asylum-seekers who are apprehended within 8 km (5 miles)** of either the Serbian-Hungarian or the Croatian-Hungarian border to the external side of the border fence. **Legalising collective expulsions** (push-backs) from deep within Hungarian territory denies asylum-seekers the right to seek international protection, in breach of relevant obligations emanating from international and EU law.[48]

Another set of significant changes entered into force on **28 March 2017**, as well as on **1 January 2018**. Key changes as of 28 March 2017[49] include:
- Significantly **widened grounds for announcing a "state of crisis due to mass migration"**, a period during which certain **rights of asylum-seekers and procedural guarantees of the asylum procedure are suspended;**[50]
- **Asylum can only be sought in the transit zones**;[51]
- With the sole exception of unaccompanied minors under 14, **all asylum-seekers are automatically detained** by virtue of their application in the transit zones until such a decision is made in their case against which no remedy is available;[52]
- Extending the territorial applicability of the push-back law, third-country nationals found **anywhere in Hungary without the right to stay are automatically removed to the external side of the closest border fence** (in practice, to Serbia) without any documentation or the right to seek asylum, irrespective of their individual circumstances.[53]

The adoption of these changes were heavily criticised by key international actors, including UNHCR[54] and UNICEF.[55]

New rules applicable to asylum procedures entered into force on 1 January 2018, including:

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[44] Article 14 of the amended Asylum Act
[45] Article 32 (1) of the amended Asylum Act
[46] Article 32 (1a) of the amended Asylum Act
[47] Article 57 (6) of the amended Government Decree 114/2007 (V. 24.) on the implementation of Act II of 2007 on the Entry and Stay of Third Country Nationals.
[48] Amended Article 71/A (1) of the Asylum Act and newly added Article 5 (1a) of Act LXXXIX of 2007 on State Borders. See Article 13 of the ICCPR and Section 10 of General comment No. 15: The position of aliens under the Covenant (1968). See also Articles 32-33 of the 1951 Refugee Convention and Article XIV (1) of the Fundamental Law of Hungary.
[49] For an English translation of the adopted amendments, see: https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/ . For the HHC's analysis of the amendments, see: https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/
[50] Amended Article 80/A (1) c of the Asylum Act.
[51] Newly added Article 80/J of the Asylum Act.
[52] Newly added Article 80/J (5)-(6) of the Asylum Act. Automatic detention by virtue of lodging an asylum application is in breach of, *inter alia,* Article 9 of the ICCPR.
[53] Newly added Article 80/J (3) of the Asylum Act.
[54] See: http://www.unhcr.org/news/briefing/2017/3/58be80454/unhcr-deeply-concerned-hungary-plans-detain-asylum-seekers.html
[55] See: https://www.unicef.org/media/media_95066.html

- The Immigration and Asylum Office (hereafter: IAO) can close the procedure if an asylum-seeker does not provide certain documents upon the request of the IAO;[56]
- The IAO can order the **surveillance of individuals** and real estates during the asylum procedure;[57]
- The IAO can impose a **procedural fine** between 40 and 2,000 USD in case of an individual (such as the representative of the asylum-seeker) and 40 and 4,000 USD in case of a legal entity (such as an NGO) if the IAO considers that the representative or the NGO obstructs or delays the asylum procedure. The laws do not specify what obstruction or delaying means which can lead to an **arbitrary practice**;[58]
- A **new exclusion ground from refugee status** has been introduced: "a foreigner sentenced by a court's final and enforceable order for having committed a crime which is punishable by at least five years' imprisonment cannot be recognised as a refugee".[59] This provision is **not in line with Article 1F (b) of the 1951 Refugee Convention** as the requirement of committing the crime "outside the country of refuge prior to his or her admission to that country as a refugee" is omitted. It is also questionable whether a blanket designation as "serious" of crimes punishable by at least five years' imprisonment is in compliance with UNHCR guidelines. Moreover, **this also gives rise to possible violations of Articles 6, 7, 9 and 14 of the ICCPR.**
- The IAO, which is the responsible authority to conduct the refugee status determination procedure, including the assessment on potential exclusion from protection, will not be in a position to deviate from the opinion of the special authorities if these authorities state that the asylum-seeker should be excluded from protection. These special authorities include the Counter-Terrorism Centre and the Constitutional Protection Office.[60]

