



Hungarian Helsinki Committee

WRITTEN COMMENTS

BY

THE HUNGARIAN HELSINKI COMMITTEE

***REGARDING THE FIFTH PERIODIC REPORT OF
HUNGARY***

**UNDER ARTICLE 40 OF THE
INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

***FOR CONSIDERATION AT ITS
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About the Hungarian Helsinki Committee

The Hungarian Helsinki Committee (HHC) is an NGO founded in 1989. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defense to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantee the consistent implementation of human rights norms.

The HHC promotes legal education and training in fields relevant to its activities, both in Hungary and abroad.

The HHC's main areas of activities are centered on non-discrimination, protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on access to justice, the conditions of detention and the effective enforcement of the right to defense and equality before the law.

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About the Shadow Report

The Shadow Report is based on and in part repeats information included in HHC's "Suggestions for questions to be included in the List of Issues" (hereafter: HHC Suggestions) submitted by the HHC for the Human Rights Committee's 98th Session. The Shadow Report follows the structure of the 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 under the new Government of Hungary (formed in May 2010) after the formulation of the List of Issues.

Constitutional and legal framework within which the Covenant is implemented

Concerns related to § 1 of the List of Issues

Changes in the Constitutional and legal framework after the general elections of 2010:

At the general elections in April 2010, the party alliance of Fidesz (Alliance of Young Democrats) and KDNP (Christian-Democratic People's Party) gained more than two-thirds of the seats in the Parliament. According to the Hungarian rules on legislation, the vote of two thirds of all the MPs is required to amend the Constitution. Other important acts of Parliament (for example those affecting fundamental rights) may be amended with the vote of two-thirds of the MPs present at the sitting. Thus, the Fidesz-KDNP majority currently has the possibility to amend the Constitution and practically all the acts without the consent of the opposition. Making use of this possibility, the Fidesz-KDNP majority has removed some important elements of the system of checks and balances and guarantees of a state based on the rule of law.

The method of legislation:¹

In the first three months after the elections in April 2010 the Hungarian Parliament adopted 56 bills. Only 11 of those bills were introduced to the Parliament by the Government, while the remaining 45 were introduced by Members of Parliament. The Constitution was amended six times in the last ten weeks.

Under Hungarian laws, bills prepared by a Ministry shall be discussed by other state and social organizations, and Ministries preparing bills shall ensure that those bills may be commented on and allow related suggestions to be made. According to the procedural requirements set out in the Electronic Freedom of Information Act, Ministries shall publish bills, concepts of legislation and the reasoning thereof on their websites, indicating also the state of discussion about them. At the same time, opportunity for commenting on draft bills shall be ensured. It is obvious that the method of introducing bills, implementing the program of the Government by individual MPs was aimed at eluding the above mentioned rules, since the legal provisions guaranteeing the publicity of the procedure of preparing bills do not apply to bills introduced by MPs. In the course of the three months indicted, the provisions above were clearly violated, since draft bills were not published and the possibility of commenting on them was not ensured.

It may be stated in general that the bills introduced by MPs were full of errors. Besides errors concerning spelling, grammatical correctness and legal dogmatics, the harmonization of the bills with EU legislation and domestic legal provisions was also absent. In a number of cases, MPs tried to legitimize unconstitutional proposals by passing amendments of the Constitution at the same time as introducing the bill concerned. Below some of the most problematic new developments are summarized.

Amending the rules on proposing Constitutional Court judges:

According to the amended rules of the relevant act and of the Constitution, the composition of the Parliamentary Committee nominating judges of the Constitutional Court [*Alkotmánybíróság*]² will reflect the number of MPs in the parliamentary factions.³ (According to the original rules, all parliamentary parties were represented in the committee by one MP each.) Thus, the Fidesz-KDNP majority may nominate and elect Constitutional Court judges without having to take into consideration the opinion of the opposition, thus it may determine the direction of the Constitutional Court's decisions. Before signing the amending legislation, the President of Hungary asked the Parliament to

¹ See: Assessing the First Wave of Legislation by Hungary's New Parliament. 23 July 2010. Prepared by: Eötvös Károly Institute, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee. See: http://helsinki.hu/dokumentum/Hungarian_NGOs_assessing_legislation_July2010.pdf (in English), http://helsinki.hu/dokumentum/Az_elso_torvenyalkotasi_hullam_ertekelese_final_web.pdf (longer version in Hungarian).

² www.mkab.hu

³ The text of the bills is available at: <http://www.parlament.hu/irom39/00190/00190-0006.pdf>, <http://www.parlament.hu/irom39/00189/00189-0009.pdf>.

reconsider its decision, however, the rules in question were adopted by the Parliament again, thus making it possible for the majority to have their nominees elected to the Constitutional Court without any discussions with the majority.

Altering the term of mandate of members of the National Election Committee:

The National Election Committee is an independent body, vested with the task of ensuring the lawfulness of the elections and enforcing the requirement of impartiality of the procedure. According to the new rules, members of the National Election Committee [*Országos Választási Bizottság*⁴] shall be re-elected not only before the general parliamentary elections, but also before local elections or European Parliament elections take place.⁵ The new rules were applied with regard to the National Election Committee in charge, thus the members elected in spring 2010 were in charge only for approximately half a year instead of the four years they were originally elected for, meaning that the governing party could get rid of the members of the Committee elected by the former Parliament before the local elections take place in October 2010.

Certain civil servants may be dismissed without any justification:

According to the amended rules, employers may dismiss certain civil servants (e.g. those working in Ministries) without justification.⁶ Thus in these cases, due to the lack of reasons given, the dismissal may not be effectively challenged. As a result of the new provisions, civil servants are fully dependent on their employers, making it impossible for the public administration to operate in a professional, politically neutral way and endangering the democratic functioning of the state machinery. The amendment was sent back by the President of Hungary to the Parliament for reconsideration, however, the Parliament adopted the act again without taking into account the remarks of the President.

Principle of non-discrimination, rights of minorities, and freedom from torture and cruel, inhuman or degrading treatment

Concerns related to § 2 of the List of Issues

Independence of the Equal Treatment Authority:

As it was already indicated in HHC's "Suggestions for questions to be included in the List of Issues" (hereafter: HHC Suggestions), a severe problem concerning the Equal Treatment Authority's independence from the Government is the status of the Authority's President. The Authority is headed by a President – in the rank of a deputy state secretary – who is appointed by the Prime Minister based on a joint proposal of the Minister of Public Administration and Justice and the Minister of National Resources. The Minister of National Resources exercises the employer's rights over the President, with the exception of the right of appointment and dismissal, which is exercised by the Prime Minister. The status of its President is of crucial importance with regard to the Authority's effective independence. Under Section 2 (1) of the Government Decree regulating the Authority's status and proceedings,⁷ the President is appointed for an indefinite period of time in accordance with the provisions of the Civil Servants Act. This means that under the specific rules of the Civil Servants Act concerning "appointment to a leading position", the President's appointment may be withdrawn by the Prime Minister at any time without any justification.

This makes the President (and therefore the Authority) dependent on political developments, which is a factor that can seriously compromise his/her independence (e.g. when the Authority ought to take measures against a Ministry, or when a case has serious political implications).

This danger is clearly illustrated by the fact that not long after the new Government was formed, the first President of the Authority (appointed in 2005) was dismissed as of 15 September 2010 without justification, although no professional criticism was formulated with regard to her activities.

⁴ See: <http://www.valasztas.hu/hu/ovb/index.html>.

⁵ The text of the bill is available at: <http://www.parlament.hu/irom39/00371/00371-0005.pdf>.

⁶ The text of the bill is available at: <http://www.parlament.hu/irom39/00045/00045-0032.pdf>.

⁷ Government Decree no. 362/2004 (XII. 26.) on the Equal Treatment Authority and the Detailed Rules of its Procedure

Concerns related to § 3 of the List of Issues

3(a) The establishment of a system to monitor incidents that may constitute racist violence:

Several international organizations have pointed out the lack of such a monitoring system in Hungary. In its Fourth Periodic Report on the country,⁸ the European Commission against Racism and Intolerance (ECRI) voiced severe criticism about the implementation of existing provisions of criminal law on racially motivated criminal offenses, including not only the lack of sufficiently vigorous implementation of the existing laws, but also the lack of reliable statistics in this field. To overcome these problems, ECRI made a number of recommendations, including the introduction of systematic and comprehensive monitoring of all incidents that may constitute racist offences, covering all stages of proceedings, including complaints lodged, charges brought and convictions recorded.

Due to the lack of proper statistical methodology, there is no clear picture about the number of racially motivated crimes. As the European Monitoring Centre on Racism and Xenophobia pointed out in its report *Policing Racist Crime and Violence*,⁹ “[i]n Hungary, the low levels of registration under the various specific racially motivated crimes were attributed to law enforcement agents, as well as prosecutors and courts, being very reluctant to recognize racial motivation in violent and non-violent crimes committed against Roma”. The report describes other areas where Hungarian policing of racist crime lags behind the European standards:

- There are no instructions on how to determine whether a crime is racially motivated.
- Specialist training programs on dealing with racist crime and violence are not provided.
- No systematic approach exists to promoting the reporting of racist crime and violence, particularly by minorities.
- No measures to publicize police initiatives and guidelines for working with victims of racist crime and violence exist.

In its report “Field Assessment of Violent Incidents against Roma in Hungary: Key Developments, Findings and Recommendations”,¹⁰ the OSCE Office for Democratic Institutions and Human Rights (ODIHR) pointed out that according to interlocutors, “current interpretations of Hungarian law render the collection of [relevant] data, or even the identification of ethnic bias as a motivation for a crime, extremely difficult. [...] According to official information provided to ODIHR by the Government of Hungary, [...] only the citizenship, gender and the age of victims are recorded on the statistical sheet [...], and there are no data on their ethnicity. As a result, there is no statistical information on crimes committed against Roma. Recorded cases of hate crimes are also not disaggregated further by bias motivation, so there are no available data of how many of the cases were based on bias against Roma. There are no records kept on cases where the hate motivation was considered as a base motivation and evaluated as an aggravating circumstance. As such, there is no statistical information on the extent and pattern of hate crimes.” Against this context, ODIHR recommended that the Hungarian authorities ought to

- develop procedures and guidelines for identifying and investigating hate motivated crimes;
- ensure that investigators and prosecutors are specially instructed to thoroughly investigate the motive when a suspected hate crime is reported;
- reconcile the aim of effectively investigating crimes with a possible hate motivation and the Hungarian regulations on ethnic-data collection and processing.

