Briefing paper of the Hungarian Helsinki Committee
for the
Working Group on Arbitrary Detention
UN Commission of Human Rights

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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 defence 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 centred 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 defence and equality before the law.

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The Hungarian Helsinki Committee (HHC) wishes to respectfully call the attention of the Working Group on Arbitrary Detention UN Commission of Human Rights (UNWGAD) to the following problems which the HHC identified in the course of its activities regarding detention in the field of criminal justice
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Content

Pre-trial detention

1. The excessive use of PTD

The excessive use of pre-trial detention continued to be **one of the most serious problems** of the Hungarian criminal justice system, nevertheless there are **undoubtedly progressive trends** in the legislation and the practice.

On the 31st of December 2017, 3,401 suspects were in pre-trial detention in Hungary, which was the 20% of the total prison population. The previous years showed a significant decrease which started in 2014: on the 31st of December 2013, 5,053 suspects were detained in pre-trial detention, which was the 28% of the total prison population. The numbers have been improving ever since.

Table 1 – The number of the detainees in pre-trial detention and their ratio to the total prison population[1]

Date	Number of detainees in PTD	The ratio to the total prison population
31 December 2010	4 803	29.6%
31 December 2011	4 875	28.4%
31 December 2012	4 888	27.9%
31 December 2013	5 053	28.0%
31 December 2014	4 400	24.6%
31 December 2015	3 978	22.8%
31 December 2016	3 646	20.6%
31 December 2017	3 401	20.0%

The present progress is the **result of the decreasing number of prosecutorial and police motions in the investigation phase.** The success-rate of the motions filed by the police and prosecution also decreased in the past years, however they are still relatively high.

Another reason is the **decrease of the 'success rate' of the authorities' motions, therefore the pre-trial detentions ordered by the court in the investigation phase.** The success was rather high, above 90%, a reduction started in 2014, and the national average fell below 90% in relation to the prosecution and below 80% in relation to the police. Obviously these data still show a high success rate of the motions.

Table 2 – Police and prosecutorial motions aimed at ordering pre-trial detention and court decisions ordering pre-trial detention prior to filing the bill of indictment

Year	Police motions aimed at ordering pretrial detention	Success rate of the police motions	Prosecutorial motions aimed at ordering pretrial detention [2]	Pre-trial detentions ordered upon a prosecutorial motion	Success rate of the prosecutorial motions
2010	7 368	82.5%	6 355	5 885	92.6%
2011	7 417	80.6%	6 245	5 712	91.5%

[1] Sources of the data from 2010-2015: Hungarian Prison Service (http://bv.gov.hu/sajtoszoba). Source of the data from 2016: *Year Book – National Prison Administration – 2016,* http://bv.gov.hu/download/3/2f/c1000/A%20B%C3%BCntet%C3%A9s-v%C3%A9grehajt%C3%A1si%20Szervezet%20%C3%89vk%C3%B6nyve%202016.pdf, p. 18. Source of the data from 2017: *Year Book – National Prison Administration – 2017,* http://bv.gov.hu/download/9/f0/32000/A%20B%C3%BCntet%C3%A9s-v%C3%A9grehajt%C3%A1si%20Szervezet%20%C3%89vk%C3%B6nyve%202017.pdf, 17. p.

[2] The number of prosecutorial motions without a police application is included in this column.

2012	7 332	77.7%	5 861	5 334	91.0%
2013	8 051	80.0%	6 673	6 098	91.4%
2014	6 579	78.2%	5 319	4 836	90.9%
2015	6 205	78.0%	5 075	4 453	87.7%
2016	5 936	78.9%	4 846	4 199	86.6%
2017	5 694	77.6%	4 552	3 997	87.8%

Although the success rate of the prosecutorial motions continuously decreasing, the **territorial differences** are still considerable. For instance, the rate in 2017 was 100% in Vas county and in Békés county while the Central Investigative Prosecution's the rate was "merely" 75.9%.[3]

Although the amount of prosecutorial motions decreased, **the number of the alternative coercive measures is still rather low compared to the pre-trial detentions. The table below presents the data of the house arrests and curfew –** it is clearly visible that the amount of alternative measures is still rather low, the curfew (instead of a pre-trial detention) increased by 57 % and the house arrests increased by 60%.