LEGAL REMEDIES AVAILABLE AGAINST PLACEMENT IN THE TRANSIT ZONES AND VAGUE GROUNDS FOR DETENTION

As the **automatic placement of all asylum-seekers** (with the sole exception of unaccompanied minors under 14) **in the transit zones** is not considered detention by the Hungarian authorities, **no detention order is issued** hence there are **no legal remedies** available to contest the lawfulness of detention (in breach of Articles 2 (3), 9 (4) ICCPR, Articles 5 (4), 13 ECHR, Articles 32, 33 of the 1951 Refugee Convention). Moreover, the legislation **lacks any clearly defined maximum length** of placement (that is, detention) in the transit zones.[61] That placement in the transit zones amounts to unlawful detention and that the lack of remedies against such placement **violates fundamental human rights** was also **established by the ECtHR** in its judgment of 19 March 2017 in the case of ***Ilias and Ahmed v. Hungary***.[62] The case, upon the request of the government, was referred to the Grand Chamber with the hearing scheduled in April 2018.

Hungarian authorities ignored interim measures communicated to them by the ECtHR in five cases in 2017.[63] All of these interim measures concerned **vulnerable asylum-seekers** detained in the transit zones and the ECtHR in all cases indicated to the Hungarian government to ensure that the applicants (a total of 29 persons, including 14 minors) are placed in an environment that complies with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment as under Article 7 ICCPR and Article 3 ECHR.[64]

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[56] Asylum Act, Article 32/I. b)
[57] Asylum Act, Article 32/N.
[58] Asylum Act, Article 32/X.
[59] Asylum Act, Article 8 (5)
[60] Asylum Act, Article 57 (3)
[61] Excessive length of detention, or uncertainty as to its duration, may constitute cruel, inhuman or degrading treatment, and the Committee against Torture has repeatedly warned against the use of prolonged or indefinite detention in the immigration context (*Concluding Observations on Sweden*, CAT, UN Doc. CAT/C/SWE/CO/2, 4 June 2008, para. 12: detention should be for the shortest possible time).
[62] Application no. 47287/15
[63] *A.S. v. Hungary* (Application no. 34883/17), *R.R. and Others v. Hungary* (Application no. 36037/17),*N.A. and Others v. Hungary* (Application no. 37325/17), *A.A.A. and Others v. Hungary* (Application no. 37327/17), *M.B.K. and Others v. Hungary* (Application no. 73860/17). More on these cases: https://www.helsinki.hu/en/interim-measures-granted-in-cases-against-hungary-until-may-2017/
[64] The effectiveness of the right of individual petition under Article 34 of the Convention requires Contracting States (i) to ensure that the Court can consider the application under its normal procedure and/or (ii) to refrain from actions which would prevent the Court from doing so. Where interim measures are indicated by the Court, conformity with Article 34 necessitates States' strict compliance with the measure in order to preserve and protect the rights of the parties. Where a measure is indicated to prevent irreparable harm in the case of absolute and non-derogable Convention rights, including the right to freedom from torture and inhuman or degrading treatment or

Hungarian authorities also **ignored an interim measure indicated by the HRC**: the HRC requested Hungary on 24 February 2017 not to deport a seriously traumatised asylum-seeker to Bulgaria where he was previously ill-treated by the authorities.[65] The HRC reiterated its position on the matter on 10 April 2017 in order to prevent the deportation. The authorities deported the asylum-seeker to Bulgaria at dawn the next day.[66]

ALTERNATIVES TO DETENTION

There are **no alternatives provided by law to detention in the transit zones**. Since 28 March 2017, the IAO only released a handful of asylum-seekers from the transit zones whose physical and mental states were so weak that the IAO decided to transfer them to open reception centres.