3(b) The investigation, prosecution and sanctioning of violent attacks against the Roma:

As pointed out in the HHC Suggestions, in August 2009, the Hungarian Bureau of Investigation arrested the suspects of the series of violent attacks against Roma people (killing 6 and injuring 5 victims and threatening the lives of 55 other people between the end of 2008 and the summer of 2009). After one year of investigation, the prosecutor’s office submitted the bill of indictment in September 2010.¹¹

⁸ See: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-IV-2009-003-ENG.pdf>

⁹ See: http://www.fra.europa.eu/fraWebsite/attachments/PRCV_en.pdf

¹⁰ See: http://www.osce.org/documents/odihr/2010/06/44569_en.pdf

¹¹ See: http://www.vasnepe.hu/fokuszban/20100908_romagyilkosagok_vadirat

At the same time, severe omissions and negligence on the part of state authorities in handling the incidents have been revealed.

The actual assistance provided by the authorities in certain cases to Roma victims of the series of attacks also left much to be desired. An example for this is the Tatárszentgyörgy case that took place in February 2009. A joint NGO report¹² on the circumstances of the case and the conduct of authorities found numerous examples of official misconduct on the part of police, fire fighters and emergency medical personnel. Internal disciplinary proceedings had been initiated against certain officers, who allegedly admitted that they had made mistakes and were sanctioned, but the police refused to inform the public about the nature of the sanction. The Independent Law Enforcement Complaints Board dealt with the case as well, revealing that the police had failed to properly secure the crime scene, thus infringing the right of the victims and their relatives to a fair and thorough investigation. The conclusions of the Board were accepted by the National Police Chief.¹³

In September 2009, the Minister for National Security Services announced that the internal investigation carried out into the role of the National Security Services in the investigation of the above outlined series of racist killings had established that several serious mistakes had been committed by the Service: some of the perpetrators were well-known extreme right-wing activists who had also been subjected to secret surveillance which had been ended only some weeks before the first offences in question had been committed.¹⁴ It was also revealed that one of the four suspects in the case was a former informer of the Military Security Office (whom even his liaison officer contacted in the summer of 2009 after a longer pause to inquire whether he has information on the attacks).¹⁵

Despite these problems, there is still no publicly available information on whether the competent authorities have devised a plan to address the problem of investigating and prosecuting hate crimes in general

3(d) Continuation of the operation of the paramilitary group "Magyar Gárda":

The association Hungarian Guard ("Magyar Gárda"), an extremist right-wing paramilitary group was dissolved by a legally binding court ruling in 2009 on the basis that its activities had infringed the rights and freedom of others. However, members of the Magyar Gárda continue to carry out their activities (e.g. attending demonstrations in the uniform of the Magyar Gárda), claiming that they are members of the "New Magyar Gárda", which they claim to be a completely new association (not related to the dissolved group in any way). The organization has an operating "official" website: <http://magyargarda.hu/>

It can be regarded as a positive development, that in September 2010, the Metropolitan Prosecutor's Office qualified the re-establishment of the Hungarian Guard under the name of New Hungarian Guard as "incitement against the decree of an authority" and "abuse of the freedom of assembly" (both rendered punishable by the Penal Code) and submitted a bill of indictment against the "commander" and two other members of the movement.¹⁶

It also needs to be noted that the new Government introduced stricter rules concerning participation in the activities of a dissolved entity: according to the latest amendment of the Act on Petty Offences,¹⁷ the participation in the activities of a dissolved assembly or wearing the uniform of an organization dissolved by the court – or any outfit resembling such a uniform – in a public event is punishable with confinement up to 60 days.

¹² Joint report of the European Roma Rights Center, Hungarian Civil Liberties Union, Legal Defence Bureau for National and Ethnic Minorities (NEKI) available in English at: <http://www.errc.org/db/03/DA/m000003DA.pdf>

¹³ See: http://www.neki.hu/index.php?option=com_content&view=article&id=419:egy-evvel-a-tatarszentgyoergyi-kettes-gyilkossag-utan-az-orszagos-rendrfkapitany-elismerte-az-aldozatok-tisztesseges-eljarashoz-valo-joganak-megserteset&catid=1:friss-hk&Itemid=64

¹⁴ See for example: http://www.fn.hu/belfold/20090908/romagyilkossagok_hol_hibazott_nbh/

¹⁵ See: http://hvg.hu/itthon/20100908_

¹⁶ http://index.hu/belfold/2010/09/09/vademeles_a_garda_volt_fokapitany_ellen/

¹⁷ <http://www.parlament.hu/irom39/00580/00580-0027.pdf>

On the other hand, the reorganized movement is strongly supported by the extreme right-wing party Jobbik (which has a fraction in the Hungarian Parliament). The Magyar Gárda movement was established by Gábor Vona, the president of Jobbik who said (in July 2010, months after the judgment on the dissolution of the Gárda became final and binding) that he regards the Gárda-movement as his own child, which had already grown up and was living its own life, but he added that Jobbik would provide the movement with full moral and other necessary kind of support.¹⁸

It is characteristic of the situation that during the 2010 electoral campaign, Jobbik disseminated posters displaying one of its candidates in the uniform of the Gárda. No action was taken by the authorities.

At the inaugural session of the newly elected Parliament Gábor Vona, the founding president of the Hungarian Guard and the president of Jobbik took the oath to the Hungarian Constitution wearing the black vest with the symbols of the Magyar Gárda (the vest is part of the Gárda's uniform). The Minister of Justice of the previous Government (that is in office until the new Parliament votes on the new Government) filed a report against him, claiming that he had committed a petty offence. We have no information about the result of this procedure.¹⁹

Equality between men and women, and violence against women

Concerns related to § 9 of the List of Issues

"Emergency" sterilizations of Roma women:

While it may not be claimed that information about such practices surface very frequently, cases in which the suspicion can be raised occur from time to time.

In a case of the European Roma Rights Center, the client, who had already given birth to seven children, was hospitalized during her latest pregnancy at the county hospital of Miskolc with an emergency status. Her emergency status ceased for a while, then re-appeared, due to which doctors informed her that an operation had become unavoidable, an operation to be performed with caesarian section. She signed a written consent on this type of operation that referred only to the risks of caesarian section. During the operation the two – already still – fetuses were removed from the womb and also a ligation of her fallopian tubes had been performed.

She claims that she was not officially informed about the tubal ligation until she was contacted by her husband a day after the operation (he was also not informed and was not requested for consent); she could only see documented proof of the intervention in the final hospital report. She denies giving any kind of consent on tubal ligation during her treatment in the hospital.

The client claims that the coerced intervention might be related to the fact that her husband is Roma; an assumption backed up – among others – by the fact she was accommodated in a segregated maternity ward during this treatment and also earlier pregnancies (a ward occupied by Roma mothers exclusively, and having far worse physical conditions than other wards of the hospital, including the lack of adjacent bathroom).

The hospital denies responsibility; according to their interpretation, it was the client who initiated the sterilization, and expressed an oral consent which was reinforced later in a written form as well. They also claim that beside voluntary consent, medical-related considerations arose during the operation as well. According to the hospital, the written consent was made in a form which is signed by the client. However, this form is a blank form, which does not contain the description of the intervention to which the consent was allegedly given, it is also lacking the signature of any witnesses or medical staff. A first-instance court procedure is pending in the case.

¹⁸ http://jobbik.hu/rovatok/valodi_rendszervaltas/vona_gabor_az_oszi_valasztasokrol_az_arvizrol_es_a_narancskoztarsasagrol

¹⁹ http://www.nol.hu/lap/mo/20100515-a_bajnai-kormany_feljelentete_vona_gabort

Freedom from torture and cruel, inhuman or degrading treatment, treatment of prisoners, liberty and security of a person, the right to a fair trial, and rights of minorities

Concerns related to § 11 of the List of Issues

11(a) Video-recording of interrogations:

The video-recording of interrogations is still not obligatory in Hungary. Under Article 167 of Act XIX of 1998 on the Criminal Procedure (hereafter: CCP), the prosecutor **may** order that procedural actions (including interrogations) be audio- or video-recorded. Upon the request of the defendant or the defense counsel the recording is mandatory, but only if the defense advances the costs of such recording. Furthermore, defendants are not warned about this possibility, so if a defendant does not have a lawyer, he/she is unlikely to be aware of that he/she may put forth such a motion.

11(b) Independent medical examination of alleged ill-treatment victims

Physicians employed by the police are the ones who examine detainees before their placement in the police detention facilities and record their health status, including potential injuries. While the provisions of Decree 19 of 1995 on the Order of Police Jails [19/1995. (XII. 13.) BM rendelet a rendőrségi fogdák rendjéről] describe in detail the procedure to be followed if a detainee complains of ill-treatment, and prescribe that the prosecutor shall be notified about allegations of ill-treatment,²⁰ this does not change the fact that the physicians who are vested with the related tasks are not independent from the police. Thus, a detainee making allegations of ill-treatment does not have the right to be examined by an independent medical expert. Despite the recommendation of the Council of Europe's Committee for the Prevention of Torture (CPT) made in 2006²¹ and also in 2010²² to this effect, the practice of taking statements from detained persons presenting injuries has not been reviewed; consequently, the chance of undue pressure put on detainees in this regard still exists.

The situation is similar with regard to persons detained in penitentiary institutions. While it is prescribed by the relevant laws that injuries of detainees shall be recorded and the prosecution shall be notified,²³ there are no guarantees of the independence of the medical staff performing the examination. In fact, Article 1 Paragraph (4) of Decree 5 of 1998 of the Minister of Justice on the Health Care of Detainees [5/1998. (III. 6.) IM rendelet a fogvatartottak egészségügyi ellátásáról] prescribes that inmates are obliged to avail of the health services provided by the penitentiary system, and – under Paragraph (6) of the same Article – external medical services may only be used if the required health service cannot be provided within the penitentiary system.

As to, the absence of law enforcement personnel at medical examinations, it needs to be pointed out that in his Order 22 of 2010 on the Implementation of the Recommendations of the Council of Europe Committee for the Prevention of Torture (CPT) [22/2010. (OT 10.) ORFK utasítás az Európa Tanács Kínzásellenes Bizottsága (CPT) ajánlásainak végrehajtásáról], the National Police Chief adopted a regulation that is in fact contradicts the CPT's relevant recommendations. Whereas the CPT recommended in the report on its 2009 visit that "all medical examinations are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of police officers",²⁴ the Hungarian Police Chief made examinations in the absence of law enforcement staff an exception and not the rule. Article 8 of the Order runs as follows: "If it does not violate the requirements of the personal safety, upon the request of the physician or

²⁰ Article 17 Paragraph 3: The injuries of the detainee shall be recorded in writing. If the detainee claims that he/she has been ill-treated, it shall also be recorded and a copy of the record shall be sent to both the prosecutor overseeing the legality of detention and the head of the police unit implementing the detention.