Table 4– alternative coercive measures ordered instead of the pre-trial detention prior to filing the bill of indictment [4]

Year	Prosecutorial motions aimed at ordering pretrial detention	Decisions of the court		
		Pre-trial detention	Prohibition of leaving the settlement of residence (curfew)	House arrest
2010	6 355	5 885	136	97
2011	6 245	5 712	168	104
2012	5 861	5 334	140	141
2013	6 673	6 098	169	148
2014	5 319	4 836	120	114
2015	5 075	4 453	154	162
2016	4 846	4 199	168	198
2017	4 552	3 397	174	160

Regarding the **bail**, in 2017 the court accepted it in only at 18 occasions out of 26 offers. In the number of offers a 50.9% decrease can be detected compared to the previous year. In the 17 cases the court terminated the pre-trial detention, in 1 further case it accepted the bail instead of prolonging the pre-trial detention.[5]

The conclusion is that the tendencies are generally favourable, however, the decreasing number of pre-trial detentions **does not grant in itself the compliance of the judicial decision-making and the judicial practice with the international standards.**

The other serious problem with pre-trial detention is its **excessive length** in a considerable number of cases: suspects often remain in detention for several months, even for years. Research findings of the HHC supported that this is rather frequent in the Hungarian practice, and the research group analysing the Hungarian case law of the Curia (the Hungarian Supreme Court) published similar results in 2017 after examining judicial decisions made between 2014-2015.[6]

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[3] Source: *Data provided for a freedom of information request by the HHC on 27 September 2018.*
[4] Source: *Data provided for a freedom of information request by the HHC on 27 September 2018.*
[5] Source: *Ügyészségi statisztikai tájékoztató (büntetőjogi szakterület) 2013, Legfőbb Ügyészség Informatikai Főosztály, (Statistical Information Note of the Prosecution [Criminal Law Division], Chief Prosecutor's Office, IT Department)* lásd: http://mklu.hu/repository/mkudok2832.pdf, p. 48., table 56.
[6] *Összefoglaló a személyi szabadságot korlátozó kényszerintézkedésekkel kapcsolatos joggyakorlat vizsgálatáról*. Kúria Büntető Kollégiuma, Joggyakorlat-elemző Csoport, 2016.El.II.JGY.B.2., *[Summary report of the research analysing the case law related to the coercive measures limiting personal liberty. Criminal College of the Curia, Research Group*

When reviewing the judgments of the ECtHR concerning Hungary in which the violation of Article 5(3) of the ECHR was established, it can be concluded that in all such cases 'Hungarian authorities were [called to account] for more or less same reasons [...]: the deprivation of liberty which may be considered justified in the beginning of the pre-trial detention is upheld for an unreasonably long time, in a way that the specific circumstances of the procedure and the defendant are not taken into account, they refer to the risk of hindering the procedure and/or the risk of absconding automatically (with regard to the latter, usually taking into account exclusively the gravity of the punishment that may be imposed), and do not consider in reality the possibility of applying a less restrictive coercive measure even if the individual circumstances [...] would make it reasonable.'

The governmental communications related to the execution of the judgments after 2011 did not foresee any 'general measures' to address or prevent the violations.

- In the case of *Darvas v. Hungary* (which was commenced based on an application is 2007)[7], the examination was terminated by the Committee of Ministers, the Hungarian government presented a report[8] (thus before the level of pre-trial detentions started to decrease). In this the following reasoning can be found: 'Further general measures were unnecessary as the case was an isolated one, and the Convention as well as the case-law of the ECtHR both have direct scope in the Hungarian legal system.'

- In the case of *X. Y. v. Hungary* (and 12 other in this case-group)[9], the execution is examined in a so called 'standard' procedure. In this case, the last report[10] was presented by the government in 2013 to the Committee of Ministers and it contained only the following: 'Regarding the Article 5 § 3, general measures related to the length of the pre-trial detention were already taken in the Imre, Maglódi, Csáky and Bárkányi v. Hungary cases (see: Resolution CM/ResDH(2011)222).'

The problem is that in the cases referred by the government the general measures were the amendments of the old CCP entered into force in 1st of July 2003 and 1st of May, 2006. (In two of the mentioned cases, the applications were filed before the amendments of the CCP, and in other two, the applications were filed in February 2002 and October 2004, furthermore one case was a pre-trial detention executed between July 2005 and September 2007.) Thus, these general measures are irrelevant to the cases in the case group of *X.Y. v. Hungary* as the applications were filed after the amendment of the CCP entered into force in 2006 (the first in 2007 and the last in 2012).