In January 2018, a national court annulled the ruling of the IAO concerning the placement of a family in the transit zone and ordered the IAO to place the asylum-seeking family during the new procedure in an open reception centre. However, the IAO *again* ordered their placement in the transit zone, demonstrating **flagrant disregard to a mandatory judicial instruction**.

DETENTION FOR ALLEGEDLY LENGTHY PERIODS

The State Report **omits the regulations that govern detention in the transit zones**. Between 15 September 2015 and 28 March 2017, vulnerable asylum-seekers could not have been detained in the transit zones[67] and were usually transported to reception facilities on the day of arrival. The maximum length of detention was 28 days.[68] Since 28 March 2017, these safeguards are suspended when a "state of crisis due to mass migration" is in effect[69] (see also concerns related to §209 of the State Report above). The state of crisis has been in effect since 9 March 2017[70] and is in place at the time of writing.[71] Since 28 March 2017, **many families with small children were detained for 6-9 months** in the transit zones (see also concerns related to §§ 210–211 of the State Report above). That children are detained in the transit zones for prolonged periods is a **blatant breach of Article 3 of the Convention on the Rights of the Child** according to which the best interest of the child shall be a primary consideration in all actions concerning children.[72]

On 5 July 2016, the ECtHR decided in the case of ***O.M. v Hungary*** that the 58 days of **detention of a highly vulnerable gay asylum-seeker was unlawful**.[73] The ECtHR unanimously ruled that the applicant's detention was arbitrary and unjustified, in violation of Article 5(1) of ECHR. In particular, the ECtHR found that the Hungarian authorities had failed to make an individualised assessment and to take into account the applicant's vulnerability in the detention facility based on his sexual-emotional orientation. The ECtHR

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punishment, there is a particular imperative to comply. Non-compliance with or disrespect for an interim measure amounts to a violation of Article 34.

[65] The binding nature of interim measures has been reaffirmed by the HRC in its General Comment 33 on the individual complaints procedure. In its para 19 it states that "Failure to implement such interim or provisional measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the Optional Protocol."

[66] *S.R. v. Hungary* (2963/2017). More on this case: https://www.helsinki.hu/en/hungary-ignores-interim-measure-granted-by-the-united-nations-human-rights-committee/ and https://www.helsinki.hu/en/interim-measures-granted-in-cases-against-hungary-until-may-2017/

[67] Asylum Act, Article 71/A (7)

[68] Asylum Act, Article 71/A (4)

[69] Asylum Act, Article 80/I (j)

[70] Government Decree 41/2016. (III. 9.)

[71] Government Decree 247/2017. (VIII. 31.)

[72] See also Resolutions of the Parliamentary Assembly of the Council of Europe 1707(2010), 1810(2011), 2020(2014) (immigration detention of migrant children in not in their best interest); para 5 of the Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child (children should never be detained for reasons related to their or their parents' migration status**);** The UN Special Rapporteur on Torture said that " (…) deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children (UN Doc. A/HRC/28/68 (2015), para 80).

[73] https://hudoc.echr.coe.int/eng#{"itemid":["001-164466"]}

emphasised the **special care** authorities should exercise when deciding on deprivation of liberty in order to avoid situations which may reproduce the plight that forced asylum seekers to flee in the first place.

There are currently two **cases pending before the ECtHR of unaccompanied minors** who were **detained unlawfully** in asylum detention facilities whereas at the material time, the detention of unaccompanied minors was prohibited by law. One of them was detained for **68 days**[74] while the other asylum-seeking child was detained for **97 days.**[75]

MEASURES TAKEN TO SECURE WELL-FOUNDED DECISIONS

Courts reviewing the legality of the decisions of the IAO annulled these decisions in numerous cases. According to the statement of the vice-president of the governing party, **in the first half of 2017, courts annulled 82% of the reviewed decisions of the IAO.**[76] In asylum appeals represented by the HHC, **courts annulled the IAO's decision in 77, 75 and 77% of the cases** in 2015, 2016 and 2017 (respectively). These figures demonstrate a **systemic dysfunction in first-instance asylum decision-making**, as well as a **flagrant disregard to mandatory judicial guidance**. According to the HHC's experience, the most common grounds for annulling the decisions were the following:

- The IAO violated its obligation to establish all the relevant facts of the case;
- The IAO used outdated country of origin information (COI) and/or used the COI selectively;
- The IAO unlawfully argued that there were no grounds for persecution based on the 1951 Refugee Convention;
- The IAO did not take into consideration the vulnerability of the asylum-seekers (partly as there is a total lack of vulnerability assessment since 28 March 2017);
- the IAO unlawfully concluded that the asylum-seeker is not credible.