²¹ 2006 CPT Report on Hungary, § 18. See: <http://www.cpt.coe.int/documents/hun/2006-20-inf-eng.htm>

²² 2009 CPT Report on Hungary, § 15: "whenever a detained person presents injuries upon medical examination and makes allegations of ill-treatment, he is promptly seen by an independent doctor with training in forensic medicine who should draw conclusions as to the degree of consistency between the allegations of ill-treatment made by the detained person and the objective medical findings." See: <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.htm>

²³ Decree 6 of 1996 of the Minister of Justice on the Implementation of Imprisonment and Pre-trial detention, Article 17 and Decree 5 of 1998 of the Minister of Justice on the Health Care of Detainees, Article 6.

²⁴ 2009 CPT Report on Hungary, § 15. See: <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.htm>

the detainee, it shall be arranged that the medical examination be out of the hearing and – if possible – out of the sight of police officers. Compliance with such a request shall be decided by [...] the commander of the guards.”

Although the Independent Law Enforcement Complaints Body(to which the draft of the Order was sent for commenting) clearly indicated that this formulation is not in compliance with the CPT’s recommendations, the National Police Chief refused to alter the wording of the relevant Article.

Concerns related to § 12 of the List of Issues

Information on the prosecution and punishment of perpetrators of acts of ill-treatment:

Before 2006, the jurisprudence for cases of ill-treatment versus cases of “violence against an official” shows that judges are definitely more lenient vis a vis police officers ill-treating civilians than the other way round. This is clearly indicated by the tables presented below.

Punishments imposed for ill-treatment in official proceeding

Year	Type of sanction					
	Effective imprisonment	Suspended imprisonment	Labor in the public interest	Fine	Suspended fine	Other
2004	2	21	1	42	1	
2005	5	19	-	33	-	
2006	0	5	-	8	-	11

Punishments imposed for violence against an official

Year	Type of sanction					
	Effective imprisonment	Suspended imprisonment	Labor in the public interest	Fine	Suspended fine	Other
2004	115	213	18	99	5	34
2005	114	218	17	110	8	33
2006	108	201	28	90	6	37

When interpreting the tables, it needs to be taken into consideration that until June 2007, there was a difference between the prospective punishments of the two offences. Ill-treatment was punishable with up to two years of imprisonment, while “violence against an official was punishable with up to three years of imprisonment. The upper limit of imprisonment for ill-treatment was raised to three years only as of 25 June 2007. Furthermore, since according to the Penal Code, the decision shall be based on the provisions in effect at the time of committing the offence if that is more favorable for the defendant, even after this date, sentences might have been based on the rules in effect before June 2007. Therefore, statistics from the year 2009 and 2010 may be indicative concerning the development of the jurisprudence. However, the HHC has not been provided by the Chief Public Prosecutor’s Office with the recent data, although a request to that end was submitted when the HHC was preparing the submission for the Human Rights Committee’s March 2010 session.

With regard to compensation granted to victims of ill-treatment, it can be regarded as a positive measure that Parliamentary Resolution 33/2010 on Compensations to Victims of Omissions of State Officials and Violations Committed on Behalf of the State²⁵ calls on the Government to take the steps necessary to provide victims of police abuses that took place between 17 September and 25 October 2006 in relation to anti-Government demonstration with compensation. Those victims shall be excluded from this possibility (i) who were convicted for criminal offences related to the demonstrations (some demonstrators attacked police officers, damaged property, etc.); (ii) who were already compensated either in a court procedure or with a friendly settlement of the case; (iii) whose claim for compensation has already been rejected by the court in a final and binding decision; (iv)

²⁵ Az Országgyűlés 33/2010 OGY határozata az állami vezetői mulasztások, illetve az állam nevében elkövetett jogsértések áldozatait megillető kártérítésekről

whose filed a report with the authorities for the criminal offence of ill-treatment, but the report was rejected or the investigation into the case terminated by the prosecution. The first negotiations between the police and some of the victims based on the Resolution have already started.

It needs to be pointed out however that the Resolution only concerns ill-treatment cases that took place in September-October 2006 in relation to a series of demonstrations and riots targeted against the previous Government, so the measure has a definite political connotation. No such initiative has been taken in relation to "everyday" police abuses, although such a mechanism would be very desirable for cases in which the ill-treatment unquestionably takes place, but the perpetrator's identity cannot be established beyond reasonable doubt (for instance due to the lack of identification badges, or for any other reason.)

As to compensations, it can be said that the sums granted by civilian courts for victims of police ill-treatment vary to a great degree. Below are presented some cases with the sums indicated.

Case of Imre Török

During the September 2006 events Imre Török was walking in a street near the premises of the riots in the 6th district of Budapest when a group of rioters entered the street, followed by two police vans. The police officers instructed everybody to lie down, but Mr Török failed to do so, and turned his back, when police officers grabbed him, forced him to the ground with his face down. At least four policemen started to kick and beat him on his back, arms and legs, he also received a kick in his right eye. He was wounded so badly, that after he was handcuffed and arrested, he had to be hospitalized. The first instance court sentenced the defendants to prison with suspending the execution of the sentence, and exempted the defendants from the negative consequences of being found guilty in advance. As an explanation for the exemption, the court referred to the lack of training of the police officers for such situations, the lack of experience in handling such riots (though the defendants were members of a special police unit specially designated for such purposes, and regularly giving duty at – among others – high-risk football matches), and the fact that on the given day they had been on duty for many hours. In the second-instance decision, the sentence of one of the defendants was eased, whereas the suspension of the other defendant's sentence was abolished, which means that he has to serve his prison sentence. The reason for this was that this officer had been found guilty of ill-treatment before this case. Mr Török, represented by one of the HHC's lawyers, filed a civil lawsuit for a compensation. He claimed HUF 4 million (approximately EUR 14,000) as compensation. The police offered HUF half of the amount in an attempt to reach a friendly settlement. Mr Török rejected the offer. The first instance court granted a compensation equaling the amount offered by the police, HUF 2,000,000 (EUR 7,000) plus interests. Appeal is pending.

Case of L.L.

A released short-term arrestee who insisted that he would not leave the police station until he could speak to the officer on duty, was beaten by the jail guards so badly that three of his ribs were broken, and he had to be hospitalized for over a week. The guards were sentenced to suspended imprisonment (eight months and one year respectively). In the lawsuit launched by the victim (represented by the HHC) for damages, the court granted a compensation of HUF 800,000 (EUR 2,800) plus interests.

Case of László Nagy

In December 2008, Police forces paid HUF 4.5 million (EUR 15,800) to László Nagy, who had been blinded by the Police: his left eye was shot out with a rubber bullet in the course of on 23 October 2006 events. László Nagy attended the rally organized by the largest opposition party, and was not charged with any criminal or petty offence. Mr Nagy initiated a criminal procedure in his case, but the investigation was terminated because the perpetrators could not be identified. However, it was established that the injuries of Mr Nagy were caused of a rubber bullet. The victim and his lawyer filed a lawsuit for a compensation of 15 million HUF. The Police agreed on paying 4 million HUF

plus interests, altogether 4.5 million HUF. Mr Nagy and his lawyer are suing for an additional 11 million HUF and for a life annuity.²⁶

Case of Tibor Kollár

On 1 July 2009, the Supreme Court upheld the previous court decision, and ruled that HUF 1 million (EUR 3,500) shall be paid to Tibor Kollár, a peaceful demonstrator, who was beaten up by police officers on 23 October 2009, and taken into short-term arrest and then 72-hour detention. The petty offence procedure initiated against Mr Kollár was terminated earlier.²⁷

Case of László Zajác

László Zajác was also beaten up by police officers during the fall 2006 events, suffered serious injuries on his hand, he was taken into 72-hour detention and he was handcuffed to his bed in the hospital. The court ruled on 14 October 2009 that the Police infringed the rights of Mr Zajác, since his hand injuries were caused clearly by the police officers, and the injuries were not treated properly. Furthermore, the court considered it disproportionate that Mr Zajác was handcuffed to the bed and that he was detained at all. The court ruled that the Police should pay HUF 1.6 million (EUR 5,600) plus interests as a compensation to Mr Zajác.²⁸

Case of László Kis

The highest amount paid by the police in a friendly settlement so far was HUF 8,000,000 (EUR 28,000) to a former teacher who was shot in the hand by police officers with a rubber bullet while he was walking home. His skull was broken, his speech and writing ability was diminished. He could not continue the teaching because of these long lasting injuries.

Information on the Independent Law Enforcement Complaints Body's procedure and workload:

The amended Act XXXIV of 1994 on the Police (Police Act) introduced the Independent Law Enforcement Complaints Body (ILCB), which, as of 1 January 2008 and under Article 92 of the Police Act, investigates violations and omissions committed by the police and border guards, provided that such violations and omissions substantively concern fundamental rights.

The ILCB consists of five members elected for six years by the Parliament with a two-third majority of the attending MP's upon the joint nomination of the Parliamentary Committee responsible for law enforcement and the Parliamentary Committee responsible for human rights. Re-election is excluded by law. Nominees may be proposed by human rights bodies and organizations, including NGOs.

Members shall be lawyers with outstanding experience in the field of fundamental rights protection. Persons who have filled political positions within two years before the election or have been employed in any legal form by any law enforcement organization or the Army within six years before the election may not become members.

The ILCB elects its own President and regulates its proceeding in its own rules of procedure (within the framework set out by the Police Act). The Board has a secretariat that is integrated into the organizational structure of the Office of the Hungarian Parliament, but the President of the ILCB exercises the employer's right over the personnel of the secretariat.

Thus, the ILCB is functionally external to the police authorities. Its budget is included into the budget line of the Office of the Hungarian Parliament. Its budget for the year 2008 was HUF 136,000,000 (approximately EUR 477,000).

²⁶ <http://index.hu/belfold/rebisz7490/>

²⁷ http://index.hu/belfold/2009/07/01/a_birosagon_elvesziette_a_rendorseg_az_alkotmany_utcai_csatat/

²⁸ <http://www.origo.hu/itthon/20091014-masfel-millios-karterites-2006os-zavargasok-alatti-rendori-tulkapas-miatt.html>

Anybody, who believes that a violation of the provisions set out in Chapter IV (general principles of police action), Chapter V (rules of police measures) or Chapter VI (rules of coercive measures) of the Police Act violated his/her fundamental rights to a significant extent, may file a complaint with the police unit responsible for the measure or the ILCB.

The complaint shall be filed within eight days of the alleged violation by the concerned person, who may also be represented by an NGO, minority self-government or foundation. Anonymous complaints or complaints arriving from someone acting on behalf of the victim without a proper authorization are rejected automatically.