Moreover, the problems arose not only in the general measures of execution of the Strasbourg judgments but also in other aspects in individual cases: in the *Süveges v. Hungary*[11]case, the ECtHR ruled that the pre-trial detention of the applicant violates Article 5 § 3 of the Convention, despite of the ECtHR judgment 2 and a half years after the decision, the applicant is still in pre-trial detention in the same case while preparing this background material.[12]

The latest relevant decision of the ECtHR was in the *Lakatos v. Hungary*[13] case. The ECtHR ruled that the 3-year-and-8-month long pre-trial detention of the applicant, furthermore the lack of consideration of the alternate coercive measures as well as the sematic reasoning violated Article 5 § 3 of the Convention. On the other hand, the ECtHR examined the issue in a more general sense, deciding whether a so called **'pilot procedure'**, namely if there is a systematic problem in Hungary with the pre-trial detentions. The Court concluded a negative answer to this question, therefore did not ordered a pilot procedure, for the following reasons (among others):

Analysing the Case-Law, 2016. El.II.JGY.B.2.] http://www.kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_7.pdf

[7] Application no. 19547/07, Judgment of 11 January 2011

[8] Available at: https://rm.coe.int/16804a3065.

[9] See the list of the cases at: http://hudoc.exec.coe.int/eng?i=004-11104.

[10] Available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2013)1184E.

[11] Application no. 50255/12, Judgment of 5 January 2016

[12] See furthermore the petition filed by the applicant to the Committee of the Ministers: http://hudoc.exec.coe.int/eng?i=DH-DD(2017)222E.

[13] Application no. 21786/15, Judgment of 26 June 2018

- As for now, around 60 applications are in front of the Court in which the applicants seek remedies for the violation of Article 5 § 3 of the Convention. According to the Court, although the amount of the pending cases shows that the violation of the applicants' right is not an 'isolated case', however the number of pending cases accumulated in five years which fact has to be taken into consideration. (§ 86)

- As the interfering CSOs[14] draw the attention, the pre-trial detention is truly the most ordered coercive measure, however, according to the ECtHR, solely the high amount of the detainees in pre-trial detention compared to the subjects of alternative coercive measures, does not necessarily mean an incompatible practice with the case-law of the ECtHR. (§ 87)

- Should the measures of the Hungarian government turn out to be insufficient, the Court can examine the possibility of launching a pilot procedure again. (§ 91)

The issue of the pre-trial detention and the coercive measures emerged in the *Varga and others v. Hungary* pilot decision, which decided on the overcrowding of the penitentiary institutions. The **ECtHR** ruled the following:
'In particular, when a State is not able to guarantee each detainee conditions of detention consistent with Article 3 of the Convention, it has been the constant position of the Court and all Council of Europe bodies that the most appropriate solution for the problem of overcrowding would be the reduction of the number of prisoners by more frequent use of non-custodial punitive measures […] and minimising the recourse to pre-trial detention [..]. In this latter regard, the Court notes that by the end of 2013 over five thousand of the inmates held in Hungarian prisons were persons detained on remand. […]' (§ 104)

In the monitoring of the execution of the judgement in the *Varga and others v. Hungary* case, the latest decision of the Committee of Ministers in March, 2018[15] touched upon this issue among others, and called the attention of the Hungarian authorities to continue the wider use of the alternative coercive measures and the aim to decrease the number of pre-trial detentions.

During the previous years, the international organizations engaged in the Hungarian practice of the application of the coercive measures. For instance, the **United Nations Human Rights Committee** concluded in 2018 in relation with Hungary that it welcomes the efforts to mitigate the overuse of the pre-trial detention, however, draws up its concerns regarding the possibility of unlimited pre-trial detention and maintenance of the pre-trial detentions, and to secure that the in the case of juvenile offenders, pre-trial detention should be ordered in only as the ultimate choice and for the shortest time. In relation with the detention conditions, the Human Rights Committee suggested that the Hungarian authorities should use more often the alternate coercive measures not limiting the personal liberty, and that Hungary should improve the physical conditions of detention. [16]

2. The new CCP

As of the 1 July 2018 a new Code of Criminal Procedure (Act XC of 2017, hereinafter: CCP) entered into force. The new CCP brings essential changes in the subject of the coercive measures: its expressed aim is the prevalence the basic **principle of gradation and necessity**, therefore pre-trial detention should only be ordered if its purpose cannot be achieved by the other forms of the criminal supervision (alternative coercive measures which limit the personal liberty without its complete deprivation). This is visible in both the structure of the CCP's chapter (where the criminal supervision and restraining order precede the pre-trial detention) and in the various provisions prescribing the principles of the gradation, necessity and proportionality.