In **lack of a proper age assessment mechanism** (see in detail under concerns related to §25 of the List of Issues), the IAO cannot make well-founded decisions regarding the age of unaccompanied asylum-seeking minors. This leads to the **unlawful detention of many unaccompanied children** and the unlawful rejection of their claim in the asylum procedure.

Since 15 September 2015, **courts do not have the right to change the unlawful decisions of the IAO and to grant a protection status by themselves, they can only annul** the decisions of the IAO and send the case back to the IAO for reconsideration. However, courts do have the right to order what the IAO has to examine in the new procedure, and courts can also order the IAO to grant a status to the applicant. There were numerous instances in which the IAO explicitly refused to follow the orders of the annulling judgements and consequently made the same unlawful decisions as the first time. A case of a Russian asylum-seeker is currently pending before the CJEU (C-556/17) in which a Hungarian judge asked the CJEU whether the **right to an effective remedy** can mean that the judge can lawfully change the decision of the IAO and grant the status to the asylum-seeker if – as in the pending case – the IAO denies granting protection to the asylum-seeker, disregarding previous clear judicial instructions.[77] Since then, several asylum cases were suspended before national courts due to this CJEU case.

Many asylum interviews in the transit zones are flawed and lead to unfounded decisions. With the exception of unaccompanied minors between 14 and 18, **all asylum-seekers are interviewed on the very first day of their entry into the transit zone**, after a night they usually spend in inhuman and degrading conditions on the Serbian side of the border fence. The personal hearing becomes impersonal since in many cases the case officer sits in a different location in another city, the interpreter in a third location, and the armed security guards are usually present in the same room where the asylum-seeker is interviewed in the transit zone. Unless the legal representative of the asylum-seeker is present at the interview, **the interview records are usually not read back to the asylum-seeker** at the end of the interview, making it impossible for the asylum-seeker to correct any mistake.

[74] *S.B. v. Hungary* (Application no. 15977/17)
[75] *H. v. Hungary* (Application no. 10940/17)
[76] http://www.origo.hu/itthon/20170619-nemeth-szilard-a-tranzitzona-szavatolja-hazank-biztonsagat.html
[77] http://www.asylumlawdatabase.eu/en/content/cjeu-request-preliminary-ruling-c-55617-torubarov

Hungarian law allows any person to act as the representative of another person in administrative procedures (without the requirement of being an attorney, i.e. a lawyer with a bar exam and registration with the Bar Association). In September 2017, the IAO started to **arbitrarily deny the right of asylum-seekers to be represented by lawyers** who are not attorneys (i.e. with a university law degree, but without a bar exam) and also by non-lawyers. A national court concluded in January 2018 that this practice **seriously violates the rights of both asylum-seekers and their non-attorney representatives**. Nevertheless, the IAO's unlawful practice has remained unchanged to date.

If the IAO rejects an asylum-seeker arguing that the person is a **threat to national security**, the IAO does **not provide any reasoning** in the decision, thereby seriously violating the right of the asylum-seeker to an effective remedy.

LIST OF ISSUES, § 24

MIGRATION STRATEGY 2014–2020

Contrary to §217 of the State Report, the aims set out in the Hungarian Migration Strategy[78] **were not implemented** between 2015 and 2017. The general objectives set out in this strategic document envisioning, among others, the provision of assistance to beneficiaries of international protection and the fostering of a tolerant and open host society are **in direct contrast with the political direction announced by Prime Minister Orbán** at a press conference in Brussels on 3 September 2015 saying ***"We have one message for refugees: Don't come!"***. Since then, this warning has been put to effect through extremely restrictive legislative and policy changes.