In the course of its investigation, the ILCB may require information from the police and may inspect and request copies of all the case files. Furthermore, the ILCB may require the disclosure of any fact, information and circumstances that may be relevant from the point of view of the concerned measure or omission. This is also true for classified information.

After its investigation (the deadline for which is 90 days), the ILCB may:

- Formulate a recommendation and forward the case to the National Chief of the Police, if it is established that the measure or omission substantively violated fundamental rights;
- Forward the case to the police unit the member of which took the measure if it is established that there was no violation or it was not substantial. If the complainant expresses his/her wish that the complaint shall not be forwarded to the responsible police unit, the case shall be terminated;
- Forward the case to the competent authority, if the complaint does not fall into the Board's competence, but the competent authority may be established on the basis of the facts;
- Reject the complaint if the competent authority may not be established, or the complaint is filed after the deadline.

The complaint is adjudicated by the National Chief of Police on the basis of the ILCB's recommendation. The Chief of Police may divert from the conclusions of the Board, but if this is the case, the reasons shall be explained in detail in the resolution delivered on the complaint. The decision of the Chief of Police is subject to judicial review.

In 2008, the ILCB received around 170 complaints, out of which it adjudicated 106 in 2008. Out of the 106 cases, a severe or non-substantial violation was established in 40 and 28 cases respectively. Out of the 40 cases involving a severe violation and sent to the National Chief of Police for adjudication, the National Chief of Police agreed with the Body's stance in 9 cases (24%), and partly agreed with it in 7 cases (19%).²⁹

In 2009, 737 complaints were submitted to the ILCB, the body delivered altogether 457 decisions. In 57 cases the Body established a violation that was not substantial, while in 59 cases the violation of fundamental rights was considered to be severe, and the case was sent to the National Chief of Police. The National Chief of Police fully or partly agreed with the ILCB's stance in 11 and 26 cases (20 and 48%) respectively.³⁰

From the above it can be seen that the ILCB functions as a collective law enforcement ombudsman, this is why its decisions are not binding on the police, which delivers the final decision on the cases (with the possibility of judicial review).

The problems related to the ILCB's mandate and authorizations may be summarized as follows:

- The Body is not vested with the right to hear police officers. The officers are free to decide whether or not they give a statement upon the Body's inquiry. This sometimes makes it very difficult for the Body to appropriately clarify the facts of the case;
- The Body is not vested with the right to interfere with the judicial review of the National Police Chief's decisions in cases when the Police Chief diverts from the opinion of the Body. Thus, it depends on the complainant whether or not he/she refers to the Body's decision in a lawsuit;

²⁹ See: <http://www.panasztestulet.hu/cvs/file/tajekoztato2008.pdf>

³⁰ See: http://www.panasztestulet.hu/files/frpt_stat.pdf

- The five members are assisted by eight lawyers, which does not seem sufficient compared to the increasing caseload of the ILCB.
- The Body does not have regional offices, and with the limited number of personnel, it is practically not possible for the staff to carry out on the spot. As a result, the Body's investigation is restricted to the inspection of the case files consisting of documentation provided by the police units concerned by the complaint, which obviously restricts the effectiveness of the investigation.

Concerns related to § 14 of the List of Issues

Issues related to short-term arrest:

Short-term arrest (*előállítás*) for 8 (in exceptional circumstances 12) hours is still legal under Article 33 of the Police Act.³¹

It needs to be highlighted in this regard that in terms of Article 38 of the Police Act if the short-term arrest is performed because the concerned person cannot or does not prove his/her identity, but within the 12 hours this cannot be accomplished, the police may prolong the custody up to 24 hours counted from the beginning of the short-term arrest (*közbiztonsági őrizet*).

The legal framework regulating the status of persons under short-term arrest (*előállítás*) is unclear, as when amending the previous Ministerial Decree on the Service Regulations of the Police,³² the lawmaker simply forgot to regulate this legal institution in details. The previous ministerial decree ruled that the rights and obligations of persons under short-term arrest shall be governed by the same provisions as those of persons under a 72-hour detention and pre-trial detainees held in police cells. However, this sentence is missing from the New Service Regulations³³, therefore, at this moment no legal provisions govern the rights and obligations of people under a short-term arrest (*előállított*), with the exception of a handful of very basic provisions.

In terms of Article 18 of the Police Act, a detainee (*fogvatartott*, which term, under Article 97 of the Police Act, also includes persons under a short-term arrest) shall be provided with the possibility to notify a relative or another person, if this does not endanger the purpose of the arrest. If the person is not in the position to exercise this right, the notification shall be performed by the police. If the detainee is juvenile, his/her parent or guardian shall be notified without delay. The police shall provide placement for the detainee, and shall provide those services that are necessary to prevent any health injury that may occur as a result of the detention. If the detainee is injured, ill, or in need of medical service for any other reason, this service shall be provided by the police.

Under Article 33 of the Police Act, the short-term arrestee shall be informed about the reason for the arrest orally or in writing, and shall be provided with a certificate about the time he/she has spent in custody.

Under Article 51 of the New Service Regulations, the short-term arrestee shall be placed in a short-term arrest cell, or any other premises where he/she can be guarded safely. Before his/her placement in the short-term arrest cell, the arrestee shall be informed about the expected length of custody, his/her clothes shall be searched, and those objects shall be taken from him/her that he is not allowed to possess while in custody. He shall be asked about potential injuries, complaints, and – if necessary – shall be seen by a doctor.

Apart from these provisions, the present legal framework does not contain regulations on the status, rights and obligations of short-term arrestees.

³¹ Under Article 33 of Act XXXIV of 1994 on the Police (Police Act), a person may be taken into a so-called short-term arrest – inter alia – if he/she is caught in the act of committing a crime; is under an arrest warrant; is suspected of having committed a crime; cannot identify himself/herself or refuses to do so; who is required to give a blood or urine sample in order to prove a criminal or a petty offence; who fails to stop a petty offence when called to do so; etc. A short-term arrest may not last longer than "necessary", but shall not exceed 8 or (in exceptional cases) 12 hours.

³² Decree 3/1995 of the Minister of Interior on the service regulation of the police

³³ Decree no. 62/2007. (XII. 23.) of the Minister of Justice and Law Enforcement on the service regulation of the police

The State Party Report states (§ 97) that in 2006 a circular was issued regulating the rights of arrestees and detainees. This circular was issued by the National Police Headquarters exactly because since 2007 Parliament has failed to adopt legal regulations on the issue.

This led to situations breaching the ban on degrading treatment, for instance in cases when persons taken into short-term arrest were not provided with food for 8 hours, as there was no regulation prescribing the provision of food. In order to bridge this legislative gap, the National Police Headquarters issued a circular on how to handle short-term arrestees (prescribing for instance that food shall be provided if the detention last longer than 5 hours). However, the circular is not a public legal norm and is not easily accessible for citizens. For a long time the HHC has been lobbying for the adoption of a new Ministerial Decree in order to remedy the situation and finds it totally incomprehensible why this has not been done in the past two and a half years.

Statistics on the practice of pretrial detention:

According to statistics from the Chief Public Prosecutor's Office, on 31 October 2009, the number of pre-trial detainees whose case was still in the investigation phase was 2,300. 70 of them had been detained for over a year, and an additional 481 had been detained for over half a year. In comparison on this day 70 suspects were under house arrest, and 219 under a geographical ban (the ban to leave a certain geographical area, such as a town or a county).³⁴ While, these numbers do not contain those who are in remand detention during the court phase (i.e. after the charges are pressed by the prosecution), the comparison clearly shows how underutilized existing alternatives to pre-trial detention are.

According to prosecutorial sources in 2009, the number of motions filed by the prosecutor aimed at ordering pre-trial detention was 5,960, and detention was ordered in 93% of the cases.³⁵

Concerns related to § 15 of the List of Issues

Follow-up of the CPT's recommendations concerning detainee's rights:

The State Party Report (§ 99) states that, following its visit in 2005, the CPT "concluded that the Hungarian legislation and circumstances conform to the requirements of the Council of Europe". In contrast to this statement, it should be recalled that after its 2005 visit, the CPT formulated a number of recommendations:³⁶ the recommendation concerning the right to an external doctor (see under the Section on § 11 of the List of Issues), and some further suggestions such as the ones related to the right of detained persons to inform a relative immediately, effective access to a lawyer, improvement of the conditions of detention in police facilities, the expectation formulated in relation to the management of Kalocsa Prison, Szeged Prison and Budapest Remand Prison to deliver the clear message to custodial staff that physical ill-treatment and verbal abuse of inmates as well as other forms of disrespectful or provocative behavior vis-à-vis prisoners are not acceptable and will be dealt with severely; the expectation formulated in relation to the management and staff of Szeged Prison to exercise continuing vigilance and make use of all the means at their disposal to prevent inter-prisoner violence and intimidation, and so on.

Right to inform relatives:

The Independent Law Enforcement Complaints Body established in a number of cases that the requirement obliging the Police to allow detainees to notify their relatives or perform the notification if the detainee is not in the position to do so was not met. Examples include the following instances:

On 15 March 2009, two men, Zsolt Hernády and Tamás Rosdy were taken into short-term arrest because in the view of the Police they were demanding the resignation of the actual Prime Minister at a state ceremony, which in the view of the police qualified as a petty offence.³⁷ The clothes of Mr Hernády and Mr Rosdy were examined on the spot, and they were handcuffed. At the police station they men were ordered to undress, and

³⁴ See: http://www.mklu.hu/pdf/kenyszint_091031.pdf

³⁵ <http://www.mklu.hu/cgi-bin/index.pl?lang=hu>

³⁶ See: 2006 CPT Report on Hungary. Available at: <http://www.cpt.coe.int/documents/hun/2006-20-inf-eng.htm>.

³⁷ Article 152/A of Act LXIX of 1999 on Petty Offences

they were examined while being naked. They could not inform their family or their lawyer about the short-term arrest.

In June 2009, the Independent Law Enforcement Complaints Body established that the two men had not committed a petty offence, and the police unlawfully restricted their right to freedom of expression, since the two men solely expressed their view that the Prime Minister should resign from his office, which could not have constituted a ground for police action (a conclusion later confirmed by the Pest Central District Court on 1 October 2009). The Body also established that ordering the two arrestees and examining them in this way lacked any legal basis. The Body also found the complaint that Mr Hernády and Mr Rosdy were not provided with the possibility to notify their relatives about the detention well-grounded.³⁸ The Chief of the National Police Headquarters accepted the Body's conclusions and decided in favor of the complainants.³⁹

In a series of other decisions concerning the events of 15 March 2009 (when the police arrested several anti-Government demonstrators), the Complaints Body also established that the detainees could not notify their relatives.⁴⁰

Another problem is that if the person is not taken into a short-term arrest before the ordering of his/her 72-hour detention (i.e. when the police already at the outset takes the person into a 72-hour detention), then a different legal provision pertains to the notification of relatives. Under Article 128 of the Code of Criminal Procedure, the relative chosen by the defendant shall be notified about the fact that the defendant was taken into 72-hour detention and about the premises where he/she is detained within 24 hours. This is clearly in contradiction with the requirement of immediate notification.