[14] In the case, the Hungarian Helsinki Committee and the Human Rights Litigation Foundation intervened as a third party.
[15] Available at: http://hudoc.exec.coe.int/eng?i=004-10809.
[16] *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/HUN/CO/6&Lang=En, 37–38. and 41-42. §

'Article 271. (1) While ordering and executing the coercive measure, the fundamental rights of the person should be limited solely in the most necessary degree and length.
(2) A more serious coercive measure may only be ordered if the aim of the coercive measure cannot be achieved by a less serious coercive measure or another procedural action.'
'Article 276. (1) In a procedure against a defendant who is suspect of an offence punishable by imprisonment a judicial coercive measure limiting the personal liberty may only be ordered, prolonged or sustained if
a) the defendant is reasonably suspected or the bill of indictment was filed
b) it is necessary for achieving the aim of a judicial coercive measure limiting the personal liberty, and the aim cannot be otherwise ensured'
'Article 277. (4) Pre-trial detention may be ordered to ensure the presence of the defendant, to prevent encumbering or reversing the evidentiary procedure or reoffending, especially if taking into consideration
a) the nature of the criminal offence
b) the state and efficiency of the investigation
c) the personal and family circumstances
d) the relation of the defendant with other involved persons
e) the actions of the defendant prior to and during the criminal procedure
the judicial coercive measure limiting the personal liberty cannot be ensured by a restraining order or criminal supervision.'

Therefore the new CCP **considers the pre-trial detention as an ultima ratio tool** in accordance with the case-law of the ECtHR. Furthermore, the new CCP widens the options of alternative coercive measures available for the authorities, providing wider liberty to the judges tailoring their decisions to the personal needs of the defendant. (See below for more details.)

We anticipate that this important **conceptual change** and the reform of the alternative coercive measures contribute to the development of the practice regarding the pre-trial detentions and the more frequent application of the alternative measures. However, it has to be emphasized that **the stakeholders need to change their approach as well** – especially that so far not the provisions of the CCP themselves were the real obstacles for ordering the pre-trial detention exclusively in the truly necessary cases and that the decisions comply with the national and the international standards.

The previous research findings related to the special grounds of the pre-trial detention are still relevant as the new CCP does not change the special grounds but specifies them in more detail:[17]
'Article 276. (2) Judicial coercive measures limiting the personal liberty may only be ordered
a) in the interest of the defendant if
aa) the defendant has escaped, or has attempted to escape, or absconded from the court, the prosecutor or the investigating authority
ab) there is reasonable ground to believe that the presence of the defendant in the procedural actions cannot be otherwise ensured, especially owing to the risk of an escape or abscond
b) to prevent the encumbering or reversing of the evidentiary procedure if
ba) the defendant influenced or intimidated the witnesses or other persons, or by the destruction, falsification or secretion of physical evidence or electronic data or an object of confiscation of property or
bb) there is a reasonable ground to believe that the defendant would jeopardize the evidentiary procedure, especially by influencing or intimidating the witnesses or other persons or by destructing falsificating or secreting of physical evidence or electronic data or an object in the scope of confiscation of property
c) to prevent committing another criminal offence, if
ca) the defendant continued the offence which is the subject to the proceeding or consecutively the interrogation as a suspect, the defendant was interrogated based on the suspicion of another criminal offence punishable by imprisonment or
cb) there is reasonable ground to believe that the defendant would accomplish the attempted or planned criminal offence or would commit another criminal offence punishable by imprisonment.

We assume – as we did in our previous researches – that **the issues regarding the quality of the decisions as well as their conformity with the ECHR may be remedied if the prosecutors, judges**

[17] Compare with new CCP Article 276.

and defence lawyers paid raised attention towards the content and importance of the case-law of the ECtHR, in relation to the pre-trial detentions, and if trainings organized in this subject. The HHC is running a EU funded project analysing the changes in the practice under the new CCP, however it is too early to assess if improvements have been made.

Prison overcrowding

1. Data of prison overcrowding

Since the pilot judgment delivered in the *Varga and Others v. Hungary*[18] case by the ECtHR in 2015, concluding that prison overcrowding constitutes a structural problem in Hungary, the **average occupancy rate has been on the decrease**: as compared to 141% in 2014, it was 135% in 2015, 131% in 2016 and 129% in 2017. Data received from the National Penitentiary Headquarters (NPH) state that the overcrowding rate was 124% as of 30 June 2018. The data furnished by the NPH on the same day reveal that the overcrowding in the individual penitentiary institutions changed in a significant way (e.g. by close to 30% in the Jász-Nagykun-Szolnok County Penitentiary or the Tökül Juvenile Penitentiary Institution).