The most dramatic changes in the field of integration include **the state's complete withdrawal from the provision of integration assistance** (see in detail in concern related to §23 of the List of Issues above). Following the state's withdrawal from integration assistance, the resources of the **European Union's Asylum, Migration and Integration Fund** (hereinafter: AMIF) have become the major source for securing the funding for NGOs providing integration assistance. The last call for proposal for the AMIF was announced on 8 December 2017. On 24 January 2018,[79] **the government withdrew its call relating to 13 areas**, several of them related to integration services. These areas include the provision of assistance to unaccompanied minors; legal assistance; psycho-social assistance; housing assistance; training for professionals and the monitoring of returns. Consequently, AMIF-funded crucial integration and housing services provided by NGOs to refugees will stop in June 2018.

Hungary, as a host society has witnessed **three massive, state-funded xenophobic propaganda campaigns**[80] **during the period of 2015-2017**, undermining the aim of fostering a tolerant society. The first one was initiated on 11 February 2015 following the Paris terrorist attacks when a so-called "national consultation"[81] questionnaire sent out to every household linked migration to terrorism. This was followed by a national referendum, on 2 October 2016, on relocation and the "Let's stop Brussels campaign"[82] inciting fear and hatred against migrants and misrepresenting the subject in the national media. 2017 has witnessed an attack not only on migrants but also on civil society assisting them. Another "national consultation"[83] was launched on the so-called Soros-plan, generating hate and fear[84] and has hardened further the integration of refugees and the operations of NGOs assisting them.

[78] http://belugyialapok.hu/alapok/sites/default/files/MMIA_.pdf
[79] http://belugyialapok.hu/alapok/menekultugyi-migracios-es-integracios-alap/tajekoztatas-palyazati-kiirasok-visszavonasarol-20180124
[80] http://helsinki.hu/wp-content/uploads/Asylum-2015-Hungary-press-info-4March2015.pdf
[81] http://www.kormany.hu/en/prime-minister-s-office/news/national-consultation-to-be-launched-on-illegal-immigration
[82] https://www.politico.eu/article/hungarys-lets-stop-brussels-survey/
[83] https://bbj.hu/news/national-consultation-on-soros-plan-extended_142127
[84] https://www.washingtonpost.com/news/worldviews/wp/2017/11/08/hungary-accused-of-hatemongering-in-national-survey-targeting-george-soros/?utm_term=.228086fe551c

SUFFICIENT SPACE IN TEMPORARY FACILITIES

A **temporary tent camp** was set up in Körmend during autumn 2015 that was quickly shut down the same year as there was no longer need for additional accommodation. However, the IAO **reopened** it on 2 May 2016 and started to **relocate asylum-seekers there from two permanent camps** (Bicske and Vámosszabadi) **despite the clearly inadequate conditions.**[85] As the winter cold arrived, the HHC urged the authorities to shut down the temporary camp and relocate asylum-seekers to permanent facilities: there was **no heating available** while permanent reception facilities had ample available space to accommodate asylum-seekers. In its November monitoring report, the HHC argued that **conditions in Körmend could violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment** as under Article 7 ICCPR and Article 3 ECHR.[86] Conditions became so untenable that the vicar of Körmend decided to offer accommodation to most of the asylum-seekers during the winter.[87] Some asylum-seekers were offered accommodation in Budapest by Oltalom Charity Society.[88] The camp was finally closed in the first quarter of 2017.

MEASURES TO IMPROVE DETENTION CONDITIONS

There are **complaints of aggressive behaviour of the security guards** in all the centres.[89] Facilities are managed by the IAO, but security is provided by police officers. The CPT found that **hardly any arrangements had been made to cater for the needs of young children detained** in the only specific detention facility where asylum-seeking families can be placed, in Békéscsaba.[90]

Conditions in the transit zones remain inadequate. The HHC published a list of the most urgent changes that are needed to ensure that confinement in the transit zones is in line with relevant international, EU and domestic standards of detention.[91] To date, none of the described changes to material conditions have been met. A slight improvement of services was observed after September 2017, when education for children started in the community rooms of the sectors, and after November 2017, when psychological care became available upon request (however, the Cordelia Foundation, a NGO specialised in providing therapeutic care to torture victims and traumatised patients with over 20 years of unique experience, is still denied access).