The right to be examined by an independent doctor:

See what is said about the issue in the section related to § 11 of the List of Issues.

Problems of the ex officio appointed defense counsel system:

The Government Report outlines the system of appointed defense counsels (§§ 177 and 180) and also mentions the criticism voiced in relation to its functioning (§ 267). While acknowledging the Government's plans to reform the system, the HHC wishes to call attention to the scale of the problem, and to the fact that a temporary solution would be available even before a comprehensive reform takes place.

As to the scale of the problem, the police's own investigation into the issue may be quoted (as the data in this case come from the police themselves).

A survey carried out by the Crime Investigation Department of the National Police Headquarters, involving the 23 regional investigation units⁴¹ of the National Police and based on targeted data collected during June and July 2006 (NPH survey),⁴² showed that in 14 out of the 23 regional units of the Hungarian Police, less than 50 per cent of first interrogations were attended by the appointed counsel.

In one county, for example, only 4.54 per cent of the first interrogations took place in the presence of the appointed counsel. There were also some counties with results either below or just over 10 per

³⁸ Standpoints 152/2009. (VI. 3.) and 153/2009. (VI. 3.) of the Independent Law Enforcement Complaints Body. Available at: http://www.panasztestulet.hu/cvs/file/allasfogl/2009/2009_152.pdf and http://www.panasztestulet.hu/cvs/file/allasfogl/2009/2009_153.pdf.

³⁹ http://www.police.hu/data/cms601079/ORFK_00105_266_2009_FRP_152_2009.pdf, http://www.police.hu/data/cms601083/ORFK_12445_2009_FRP_153_2009.pdf

⁴⁰ See decisions 248/2009, 275/2009 and 276/2009 of the Body (available at: www.panasztestulet.hu)

⁴¹ The county headquarters, the Budapest headquarters, the National Investigation Office, the Highway Police and the Airport Security Service.

⁴² The results of the survey are presented by Szabó Z. & Szomor S., 'Fegyveregyenlőség' (Equality of Arms), In: Rendészeti szemle (Law Enforcement Review), 2007/3., p. 19-41.

cent. The average percentage for all 23 units was 34.9, meaning that overall almost two-thirds of indigent defendants faced their first interrogation without professional legal assistance.⁴³

Similarly to the case of retained lawyers, this is partly due to late notification. The NPH survey provides convincing evidence on the issue. In one county, for example the average time between notification and the commencement of the interrogation was 30 minutes, which in most cases is obviously not sufficient for the lawyer to attend. In 16 counties, the notification was sent out on average only an hour before the scheduled time, although in 11 of these, if the lawyer indicates the intention to attend, the police are willing to reschedule the interrogation.⁴⁴ Obviously, if the notification is sent by fax and no attempt is made to reach counsel by phone (which is often the case), there is a good chance that counsel will not be informed about the interrogation in sufficient time to allow him/her to try to have it rescheduled.

However, in the HHC's view, the biggest problem is that in the investigation stage the appointed counsel is selected by the investigating authority (mostly the police), which poses a severe threat to effective defense. The investigating authority is disinterested in efficient defense work and for the investigator, it is undoubtedly easier to deal with a defense counsel who is not too active, who does not bombard him/her with questions, remarks and motions, or who may not even show up. In addition, for the suspect it is difficult to trust a counsel who was selected by the person who is in charge of the investigation against the defendant.

In addition to this, there are some attorneys who base their law practice principally on ex officio appointments. Such lawyers may become financially dependent on the member of the police who takes decisions on appointments.

In June 2008 the HHC sent a public interest information request to all Budapest-based police stations to find out in how many cases the police had appointed ex officio defense counsels in mandatory defense cases in 2007, who were the individual appointed attorneys and how many cases were given to each attorney. Although only 6 police stations complied with the HHC's request (7 stations refused and 12 failed to answer) the responses corroborated the HHC's experience: police stations assign the vast majority of cases to only a small handful of attorneys.

Police station	No. of appointments in 2007	Proportion of cases taken by the most often appointed counsel in percentage of all cases	Proportion of cases taken by the two most often appointed counsel in percentage of all cases
Budapest, 1 st district	83	55%	69%
Budapest 5 th district	192	65%	82%
Budapest 17 th district	135	37%	68%
Budapest 18 th district	229	55%	70%
Budapest 20 th and 23 rd district	97	61%	67%

At all these police stations two lawyers took over two-third of all the appointments.

In 2009, the HHC has requested further statistics from 28 police headquarters in 7 regions to demonstrate that the practice of having "in-house" lawyers at police stations is widespread. The results of a series of inquiries to police stations by the HHC show the widespread practice of "in-house" lawyers, some examples are showed below.

⁴³ Szabó & Szomor 2007, p. 36.

⁴⁴ Szabó & Szomor 2007, p. 35.

<i>Police station</i>	No. of appointments in 2008	Proportion of cases taken by the most often appointed counsel in percentage of all cases	Proportion of cases taken by the two most often appointed counsel in percentage of all cases
Kiskőrös	358	82.4%	91%
Siófok	393	70.2%	78.1%
Kunszentmiklós	139	69%	87.8%
Tatabánya	399	58.2%	73.4%

It shall be mentioned at this point that after receiving the HHC's data request, the head of the Bács-Kiskun County Police Headquarters launched an internal investigation into the practice of selecting ex officio defence counsels. The result of the investigation was that most police units in Bács-Kiskun county have "in-house" lawyers who receive a large part of the appointments. The county police chief has seriously criticized the practice revealed and ordered measures to counter these tendencies.

The practice demonstrated above is likely to significantly contribute to the problem that appointed counsels as a rule fail to show up in the investigation phase.

It is obvious that the selection of defense counsels must be randomized, so that the investigating authority is not able to influence the result of the appointment. This could be achieved by a computer program that could be integrated into the general IT system of the Police.

Effective implementation of the rules concerning the notification of a lawyer:

While the law prescribes that sufficient time and opportunity shall be provided for the preparation of defense (State Party Report § 178), the Government Report fails to give an account of the problems in the practical implementation of the related provisions.

First of all, it should be noted that the mandatory nature of defense does not require the presence of defense counsel at individual procedural actions in the investigation stage. Thus, if the notified counsel fails to show up for any reason, it will not prevent the investigative authority from interrogating the defendant. The situation is different in the judicial phase: if defense is mandatory, no hearing may be held without the presence of defense counsel.

As of 1 June 2007, if the suspect's detention is ordered, it is guaranteed that he/she can retain a lawyer prior to the first interrogation.⁴⁵ If the suspect claims before the interrogation has taken place that he/she has a retained counsel, and requests that the counsel be notified, the investigating authority shall notify the counsel about the interrogation by fax, e-mail, or if this is not possible, by telephone. This, however, still may not mean that counsel actually has the chance to be present.

When asked about the actual practice, practitioners have said that suspects who (usually from an earlier case) already have ongoing contacts with a lawyer are in a relatively good position. If this is the case, the investigating authority usually attempts to contact the lawyer, although the notice given is often very short, not to mention instances when a fax or e-mail is sent to the lawyer's office late at night, when the chances of the lawyer receiving notification are practically non-existent. If the suspect cannot immediately name a lawyer, he/she will not be allowed to call relatives or acquaintances to inquire about one. In such cases, the interrogation is conducted and only afterwards does the suspect have the chance to try to arrange the retainer.

Late notification – as it was outlined above – is also a problem with regard to appointed lawyers.

Concerns related to § 16 of the List of Issues

16(a) Review of policy on detention of aliens apprehended for unlawful entry or stay:

Hungarian policy on detention of aliens apprehended for unlawful entry or stay has significantly changed recently in a restrictive direction. In April-May 2010 the HHC found that new „temporary”

⁴⁵ Joint Decree no. 23/2003. (VI. 24.) of the Minister of Justice and the Minister of Interior no. 23/2003. (VI. 24.)

alien policing jails („temporary guarded shelters“) were opened throughout the country. Altogether 11 new detention facilities were opened to detain irregular migrants.⁴⁶ The capacity of alien policing detention facilities increased from 282 to 703 by the end of June 2010. 9 of these 11 newly opened detention facilities are police jails originally designed to detain criminal suspects for 72 hours (but not longer than 15 days). These jails were closed in 2004-2005 due to inappropriate detention conditions and non-compliance with CPT standards. The reopening was not preceded by refurbishment or renovation therefore physical conditions are still not appropriate for longer detention.

Aliens apprehended by the Police for unlawful entry or stay are now immediately detained even if they apply for asylum (before the above date, those who immediately applied for asylum upon interception were transferred to the closed screening facility of the Office of Immigration and Nationality (OIN) in Békéscsaba for a 15-day long admissibility procedure and then got transferred to the OIN's open processing centre in Debrecen in case the responsibility for the case remained with Hungary). According to the HHC's information the only exception from the above described new detention policy is the group of families with minor children and unaccompanied minors while pregnant women and married couples are also detained in the new detention regime (separately within the jails).

The HHC conducted monitoring visits to 10 of the 11 newly opened temporary alien policing jails in August 2010. Most of the findings described below are based on direct experience of the HHC staff.

Detention regime, physical conditions: In most of the temporary alien policing jails the detention regime is extremely strict. Detainees are locked up in their cells all day and all night long, except for a few hours that allow them to have a shower and spend some time in community areas (corridors, TV room, smoking room or outdoor space – if available). It is also worrisome that in some of the newly reopened jails the detainees have to ask the guards to escort them to the bathroom/toilet since such facilities are not available inside the cells. Hygienic conditions are extremely poor in some of these jails, 1 or 2 toilets and showers serve 20-30 detainees. It is not unusual that three detainees share a cell of 9-10m². Access to open air space/courtyard is not provided in the newly opened jails, only a room of 15-30 m² with windows lacking glasses is available for outdoor activities although domestic law would require open air exercise.⁴⁷

Services: Detainees in the „temporary“ detention facilities have no access to psychosocial assistance or counselling, community activities etc. The jails hardly offer recreational activities for the detainees, libraries, books, and sports facilities are not available in most of them. Only limited information is available on the detainees' rights and contact to NGOs.