The average number of detainees increased from 17,792 in 2015 to 18,023 in 2016. In 2017 a slight decrease of 79 inmates was detected.[19] In June 2018 the number of inmates was 17,516. A **new methodology was introduced for calculating the capacity** of penitentiaries: as of January 2017, capacity is determined based on the overall floor area (save for toilets), whereas earlier the area of the furniture was deducted from the overall floor area.[20] At the same time the minimum space provided for the inmates increased from 3 to 4 m2. Surprisingly the NHP states that the legal modifications have not affected the overcrowding rates which remained unchanged according their data.

The HHC has received a response to its data request dated on 13 April 2018. The National Penitentiary Headquarters in its reply explicitly stated that on 5 April 2018 **the smallest moving space per inmate was 2.15 m2**: in the High and Medium Security Penitentiary Institute in Sátoraljaújhely 2 detainees were placed in a cell of 4.3 m2.

The government proposed a program to build 10 new detention facilities, but the program has not been launched yet as of September 2018 and **not even one new penitentiary was constructed**.

According to the official prison statistics, institutions that hold pre-trial detainees tend to be more overcrowded than institutions holding convicted prisoners.[21] The rate of overcrowding in almost half of remand houses exceeded 130% and in certain institutions it is higher than 150%. Furthermore overcrowding is still often accompanied by **unsatisfactory detention conditions**, such as toilets separated from the rest of the cell only by a textile curtain, inadequate number of toilets and sinks, and bedbugs.

2. Experiences gained by the latest HHC's monitoring visits in penitentiaries

The latest monitoring visit was conducted by the HHC in September 2017 at the Heves County Penitentiary Institution (place of institution: Eger). None of the cells of the institution provides the adequate moving space. The smallest moving space for an inmate was 1.92 m2. In the Borsod-Abaúj-Zemplén County Penitentiary Institution (place of institution: Miskolc, accommodating primarily male pre-trial detainees) where HHC conducted a monitoring visit in June 2017. The smallest moving space per detainee amounted to 1.5 m2.[22] It has to be noted that both are remand houses where overcrowding is even a more severe problem as indicated above in the present report.

The below photos were taken during the June 2017 monitoring visit conducted by the HHC at the Borsod-Abaúj-Zemplén County Penitentiary Institution's remand house.

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[18] Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13
[19] Review of Hungarian Prison Statistics, 2017/1, http://bv.gov.hu/download/0/fc/f1000/REVIEW_OF_HUNGARIAN_PRISON_STATISTICS_2017_1.pdf, pp. 3 and 6
[20] Decree 16/2014. (XII. 19.) of the Ministry of Justice, Article 121
[21] For official statistics see: http://bv.gov.hu/bortonstatisztikai-szemle
[22] https://www.helsinki.hu/wp-content/uploads/MHB_jelentes_foto_BAZMBVI_fin_BVI_BVOPeszrevetelekkel.pdf

In the Somogy County Penitentiary Institution (place of institution: Pécs, date of visit: March 2017) the average space per detainee in the most crowded cell was 2.83 m2. Such a small moving space was not an exceptional case: numerous inmates were held in the institution under similar conditions. Average occupancy rate in this penitentiary in 2016 was 123% which was below the national average.[23] In the Vác Strict and Medium Security Prison the average occupancy rate was 143% in 2016. During the HHC monitoring visit in August 2016 the 3 m2 personal space prescribed by law was guaranteed to 53 inmates, while in case of 773 inmates the prison could not comply with the relevant regulations. The smallest free moving space per detainee in a cell was 1.39 m2.[24]

The HHC paid a visit to the Márianosztra Penitentiary in April and a follow-up visit in May 2016. The general human right situation was extremely bad in the institution (e.g. masked, unidentifiable guards have been intimidating and violating the inmates, etc.). The overcrowding reached an unacceptable level: among the 101 cells of the institution the moving space was adequate only in 12 cells for 79 detainees. The remaining 606 inmates were held in 89 cells. In the most crowded cell merely 0.91 square meters of moving space was available for the inmates.[25]

The below photos were taken in April 2016 during the HHC visit to the Márianosztra Penitentiary.

Furthermore the HHC received numerous complaints from individual inmates, certain embassies and in the course of its monitoring visits from foreign inmates. Although the internal prison rules are available in multiple languages, **the prisoners who do not speak Hungarian face significant difficulties when communicating with the peer inmates or prison staff and also in maintaining contact with relatives or other correspondents**. This is especially the case if they are not from a neighbouring country or do not speak English and held in PTD when they are most possibly separated from same country nationals (complicit in the offence). The prison staff who the foreigner inmates are in contact with generally do not speak any foreign languages at all, moreover, the selection of books of the library is extremely limited and foreign television channels or radio stations are practically not available. Given the fact that communication possibilities of these prisoners are very limited or even non-existent they spend their terms in almost complete isolation.