LIST OF ISSUES, §25

AGE ASSESSMENT OF ASYLUM-SEEKERS

Age assessment practices currently used by the IAO are **substandard** since they completely fail to take into account the widely accepted professional consensus that age assessment shall not be solely based on medical examination.[92] Although age assessment had been problematic even before,[93] since March 2017 (see §23 of the List of Issues above), the practice has further deteriorated. The IAO employs **a military doctor to carry out age assessment who does not have special expertise** in the field of age assessment and

[85] See the HHC's monitoring report from 20 May 2016: https://www.helsinki.hu/wp-content/uploads/MHB-Kormend-jelentes-2016_05_10.pdf.
[86] https://www.helsinki.hu/wp-content/uploads/MHB_jelentes_Kormendi_Befogado_allomas_fin_20161118.pdf
[87] https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Update%20on%20the%20Emergency%20Response%20in%20Europe%20-%20January%202017.pdf
[88] https://www.thequardian.com/world/2017/mar/08/refugees-asylum-seekers-hungary-hardline-eu-viktor-orban
[89] CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, §§16 and 48
[90] CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, §44
[91] https://www.helsinki.hu/en/minimum-standards-required-in-the-transit-zones-on-the-hungarian-land-borders/
[92] See, inter alia, Third party intervention of the AIRE Centre, Dutch Council for Refugees and ECRE in the case of *Darboe and Camara v. Italy* (Application no. 5797/17), http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Darboe%20Camara%205072017%20final%20INTERVENTION%20ONLY%20as%20sent.pdf; Age Assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration https://rm.coe.int/age-assessment-council-of-europe-member-states-policies-procedures-and/168074b723; UNHCR – UNICEF: Safe and Sound http://www.refworld.org/docid/5423da264.html.
[93] *Best Interest out of Sight – The Treatment of Asylum Seeking Children in Hungary*, Hungarian Helsinki Committee, 2017, https://www.helsinki.hu/wp-content/uploads/Bestinterestoutofsight.pdf

relies solely on primary gender characteristics and **mere visual examination** to determine a child's age. Examination of facial, body and pubic hair and measuring **the width of girls' breasts** (!) are not only insufficient to verify one's age but also **deeply violate the human dignity of children**. The HHC is aware of one case when the size of a boy's penis was also measured.

Given that, since 28 March 2017, unaccompanied minor asylum-seekers above the age of 14 are not entitled to stay in a children's home[94] but must await the end of their asylum procedure in the transit zone[95] **the potential violations suffered as a result of an erroneous age assessment result have also increased significantly**[96] (see also §23 of the List of Issues above). Age assessment is done **prior to the appointment of a guardian**. The result of the age assessment **cannot be challenged** individually and thus the right to an effective remedy is violated.

PLACEMENT OF UNACCOMPANIED MINORS

Since March 2017, **unaccompanied children above the age of 14** must await the end of the asylum procedure in the **transit zone in Röszke**. Children are detained here for an **indefinite period** of time, behind a high barbed wire fence and with policemen who outnumber them by far. **The Council of Europe Special Representative**[97] **and the UNHCR**[98] **both described the Röszke transit zone as no place for children**, who shall, in accordance with international law,[99] only be detained as a measure of last resort.[100] Between March and September 2017, children had **no access to education or psychological assistance** and, despite government attempts to fill these gaps, services are still inadequate at the time of writing.

The government announced the **closure of the children's home** in Fót, yet a clear schedule has not yet been drawn up and children staying there have not been consulted on the closure and the possible implications it may have on their lives. Unaccompanied minors will be **relocated to Aszód, to a territory currently belonging to a juvenile detention centre**, which is clearly alarming.[101] The conditions in Fót are satisfactory and children have access to the services of several NGOs and schools in Budapest.