No preparation, no training for guards: New (temporary) jails were opened without allowing any time for preparation for the staff, in some towns (e.g Baja, Eger) police officers have no experience in working with foreigners, most of them have never worked as guards before. An average 3 hours of training was organised for the guards on human rights, alien policing and immigration laws that is clearly not sufficient to become familiar with this field of law. Sensitisation and intercultural skills were not part of the very limited training agenda.

Increasing tensions: As access to information and communication with immigration officers is rather limited, most detainees do not understand the reason of being detained for such a lengthy period under such a harsh regime without having committed criminal acts. Language and capacity barriers of the police officers prevent them from being able to understand detainees' needs and mediate. As a result of increasing frustration that results from being in detention without psychological assistance and meaningful recreational activities more and more extraordinary incidents occurred in the most crowded jails. Arson, physical violence against each other and guards, (attempts of) escape, suicide attempts, hooliganism etc.

⁴⁶ Newly opened jails are situated in: Tatabánya, Sopron, Székesfehérvár, Eger, Salgótarján, Nyírbátor, Debrecen, Csongrád, Baja, Kiskunhalas and Zalaegerszeg

⁴⁷ Section 61 (3) (h) of the Act II of 2007 on the entry and residence of third-country nationals

16(b) Detention of asylum-seekers beyond the 15 days limit prescribed by law:

The monitoring missions conducted by the HHC confirmed the allegations namely that detention of asylum seekers has become increasingly widespread in Hungary in 2010. The detention for unlawful entry or stay is imposed on asylum seekers as a rule rather than exception. The main concerns may be summarized as follows.

Unlawfulness of the detention: The HHC wishes to call the Human Rights Committee's attention to the continuous practice of keeping asylum seekers in detention beyond the period of pre-assessment procedure of maximum 15 days, in violation of the law.⁴⁸ Upon the request of the HHC in February 2009, the Chief Public Prosecutor looked into the matter of arbitrary detention of asylum seekers beyond the 15 days period foreseen by the Asylum Act. In his conclusion, the Chief Public Prosecutor called up the OIN to terminate immediately this unlawful practice. However, the OIN ignored the position of the Chief Public Prosecutor.

The HHC initiated the intervention of the Chief Public Prosecutor again in February 2010 by providing the names and the case numbers of unlawfully detained asylum seekers in three alien policing jails in Hungary. In April 2010, the Chief Public Prosecutor's office again warned the OIN about the unlawfulness of the practice. The HHC has no information on the OIN's reaction, but has experience concerning the practice that has remained as described in the US Department of State's annual human rights report (released on 12 March 2010), which explicitly refers to the unlawful detention of asylum seekers in Hungary: "*On April 21, the Prosecutor General determined that the Office of Immigration and Nationality (OIN) was unlawfully detaining certain asylum seekers. The Prosecutor General sent a notice to the OIN demanding that it immediately enforce the law by releasing all asylum seekers whose applications had been admitted into the final asylum procedure. The OIN challenged this notice at the Ministry of Justice and Law Enforcement, suggesting an amendment to the law. The HHC reported that the unlawful practice continued at the end of the year despite the Prosecutor General's intervention.*"⁴⁹

Inadequate detention conditions: As the same detention regime applies to asylum seekers as to irregular migrants the same concerns prevail. Please see the concerns related to § 16(a).

Discrimination amongst asylum seekers: Hungary does not fulfil its obligation to provide certain services for detained asylum seekers set forth by the EU Reception Directive⁵⁰ for asylum seekers in general. Asylum seekers in detention benefit from fewer services (psychosocial assistance, legal aid etc.) than asylum seekers in open reception centres run by the OIN.

Treatment of vulnerable asylum seekers: Asylum seekers with special needs such as pregnant women, elderly, single women, asylum seekers with Post Traumatic Stress Disorder or other psychological problems do not receive differentiated treatment. On its monitoring missions the HHC witnessed that even 9 months pregnant women and persons with serious psychiatric problems are detained in alien policing jails.

16(c) The possibilities of judicial review of the detention of aliens and asylum seekers

Judicial review of detention exists but remains merely formal procedure. Local courts issue the same decisions every 30 days. The reasoning of these decisions is short and laconic lacking proper fact and risk assessment and individualization.

⁴⁸ Section 55 (3) of the Act LXXX of 2007 on Asylum provides that the asylum authority (a part of the Office of Immigration and Nationality) shall initiate the release of an asylum seekers in alien policing detention, whose asylum claim has been admitted to an in-merit procedure (following a maximum 15-day admissibility assessment).

⁴⁹ The full report is available at:

<http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136035.htm>

⁵⁰ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

Concerns related to § 17 of the List of Issues

The HHC is not aware of steps envisaged by the government in order to reduce overcrowding in alien policing detention facilities. According to the experience of the HHC'S monitoring missions to alien policing detention facilities in August 2010 we can conclude that the reopening of crammed police jails to detain foreigners has significantly deteriorated the physical conditions of alien policing detention in general.

The lack of proper medical and psychological care seemed to be a serious issue in all the 10 visited jails as well in others in Kiskunhalas and Nyírbátor in August 2010. The HHC staff received information from detainees stating that they mostly receive pain killers and sleeping pills for all their medical problems and even if they requested to see a psychologist their requests were disregarded.

Regarding specific dietary needs most of the detainees confirmed that such needs are respected although the quality and the quantity of food remained problematic in most of the jails (with the exception of the facilities in Csongrád and Sopron).

Other concerns related to freedom from torture, the treatment of prisoners, and the liberty and security of a person

Actual life sentence:

Hungary is one of the few European countries where life imprisonment without the possibility of parole exists. In the report on its 2007 ad hoc visit to Hungary, the CPT expressed grave concerns over the issue: "More generally, as regards "actual lifers", the CPT has serious reservations about the very concept according to which such prisoners, once they are sentenced, are considered once and for all to be a permanent threat to the community and are deprived of any hope of being granted conditional release. [...] Firstly, no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behavior, the delivery of personal development programs, the organization of sentence plans and security. In the light of the above, the CPT invites the Hungarian authorities to introduce a regular review of the threat to society posed by "actual lifers", on the basis of an individual risk assessment, with a view to establishing whether they can serve the remainder of their sentence in the community and under what conditions and supervision measures."⁵¹ Despite the view of the CPT and numerous Hungarian experts and NGO's, there is no intention to amend the provisions setting forth the possibility of imposing life imprisonment without parole.

The "three strikes" rule – recent amendment introducing mandatory life sentence into the Penal Code:

The Penal Code's recently passed amendment⁵² excludes the individualization of the sanctions by making it mandatory for the courts to sentence suspects to life imprisonment if certain conditions are met.

This provision infringes the constitutional principle (established by the Hungarian Constitutional Court in its Decision no. 13/2002) that criminal sanctions shall be individualized in accordance with the specific circumstances of the case and the perpetrator, because this is the only way in which the requirement of the sanction's proportionality can be guaranteed.

To add to this problem, the conditions for mandatory life sentence are formulated in a way that perpetrators with offences of very different severity may have to face this same sanction. For instance, due to the regulation set out in Article 85 Paragraph (4) of the Penal Code, a person who commits two instances of light bodily harm and a group robbery (involving at least three perpetrators) with the aim of taking more than HUF 2 million (EUR 7,000) will fall under the scope of mandatory life

⁵¹ 2007 CPT Report on Hungary, <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>

⁵² <http://www.parlament.hu/irom39/00025/00025.pdf>

sentence just like someone who is convicted for murdering three people with a base motivation and with outstanding cruelty.

Moreover the amendment of the Penal Code was not validated by criminal statistics (which show a decreasing tendency in violent offences)⁵³ and was lacking in well established rational justification. Even the MPs proposing the amendment justified the introduction of the “three strikes” bill with the electoral will and societal expectation for a stricter legal environment instead of facts of criminology.⁵⁴

The “three strikes law” was widely criticized by key legal professionals; judges, NGOs and other criminal law experts.⁵⁵

Grade 4 prisoners placed in special security units or cells:

Although the law⁵⁶ expressly provides that placement in different security groups may not have any impact on detainees’ rights, in practice those qualified as Grade 4 prisoners⁵⁷ (held in the most severe regime) suffer disadvantages. These prisoners may be placed into special security units or special security cells,⁵⁸ which means that they are under constant supervision; they may move within the territory of the institution only with permission and under supervision; they are always handcuffed when leaving their otherwise always closed cells; their participation in communal (sport or cultural) activities is restricted, so they practically may not meet any other prisoner, e.g. spend their one-hour outside activities in a separate yard which is much smaller and not even open-air in the true sense of the word; the range of objects and articles the inmate may keep with him/herself may be restricted etc. Those placed in a special security cell may be subject to even more rigorous rules (their cells are smaller, they are placed alone having no contact with other detainees at all).

A special case of placement is when an inmate is placed in a special security cell not because he/she is considered dangerous, but in order to protect him/her from others.

The admission committee of the given penitentiary institution may order that the inmate will be placed in a special security cell for a maximum of three months. The admission committee may prolong placement with a further three months on two occasions. After nine months, placement shall be ordered by a special committee appointed by the national commander. The special committee shall examine at least once in every six months whether placement in the special security cell is well-founded.⁵⁹ The admission committee may order the placement of the inmate in a special security unit for a maximum of six months, which can be prolonged (the law does not clarify, for how long). It should be examined once in every six months whether placement in the special security unit is well-grounded.⁶⁰

The CPT called upon the Hungarian authorities to provide the defendants “written information on the reasons for the measure as well as the opportunity to express their views on the matter”.⁶¹ In spite of the decision’s above-listed impacts on detainees’ rights, in most cases no reason is communicated to the prisoner as a justification of the decision regarding his/her grading, since the law prescribes that the reasons may be revealed only if that does not threaten the safety of the detention. Consequently, the effectiveness of the defendant’s general right to a remedy is severely restricted due to the lack of any justification which he/she could challenge. Furthermore, it is up to the penitentiary institution to decide whether a Grade 4 prisoner is detained under general conditions or in a security unit or cell. The procedure is informal in the sense that there is no formally regulated procedure or placement

⁵³ <http://www.mklu.hu/cgi-bin/index.pl?lang=hu>

⁵⁴ <http://www.parlament.hu/irom39/00025/00025.pdf> (Hungarian)

⁵⁵ <http://www.hirextra.hu/2009/02/14/harom-csapas-torveny-alkalmazat/>

⁵⁶ Section 44 of Decree no. 6/1996 of the Minister of Justice (Penitentiary Rules)

⁵⁷ According to Article 42 of Penitentiary Rules, upon his/her reception to the penitentiary institution, the inmate is placed in one of four security regimes according to the threat he/she poses to the security of detention. Grade 4 prisoners are those who are expected to escape or commit an act severely endangering or violating the order of the penitentiary or his/her or other people’s right and/or physical integrity or who have already committed such acts, and whose safe detention may only be guaranteed through guarding or – exceptionally – through surveillance.