[23] http://www.helsinki.hu/wp-content/uploads/MHB_jelentes_Somogy_Megyei_Bv_Intezet_2017.pdf, p. 2
[24] http://www.helsinki.hu/wp-content/uploads/Jelentes_Vac_2016-honlapra.pdf, p.2
[25] http://www.helsinki.hu/wp-content/uploads/MHB_jelentes_Marianosztrai-fegyhaz_2016_vegleges.pdf, p3

3. The system of remedies

The pilot judgment prompted the Hungarian Parliament to introduce a domestic remedy (complaint) and compensation procedure for persons detained in overcrowded cells, which meant a significant progress. While taking note of the *Domján v. Hungary* judgment,[26] saying that the domestic remedy (complaint) and compensation procedure introduced for those detained in overcrowded cells "meets in principle the criteria set out in the pilot judgment given in the case of *Varga and Others v. Hungary*", the HHC wishes to reiterate its standpoint that the solution chosen by the Hungarian Government is not ideal and that the **system of complaints is ineffective** due to the lack of sufficient prison capacity. The **system of complaints** on detention conditions to be submitted to the prison governor, which should primarily result in the transfer of the detainee to a not overcrowded cell or institution, **is ineffective** due to the lack of sufficient prison capacity. This assessment is supported by the National Penitentiary Headquarters' 5 May 2017 response to the HHC's freedom of information request on complaints and compensation claims related to the overcrowding of prisons. Between 1 January and 21 April 2017, altogether 984 complaints were submitted due to substandard detention conditions. **Only in** 136 cases **(13.8%) could governors take measures to remedy the situation within the concerned prison**, in the rest of the cases the complaint was forwarded to the national headquarters. Out of the 734 cases in which the national headquarters had taken a decision until 21 April 2017, **only in 72 (9.8%) could the complaining detainee be transferred into another prison**, in the remaining over 90% of the cases, there was no less crowded prison into which the complainant could have been transferred, so the case had to be referred back to the prison governor.

Concerns regarding the **compensation procedure** include that (1) it is a **precondition to submit a complaint to the prison governor** for claiming compensation, (2) the **amount of daily compensation is low** as compared to the just satisfaction granted by ECtHR, (3) the compensation procedure is **not adversarial**, and (4) compensation claims are **overburdening the penitentiary and the judicial system**. Repercussions against detainees submitting complaints have been also reported.[27] In addition, **authorities are frequently slow in providing data**. According to the law, penitentiary institutions shall collect all data related to the specific term of detention relevant to a complaint, and submit them to the competent court within 30 days. However, frequently they conduct this duty not even within 150 or 210 days. In case they do it on time, they tend not to submit a full report, and the court needs to request them to fill in the gaps with the missing data. In certain cases, the repeated requests of the judge are not reacted upon by the penitentiary institutions.

4. Shortages in staff

In its letter sent as a reply for a freedom of information request the National Penitentiary Headquarters declared that **863 staff positions have been unfilled** as of 1 February 2018. Furthermore between 1 January 2017 and 1 January 2018, 1099 staff members left the prison system, meaning that approximately **12% of all staff has quit** out of whom 358 left the system during the probation period. In 2015 341 contracted staff members resigned. The present shortage of staff may cause serious problems and may entail that inmates have less possibility to leave the cells or take part in meaningful activities since these arrangements would require more staff than simply being kept in the cells.

HHC recommendations:

- The possibility of "unlimited" **pre-trial detention** pending a first instance judgment in certain cases should be abolished; and the deficiencies of the practice of pre-trial detention decision-making as highlighted by European Court of Human Rights judgments should be addressed.

[26] Application no. 5433/17

[27] For more information, see the HHC's communication submitted to the Council of Europe: http://www.helsinki.hu/wp-content/uploads/HHC_communication_Varga_and_Others_v_Hungary_082017.pdf.

- **Life imprisonment** without the possibility of parole should be abolished.
- The number of **detainees in penitentiaries** should be decreased by the wider application of alternative, non-custodial sentences and coercive measures and less harsh criminal policy.
- The State should ensure that **detention conditions** (e.g. moving space, sanitary conditions) comply with international standards.

Communication with the relatives and lawyers by phone

Phone calls are allowed as follows. In case of medium security sub-regime, 40 minutes per week is allowed (in the low security sub-regime 50 minutes, and in the high security sub-regime only 20 minutes is allowed each month). Each detainee is given an own mobile phone device by the prison service if the required deposit is paid. The cost of all phone calls is paid by the inmate, therefore calls are only possible if the inmate has enough money available on her virtual account.