LIST OF ISSUES, §26

RESTRICTIONS ON ACCESS TO TERRITORY, DELIBERATE NON-REGISTRATION OF ASYLUM-SEEKERS // PUSH-BACKS

On 5 July 2016, amendments to the Asylum Act and the Law on State Borders entered into force that prescribes the **police to push-back third country nationals found within an 8-km zone from the border fence to the external side of the barbed-wired barrier**.[102] Foreigners against whom this measure is applied have **no right to submit an asylum application or to appeal the measure**. This practice is applied **indiscriminately**, including against children, and thus **violates the prohibition of collective expulsion**.[103] The territorial application of this measure was **extended on 28 March 2017 to**

[94] Article 4 (1) c) of Act XXXI of 1997 on the Protection of Children and Guardianship Management; Article 80/J (6) of the Asylum Act
[95] Asylum Act, Article 80/J (5)
[96] See, inter alia, the case of *Ilias and Amed v. Hungary* (Application no. 47287/15) and the case-law of the ECtHR cited in *"The detention of asylum seeking children in Hungary: Dire tendencies in upholding the basic rights of children"* (http://www.asylumlawdatabase.eu/en/journal/detention-asylum-seeking-children-hungary-dire-tendencies-upholding-basic-rights-children).
[97] Report of the fact-finding mission by Ambassador Tomáš Boček, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2#_Toc494960722
[98] UNHCR Chief visits Hungary, calls for greater access to asylum, end to detention and more solidarity with refugees, http://www.unhcr.org/news/press/2017/9/59b809d24/unhcr-chief-visits-hungary-calls-greater-access-asylum-end-detention-solidarity.html
[99] Article 37 of the 1989 Convention on the Rights of the Child
[100] Note that according to the UN Committee on the Rights of the Child, children should never be detained for reasons related to their or their parents' migration status. See para 5 of the Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return Right to liberty.
[101] Government Decree 528/2017. (XII. 29.)
[102] Article 5(1)a of Act LXXXIX of 2007 on State Borders
[103] Article 4 of Protocol 4 to the ECHR

the entire territory of Hungary.[104] Between 5 July 2016 and 31 January 2018, **18,010 push-backs were carried out** according to official police statistics.[105] The HHC represents several victims of push-back before the ECtHR.[106]

Reports on **ill-treatment** by members of various Hungarian law enforcement agencies started to surface in May 2016 for the first time. On 1 June 2016, **a Syrian young man drowned** in the river Tisza on the Serbian-Hungarian border when, according to his surviving brother's statement, Hungarian police officers used teargas and threw rocks at them in order to turn them back to Serbia.[107] Various international non-governmental organisations[108] as well as grassroots groups[109] working in Northern Serbia have **documented hundreds of cases of violence** since then. According to media reports, between September 2015 and March 2017, in **two cases the courts convicted the perpetrators** (those found guilty were fined).[110] The HHC represents several victims of violence in ongoing criminal investigations.

FREEDOM OF ASSOCIATION: GOVERNMENTAL ATTACKS ON NGOS
LIST OF ISSUES, §29

Governmental attacks against Hungarian NGOs, starting already in 2013, included **condemning public statements** by high-ranking state officials alleging that some NGOs serve "foreign interests"; an **illegitimate state audit** into the use of the EEA/Norway Grants NGO Fund; **criminal procedures** launched against members of the consortium of NGOs distributing the NGO Fund; and a **police raid** of their offices. Even though proceedings launched against the consortium and organizations supported by the NGO Fund ceased or were terminated (without any criminal charges brought) by the beginning of 2016, critical and threatening statements from the government and the governing parties against human rights and watchdog NGOs continued, now primarily targeting NGOs supported by the Open Society Foundations. As part of the series of measures designed to discredit and silence NGOs that are trying to hold the government to account, an **anti-NGO Bill** was submitted to the Parliament in April 2017.[111]