⁵⁸ Section 47 of the Penitentiary Rules

⁵⁹ Section 47 (5) of the Penitentiary Rules

⁶⁰ Section 47 (6) of the Penitentiary rules

⁶¹ 2006 CPT Report on Hungary, 64.

decision communicated to the affected prisoner. There is no effective legal remedy against the placement, and it is not possible for the inmate to initiate the review of his/her isolation. Furthermore, the CPT's recommendation⁶² concerning the review of the policy of the application of means of restraint to prisoners placed under a special security regime was not taken into consideration.

Special security units are operated in the high-security prisons located in Sopronkőhida and Sátoraljaújhely.

The HSR regime is Szeged:

Within the Szeged Maximum and Medium Security Penitentiary Institution, a special unit has been set up for persons serving their actual life sentence, and inmates serving other long imprisonment sentences (the "HSR Unit"). In 2007, the CPT paid an *ad hoc* visit to assess conditions in the unit. The CPT revealed numerous problems in relation to the unit. The observations included the lack of sufficient sports and cultural activities, the excessive use of means of restraint, the insufficient visiting and phone call entitlements, and so on.

Detention of juveniles:

In the Hungarian penal system, juveniles between the age of 14-18 years can (i) be held in pre-trial detention, (ii) they can be under reformatory education or (iii) they can serve their prison sentence. A prison sentence can only be served in juvenile penitentiary institutions. Pre-trial detention can be served in either a reformatory institution (*javítóintézet*), or a juvenile penitentiary, while reformatory education can only be implemented in a reformatory institution.

Therefore, two types of detention are implemented in juvenile reformatory institutions: reformatory education and pre-trial detention. According to the Criminal Code, the court may sentence a juvenile offender to serve time in a reformatory institution (reformatory education) if it regards this as necessary for the juvenile offender's development. Under the Code of Criminal Procedure, the court ordering pre-trial detention of a juvenile may order that the pre-trial detention be implemented in a reformatory institution.

§ 74 of the Government Report states that no severe problems are raised in relation to the detention of juveniles. This is in clear contradiction with the findings of an investigation the Parliamentary Commissioner for Human Rights conducted in 2008 into conditions in juvenile penitentiaries, prompted by the alleged suicide of an inmate at the Juvenile Penitentiary of Tököl in late 2007.

Whereas the Ombudsman found the conditions satisfactory in two (Kecskemét and Pécs) of the four penitentiary institutions for juveniles, he expressed grave concerns over the conditions in Tököl and Szirmabesenyő.

While the Ombudsman severely criticized physical conditions in the Szirmabesenyő institution, in relation to Tököl, the Ombudsman stressed that the atmosphere of the juvenile penitentiary was the worst experienced during his entire investigation. Tököl was the only institution that did not provide daily warm showers. The Ombudsman also heard many complaints concerning the quality of food served in Tököl. The Ombudsman warned that the number of penitentiary staff is insufficient in these penitentiaries. A so-called "educator" (*nevelő*) is responsible for so many inmates that it is not possible to fulfill tasks that are aimed at enhancing the detainees' reintegration into society. According to statistics, the number of aggressive acts between inmates rose sharply in 2007 throughout the penitentiary system and particularly among juveniles. Serious acts of violence were committed in the juvenile penitentiaries in Tököl and Szirmabesenyő. In contrast, no such acts were reported in Pécs or Kecskemét. The Ombudsman concluded that the conditions in juvenile penitentiaries where the number of inmates is high pose a direct threat to detainees' right to life, human dignity, and to proper moral, intellectual and physical development.

The Ombudsman also examined county remand prisons where pre-trial detainees are held (both juveniles and adults), and found that in the particular institutions visited, overcrowding was unbearable. For example, the rate of overcrowding was 200% in the Baranya County Remand Prison

⁶² 2006 CPT Report on Hungary, 66.

where 6 people were placed in a cell originally designed for only one person. Practically no cultural and sports activities were available for the inmates (including juveniles). The Ombudsman concluded that placement of juveniles in such institutions poses a threat to the juveniles' right to proper moral, intellectual and physical development.

The Ombudsman also examined conditions in juvenile reformatory institutions and found that these are much better equipped and in better condition than the juvenile penitentiaries, also offer a wider range of activities and no serious offences had been committed among detainees. The Ombudsman therefore suggested that the capacity of reformatories be increased because placement in these institutions serves the interests of the juveniles better than placement in penitentiaries. The Ombudsman also suggested that pre-trial detention of juvenile detainees should with the exception of the most severe cases as a rule be served in reformatories.

Confinement of juveniles in petty offence proceedings:

The new Government introduced extremely strict regulations on petty offences. Petty offences are sanctioned behaviors that do not reach the level of severity of criminal offences. The petty offence procedure resembles the criminal procedure with less procedural safeguards, but also with less severe sanctions. Most petty offences are punishable with a fine only, and only some can be sanctioned with confinement up to 60 days.

Under the amendment of the act on petty offences, petty offences against the property (including petty thefts) have become punishable with confinement (whereas beforehand they were only punishable with a fine). Moreover, the previously existing ban on sanctioning juveniles with a confinement was abolished, meaning that under the new rules, juveniles committing a minor transgression may be sentenced to confinement from now on (up to 45 days).

The amendment did not take into consideration and alter that provision of the Petty Offence Act which states that if a juvenile does not have an income or property, he/she may not be punished with a fine. This results in the situation that juveniles are actually in a worse position than adults, because the only applicable sanction in their case is confinement.

Alternative sanctions – such as labor in the public interest or mediation (which are available in the criminal procedure handling more severe violations) – are not applicable in petty offence proceedings, so juveniles committing minor transgressions are not offered restorative, less restrictive possibilities than confinement.

The absurdity of the new provisions can be illustrated by the fact that thefts of valuables worth more than HUF 20,000 (EUR 70) qualify as a criminal offence while those worth less than this amount qualify as a petty offence. In a criminal procedure there are several alternative sanctions that do not restrict liberty (warning, placement under supervision of a probation officer, suspended imprisonment, labor in the public interest, mediation), while in the case of a petty offence the sanction will be seriously harsher. Thus, a juvenile offender stealing HUF 21,000 is in a better position than someone stealing less than HUF 20,000.

The problem is aggravated by the fact that according to the relevant act those who commit a petty offence punishable with confinement, if caught in the act, can be taken into short-term detention (for up to 72-hours) by the Police automatically, i.e. the Police do not need to assess the seriousness of the act or the probability of the court imposing confinement.

In the first weeks after the new rules have taken effect, they resulted in incidents triggering a public outcry. For example, three 15-year old girls who tried to steal cheap jewelry (in the value of less than HUF 10,000 or EUR 35 EUR) from a shop, were taken into a more than two-day long short-term detention by the police. One of the girls had to be taken to a psychiatric institute because of the shock during the first night of her detention. None of the girls have ever done anything illegal before.⁶³

⁶³ http://index.hu/belfold/2010/09/03/fel_se_fogtam_annyira_szegyelltem_magam/

The new legislation does not take into account Hungary's international obligations as foreseen by the UN Convention on the Rights of the Child, Article 37 of which states that "the arrest, detention or imprisonment of a child [...] shall be used only as a measure of last resort and for the shortest appropriate period of time".

Furthermore, as a result of the current amendments, juveniles committing petty offences may be detained although separated from adults, but in the same penitentiary institutions as adults, which is also in breach of the Convention on the Rights of the Child (as interpreted by the Committee on the Rights of the Child) and does not reflect the special needs of juveniles.

Court employees without judicial appointment may proceed in certain cases

Parallel to broadening the scope of petty offences punishable by confinement, the Parliament decided on giving additional rights to certain court employees (called "*bíróági titkár*"; judicial secretary – law graduates who have accomplished their three year judicial practice and taken their judicial exams but have not been appointed by the President). According to the current amendments of the Constitution and the relevant acts of Parliament, some of these judicial secretaries have been vested with the right to decide in petty offence cases resulting in the confinement of the perpetrator, meaning that they may deprive persons of their liberty.⁶⁴ The problem with this is that judicial secretaries are not independent in the way judges are: they are not appointed by the President of Hungary as judges, but by the head of the respective county (metropolitan) court, and they may be dismissed by the head of the court as well. It is also the head of the county court who selects judicial secretaries deciding in cases.

Hungary's failure to sign and ratify OPCAT

Despite publicly stating that Hungary will become a party to the Optional Protocol to the UN Convention against Torture (OPCAT), Hungary has still not signed and ratified this instrument. At the time of writing, a decision on the designation of the National Preventive Mechanism is pending.

Prohibition of incitement to racial hatred

Concerns related to § 20 of the List of Issues

Incitement to hatred in the Criminal Code and in the Civil Code

Racist, anti-Semitic or homophobic expressions may be punished under the Criminal Code, ordering to punish perpetrators of a criminal offense called "incitement against a community". According to Article 269 of the Criminal Code, any person who incites to hatred before the great public against (i) the Hungarian nation or (ii) any national, ethnic, racial group or certain groups of the population, is guilty of a felony punishable with imprisonment for up to three years. It has to be stressed that according to the judicial practice and the decisions of the Constitutional Court of Hungary, the expressions shall be aimed at and suitable for inciting others to act, and the danger of violent acts committed because of the given expressions shall be clear and present.⁶⁵ However, even in the light of this restrictive interpretation of the provision, it seems that the authorities are reluctant to order investigations, file indictments or impose sentences in these cases (even if the additional "clear and present danger" condition developed by the jurisprudence and not indicated in the original law are met)

In the past years, there have been some repeated attempts by the Government to address the issue of hate speech, which – due to the existing practice – is very difficult to sanction within the existing legal framework. In October 2007, the Parliament passed a bill⁶⁶ amending Act IV of 1959 on the Civil Code of Hungary. According to the amendment proposed by the then Government party, the Hungarian Socialist Party, the members of a certain minority or their organizations could have sued for a compensation in case of statements offending in general the members of a group with certain

⁶⁴ The text of the bills is available at: <http://www.parlament.hu/irom39/00580/00580-0027.pdf>, <http://www.parlament.hu/irom39/00579/00579-0014.pdf>.