The **tariff of phone calls is excessive** compared to the average tariff outside the penitentiary institutions. Within the penitentiary, the tariff with taxes is HUF 81 (approx. EUR 0,25) in case of calls to landline phones, while HUF 93 (EUR 0,29) to cells. In case of calls to abroad, the tariff ranges from HUF 124 to 683 (EUR 0,39 to 2,13) depending on the country. These prices seem excessive especially in light of the fact that outside the detention facilities mobile companies are striving for gaining more customers by decreasing their tariffs which in general is around HUF 20 (EUR 0,06) and do not exceed HUF 35 (EUR 0,11). The **unused balance is cancelled without reimbursement** when the detainee is released, passes away or is removed to reintegration detention.

In addition, the **cost of the reparation of the mobiles is high** and the process of reparation **takes long** while the affected detainees cannot have regular contact with their relatives or their lawyers, since the only way of calling them is by using the mobile phones provided by the penitentiary institution.

These **mobile phones** (which cost in fact HUF 20,627 including taxes, approx. EUR 64) **can be purchased for a deposit of HUF 35,000** (EUR 109) to be paid by the detainee. The deposit will be reimbursed once the detainee is released but only if the phone is intact. (This deposit has to be paid also by the detainees sentenced to life imprisonment.) In certain exceptional cases, detainees are allowed to pay the deposit in more instalments, however if the relatives send money to the virtual account of the detainee for the purchase of food, the money will be taken by the institution for the coverage of the deposit.

A detainee without a penitentiary mobile has limited access also to his or her lawyer. For those, who do not possess the mobile or do not have the money for the high tariff, the penitentiary personnel provides a **"joker" phone for the communication with the lawyer**. In this case, the member of the penitentiary personnel is in the proximity of the detainee that leads to the **violation of the lawyer-client privilege**. In case the detainee in question is illiterate annihilating the possibility of written communication, the right of the detainee to access the lawyer is severely restricted.

An additional practical problem related to the communication by phone is that there is **no separate room or space ensured for phone calls**, therefore inmates can only call from the eventually overcrowded cells leading to problems of privacy (their cell mates hear the conversation with the relatives or the lawyers).

HHC recommendations:

- Considering the fact that **regular contact with the family is a precondition of successful reintegration**, the penitentiary system should strive for facilitating it so that the distance between the detainees and their relatives does not grow further due to financial difficulties.
- The most important step to be taken should be the **reduction of tariffs** (they should be changed in light of the average tariffs given outside the penitentiary institutions considering the

fact that this particular group of "customers" is composed of approximately 18.000 people). It has an utmost importance especially in the case of juvenile detainees in whose life regular contact with the relatives plays an even more important role.

- The penitentiary institutions should provide **at least 10 minutes of phone call per week for free** to detainees who do not possess the financial asset needed for the purchase a mobile phone or cannot pay the calls due to the high tariffs.
- The detainees (especially those detained in low security sub-regime) can contact their family members via **Skype**. The technical facilities are given in the majority of penitentiary institutions for Skype calls which do not endanger the order of the institution or the success of the criminal proceedings. The use of Skype does not create any additional financial burden. Therefore, Skype calls should be permitted on a more frequent, regular basis.
- The potential solution should be considered to make the mobile phones used in the penitentiary institutions able to **receive calls from the outside**. Consequently, the persons permitted by the authorities to contact a detainee could call those who cannot afford the phone calls due to the high tariff.
- The detainees (especially those in pre-trial detention) should be provided the possibility of **calling their relatives and lawyers not in the presence of the cellmates** for the sake of privacy and the protection of lawyer-client privilege.

Personal contact with the relatives and lawyers

Currently, the detainees are **not provided the right to get into physical contact with their family members** during their visits, e.g. they cannot give a kiss to them, cannot take their children in the lap. Family members are separated from the detainee by a **plexiglass wall**. This general measure that was introduced without any differentiation with regard to security concerns systematically decreases the opportunities of all detainees to exercise the right to personal contact. The HHC has received complaints including statements that the visitors and the detainees do not hear each other well due to the plexiglass wall. In certain cases the detainees waive their right to receive visitors in order not to have the embarrassing situation of talking to their family members through a plexiglass wall and not having the chance to hug their children. In addition, complaints referred to the **routine practice of strip and search of detainees before and after the visits** in order to search for illegal items even in institutions where strict security measures are taken, e.g. the use of the plexiglass wall, video-recording of the visits, presence of the penitentiary personnel.