The Bill was adopted as **Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad**[112] on 13 June 2017 by the Parliament, despite repeated international objections by various Council of Europe bodies and UN Special Rapporteurs.[113] The law obliges NGOs that receive at least 7.2 million HUF (23,000 EUR) annually from foreign source to register with the court as an organization receiving foreign funding, to annually report about their foreign funding, and to indicate the label "organization receiving foreign funding" on their website and publications, also foreseeing sanctions in case of non-compliance. Consequently, the law interferes with the freedom of expression of the organizations as it affects their right to good reputation, violates the right to privacy and personal data protection, **violates freedom of association,** violates the general prohibition of discrimination, and introduces unjustified and disproportionate **restrictions to the free movement of capital**, in violation of EU law.[114]

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[104] See also concerns related to § 23 of the List of Issues and https://www.helsinki.hu/en/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers-in-violation-of-eu-and-international-law/.
[105] See https://www.helsinki.hu/en/hungary-key-asylum-figures-for-2017/ and https://www.helsinki.hu/en/hungary-key-asylum-figures-as-of-1-january-2017/
[106] Communicated cases include *K.S. v. Hungary* (Application no. 12625/17) and *H.K. v. Hungary* (Application no. 18531/17).
[107] See http://www.unhcr.org/ceu/387-ennews2016unhcr-alarmed-at-refugee-death-on-hungary-serbia-border-html.html
[108] See for example Human Rights Watch's first report: https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border; Save the Children's report from January 2017: https://www.savethechildren.net/article/refugee-and-migrant-children-injured-illegal-border-push-backs-across-balkans; Médecins Sans Frontières's latest report: http://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf
[109] See for example Hungary-based Migszol's collection of testimonies: http://www.migszol.com/border-violence; Serbia-based Freshresponse's collection of cases: http://freshresponse.org/border-violence/
[110] https://mno.hu/belfold/voltak-rendori-tulkapasok-a-deli-hataron-1389637
[111] A timeline of governmental attacks is available here: http://www.helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_17112017.pdf.
[112] The adopted text is available here in English: http://www.helsinki.hu/wp-content/uploads/LexNGO-adopted-text-unofficial-ENG-14June2017.pdf.
[113] For a summary of these, see: https://www.helsinki.hu/wp-content/uploads/ECODEFENCE-intervention-final.pdf, pp. 4–8.
[114] For more information, see: https://www.helsinki.hu/en/analysis-of-the-bill-on-foreign-funded-organisations-lexngo/, https://www.helsinki.hu/en/what-is-the-problem-with-the-hungarian-law-on-foreign-funded-ngos/.

Several affected NGOs, including the HHC, **declared that they will not register as an "organization receiving foreign funding"**; the review of the law by the Constitutional Court and the ECtHR is pending. In addition, the **European Commission launched an infringement procedure** for the law, and on 7 December 2017 referred Hungary to the CJEU.[115]

On 18 January 2018, the Hungarian government launched **the "Stop Soros" package, a proposal of three laws that target civil society organisations**. According to these, organisations that receive foreign funding and allegedly "propagate mass migration" or "support illegal migration" would be required to register at court, acknowledging such "illegal" activity, and would have to make this public. Any **foreign revenue given for "supporting illegal migration"** for organisations which register **would be subjected to a 25% tax**. Legal procedures for non-compliance could end in a fine of 200% of the foreign revenue or dissolution of the organisation. NGOs would be required to hold a separate bank account for foreign funds, which would be monitored by the prosecutor's office and the Central Bank. Also, NGOs would be required to disclose to authorities the data of any person they make payments to. By introducing much stricter requirements, **any NGO**, irrespective of the focus of its work, **could lose its public benefit status**, which gives tax advantages to both organisation and their clients. The proposal would also impose new restrictions on the movement of both Hungarian and non-Hungarian nationals involved in humanitarian support such as refugee assistance at the border. Should the proposals be adopted in spring 2018 without major changes, they will cause grave and irreparable damage to Hungarian civil society, with a number of NGOs unable to function or carry out core work by the end of 2018.[116]

[115] See: http://europa.eu/rapid/press-release_IP-17-5003_en.htm.
[116] In more detail, see: https://www.helsinki.hu/wp-content/uploads/OPERATION-STARVE-AND-STRANGLE-01022018.pdf.