⁶⁵ For the relevant decisions of the Constitutional Court in English, see: http://www.mkab.hu/content/en/en3/30_1992.pdf, http://www.mkab.hu/content/en/en3/12_1999.pdf

⁶⁶ The text of the bill is available at: <http://www.parlament.hu/irom38/03719/03719.pdf>.

characteristics, such as national or ethnic minority groups. However, the President of Hungary – whose signature is necessary for the validity of acts of Parliament – refused to sign the bill, and turned to the Constitutional Court of Hungary, which has the power to annul unconstitutional bills and laws.⁶⁷ In February 2008, the representatives of the Government party proposed to amend the Criminal Code of Hungary, and intended to introduce a new criminal offence, aggravating the current regulation on hate speech.⁶⁸ The Parliament adopted the bill, but the President again refused to sign it, and sent the bill to the Constitutional Court.⁶⁹ The Constitutional Court delivered a decision on the two bills in June 2008, and annulled both, claiming that they disproportionately restricted the freedom of expression.⁷⁰

In November 2008, the Parliament adopted a separate bill⁷¹ concerning conducts offending human dignity (and imposing civil law sanctions on hate speech), which was also sent to the Constitutional Court by the President.⁷² The Constitutional Court has failed to deliver a decision on the issue in the two years that have passed. Lastly, in June 2009, the Government party decided to propose the amendment of the Constitution in relation to the freedom of expression and hate speech with the intent of making stricter regulation constitutionally possible, but the Parliament did not adopt the bill, which would have required the votes of the opposition as well.⁷³

Role of the Equal Treatment Authority in the fight against hate speech:

On the other hand it seems that the Equal Treatment Authority⁷⁴ is ready to decide on racist speech cases not amounting to the level of a criminal offence, filling an important gap in the Hungarian law enforcement concerning racist, homophobic, anti-Semitic, etc. speech. The decisions taken in the cases presented below are important, because they show that the Equal Treatment Act's provisions⁷⁵ on harassment can be efficiently used against racist speech not amounting to the level of a criminal offence. (According to Article 10 of the Act, harassment is a sexually charged or other conduct violating human dignity related to the relevant person's protected characteristic [i.e. racial or ethnic origin, sexual orientation, disability, age, gender, religion, etc.] with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment.) It shall be stressed that the fact that the Equal Treatment Authority proceeded in the cases below contributes to the view that the Equal Treatment Authority fulfils an important role in the Hungarian anti-discrimination system.

On 19 October 2009, the HHC's lawyer filed an *actio popularis* claim with the Equal Treatment Authority concerning the statements of the Kiskunlacháza mayor, who in relation to a murder (with regard to which at present the suspicion is that it was committed by a non-Roma person) spoke at a public demonstration about the settlement's population having had enough of "Roma aggression" and made other statements giving the impression that in his view the murder had been committed by Roma people. The HHC's lawyer claimed that by doing so, the mayor had committed harassment in relation to the region's Roma population. In its decision dated 19 January 2010, the Equal Treatment Authority established that harassment had been committed, forbade the continuation of the violation

⁶⁷ The motion of the President is available at:

http://www.keh.hu/admin/data/file/170_20071113abinditvany_ptk_modositas_gyuloletbeszed_cimerrel.pdf.

⁶⁸ The text of the bill is available at: <http://www.parlament.hu/irom38/02785/02785.pdf>.

⁶⁹ The motion of the President is available at:

http://www.keh.hu/admin/data/file/174_20080301abinditvany_btk_modositas_gyuloletbeszed_cimerrel.pdf.

⁷⁰ The decision of the Constitutional Court 96/2008. (VII. 3.) on the amendment of the Civil Code is available at:

<http://www.mkab.hu/netacgi/ahawkereuj.pl?s1=&s2=&s3=&s4=&s5=&s6=&s7=&s8=&s9=&s10=2008+j%FAnius&s11=Dr&r=4&SECT5=AHAWKERE&op9=and&op10=and&d=AHAW&op8=and&l=20&u=/netahtml/ahawuj/ahawkere.htm&p=1&op11=and&op7=and&f=G>; the decision of the Constitutional Court 95/2008. (VII. 3.) on the amendment of the Criminal Code is available at:

<http://www.mkab.hu/netacgi/ahawkereuj.pl?s1=&s2=&s3=&s4=&s5=&s6=&s7=&s8=&s9=&s10=2008+j%FAnius&s11=Dr&r=5&SECT5=AHAWKERE&op9=and&op10=and&d=AHAW&op8=and&l=20&u=/netahtml/ahawuj/ahawkere.htm&p=1&op11=and&op7=and&f=G>.

⁷¹ The text of the bill is available at: <http://www.parlament.hu/irom38/06219/06219.pdf>.

⁷² The motion of the President is available at:

http://www.keh.hu/admin/data/file/2769_20081126abinditvany_gyuloletbeszed_2008_nov_cimerrel.pdf.

⁷³ http://www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=38&p_izon=9584,

http://index.hu/belfold/2009/06/29/a_fidesz_megsem_szavazza_meg_az_alkotmanymodositast/

⁷⁴ www.egyenlobanasmod.hu

⁷⁵ Act CXXV of 2003 on Equal Treatment, available in English at:

http://www.egyenlobanasmod.hu/data/Act_CXXV_2003%20English.pdf.

and ordered that the decision be made public.⁷⁶ The Equal Treatment Authority stated that it was clear on the basis of the facts and documents that the mayor knew that there was a tension in the city and that there was in general a strong negative approach against the Roma members of the community. The Equal Treatment Authority claimed that the mayor's statements were able to create fear on behalf of the Roma inhabitants and contribute to a hostile environment against them.

On 3 September 2009, one of the TV-channels submitted the racist and homophobic statements made by the mayor of the town Edelény at the sitting of the local council. Oszkár Molnár stated that Roma women hit their stomach while being pregnant with rubber hammers and take medicines in order to give birth to children with disabilities, thus, being entitled to higher sums of financial aid paid by the state.⁷⁷ In the course of the same sitting the mayor also said that homosexuals "will get to know what homosexual marriage means if they happened to be in prison".⁷⁸ The Equal Treatment Authority started an ex officio procedure against the mayor, and established that Oszkár Molnár had committed harassment and violated the requirement of equal treatment with regard to Roma women, and pregnant women and mothers living in the villages mentioned by him. The Equal Treatment Authority forbade the continuation of the violation and ordered that the decision be made public on the website of the Equal Treatment Authority and of the city of Edelény.⁷⁹ The mayor asked for a judicial review, but the Metropolitan Court [*Fővárosi Bíróság*] refused his claim in its decision brought on 23 March 2010, thus the decision of the Equal Treatment Authority became final.

Principle of equality and non-discrimination, protection of the family and the child

Concerns related to § 22 of the List of Issues

22(a) De facto segregation of Roma children in education:

Members of the Roma community are discriminated against in all fields of life. Segregation of Roma children in education is widespread: approximately one-third of them are educated in segregated classes.⁸⁰ Segregation also means that Roma children's education is of lower quality, which decreases their chances to gain admission to higher education, and to reach a better financial and social situation. However, despite the long-known, clear evidences on segregation and judicial decisions ruling that segregation regarding certain schools has to be terminated, the situation has remained unchanged.

Segregation in public schools is a serious ongoing problem in Hungary. NGOs and government officials estimate that 20 percent of Roma children were placed without a well-founded reason in remedial classes for children with mental disabilities, effectively segregating them from other students. Schools with a majority of Roma students employed simplified teaching curricula, were generally less well equipped, and were in significantly worse physical condition than those with non-Roma majorities.⁸¹

NGOs sued Hungarian municipalities numerous times under the 2003 Equal Treatment Act in order to raise public awareness and government attention about the issue.

Some examples are presented below

- On 9 June 2006, the Debrecen appeals court overruled a negative first instance judgment in a case brought with regard to the segregated education of Roma children in the Northeastern Hungarian city of Miskolc. The Court found that a decision that integrated seven schools without simultaneously redrawing the catchments areas of Miskolc upheld the segregation of Romani children, thus violating their right to equal treatment based on ethnic origin. The

⁷⁶ For the decision of the Equal Treatment Authority, see: http://helsinki.hu/dokumentum/EBH_hatarozat.pdf.

⁷⁷ http://www.youtube.com/watch?v=x5fv_PMLD1c

⁷⁸ <http://www.youtube.com/watch?v=fozP2Wd6-wY>

⁷⁹ For the decision of the Equal Treatment Authority, see: <http://www.egyenlobanasmod.hu/data/1475-2009.pdf>.

⁸⁰ http://econ.core.hu/file/download/zk/zoldkonyv_oktatas_05.pdf, p. 123.

⁸¹ <http://www.state.gov/g/drl/rls/hrrpt/2006/78816.htm>

court ordered local authorities in Miskolc to put an end to the situation and publicize the finding through the Hungarian Press Agency.⁸² Later on, some of the concerned pupils initiated a lawsuit against the municipality claiming moral damages. The Court awarded compensation to victims of anti-Roma school segregation on 2 June 2010 for enduring segregation during their primary schooling.⁸³

- The Chance for Children Foundation (CFCF)⁸⁴ launched an *actio popularis* claim against the local council of Hajdúhadház and the two elementary schools providing education in the city claiming segregation and direct discrimination. In May 2007 the Hajdú-Bihar County Court established⁸⁵ that the situation in Hajdúhadház amounts to segregation by the schools and the local council maintaining them. The Court ordered the defendants to terminate the violation by the beginning of the 2007/2008 academic year, and the local council was obliged to publish a letter of apology. Upon the plaintiff's request for review, in its decision⁸⁶ the Supreme Court established that – besides the direct discrimination recognized by the court of second instance – segregation had also taken place and ordered the local council to publicize the decision through the Hungarian News Agency.⁸⁷
- On September 17 2009, the CFCF sued the Ministry of Education and Culture for violating the Equal Treatment Act by failing to take measures against the segregation of Roma children in public schools. The NGO explained the action with the fact that their previously launched and successful desegregation cases had failed to yield any result. They claimed that without Ministerial intervention, the situation cannot and will not change. The case is still pending.

Confinement of juveniles for petty offences:

See what is said in relation under the Section "Other concerns related to freedom from torture, the treatment of prisoners, and the liberty and security of a person" above.

Dissemination of information relating to the Covenant and the Optional Protocol

Concerns related to § 25 of the List of Issues

Based on the lack of related internet search-results, and information from professional contacts it can be stated the Hungarian Governmental institutions do not take steps to disseminate information about the process of assessing Hungary's fifth periodic report or the Committee's previous concluding observations on the State party's fourth periodic report.

⁸² http://www.cfcf.hu/miskolc1_hu.html

⁸³ The children were awarded 100,000 HUF (about Euro 350) in compensation, and the decision confirmed that regardless of the children's individual fate after they have left primary school, segregation itself is unequal treatment, and its victims are entitled to damages in civil law.

⁸⁴ www.cfcf.hu

⁸⁵ Decision no. 6.P.20.341/2006/50

⁸⁶ Decision no Pfv.IV.20.936/2008

⁸⁷ http://www.cfcf.hu/hajduhadhaz_hu.html