Physical circumstances given in the **consultation rooms** and the plexiglass wall placed in them frequently **restrict the right for the access to a lawyer**. For instance, in the Building 'B' of the Strict and Medium Security Prison of Budapest the narrow vent below the plexiglass wall which is used to enable lawyers to slip documents to the client does not exist anymore. In case the lawyer intends to hand over to the detainee a retainer, case files or just notes on the case strategy, the guards need to be requested to assist in handing the documents over to the client. Consequently, **penitentiary personnel can get access to the documents protected by client-lawyer privilege**. Due to the plexiglass wall, the lawyer does not hear the words of the detainee clearly either. An extreme example is provided by the National Penitentiary Institution of Szombathely, where **video-recording facilities are installed in the consultation rooms**.

An additional problem with regard to personal contact with relatives is that in many cases detainees are held in a **penitentiary institution far from the place of their regular residence**. An obvious advantage is that after release it is less probable that the former detainee meets the penitentiary personnel in the streets of his/her town. However, it results in **an extreme financial burden on the relatives** who have to travel hundreds of kilometre for visiting the detainee. The worse financial situation the family is in, the more probably personal contact is annihilated.

HHC recommendations:

- The general use of plexiglass walls should be abolished and a **system of differentiation** should be introduced. In the case of detainees held **in low security prison regime**, the possibility of physical contact with family members should be restored.
- The necessity of the **routine practice of strip and search** before and after the visits should be reviewed.
- In theory, detainees can receive visitors outside the prison. For an inmate detained in medium security regime such privilege (receiving visitors outside the prison maximum twice per year from 2 to 6 hours, or going on a short leave for 4 days per year) can be granted if at least 6 months and one-third of the duration of the sentence has elapsed. In practice, this privilege is very rarely granted. In order to facilitate personal contact with relatives, the possibility of more frequent permission of **visits outside the penitentiary and short leave** should be considered.
- The normative and physical preconditions of the introduction of the so-called **"intimate room"** (for private meetings of couples) should be considered.

Access to a lawyer

1. Presence of the defence lawyer at the procedural acts

In our research of 2015 the investigation of the criminal cases showed that **with the exception of the first remand hearing, ex officio appointed counsels very rarely appeared at remand related hearings** (where their presence before prosecution is optional): in these hearings a defence counsel was not present at 66% of the cases. (Besides – as we have already mentioned above – when the appointed counsels do appear, their level of activity leaves much to be desired.) In light of the importance of the counsel's presence in cases where the deprivation of is at stake, this is a rather alarming finding. To remedy the problem, the following recommendations were made by the HHC:

- Rendering the presence of defence counsels obligatory by law at hearings related to pre-trial detention, but especially at the hearing related to ordering pre-trial detention.
- Establishing a deadline for notifying the defence counsel about the hearings which makes it realistically possible for the defence counsel to appear at the hearing.
- Considering the possibility of introducing electronic delivery when notifying the defence about the hearing related to ordering pre-trial detention.

Although **the new CCP does not make the presence of a defence counsel obligatory**, it contains several new regulations which aim to provide more possibilities for the defence counsels to appear at the procedural acts. For instance, Article 113 sets out a two-hour deadline for notifying the counsel in the five-day, 24-hour and the urgent procedural acts affecting the defendant:

'Article 113 (3) The summon and the notification should be delivered in a way that the addressee receives it five days before the procedural act. During the investigation, if it is required due to the urgency of the act, the summon and the notification should be issued in a way that the addressee receives it 24 hours before the procedural act.
(4) If it is required due to the urgency of the procedural act, when the act affecting the defendant, the summon or notification of the defence counsel should be issued in a way that the counsel receives it two hours before the act.
(5) In case of the consent of the defendant, the summon can be issued within the deadline set in paragraphs (3) and (4), and the procedural act can be commenced within the deadlines set out in paragraphs (3) and (4).'

The new two-hour rule may seem insufficient in certain cases, **nonetheless it can definitely be deemed as a positive aspect that a minimum deadline was included in the new CCP regarding the high**

priority investigative action. Furthermore, Article 113 explicitly sets out the following rules regarding the notification:

'Article 113 (1) As a main rule, summons and notices are made in writing, in electronic way providing solely audio communication or by way of verbal communication upon personal attendance before the court, the prosecutor or investigating authority.'

The participation of the defence counsels may be increased by the fact that **both the defendant and the defence counsel can attend via a telecommunication device in the procedural act, including the meetings related to the pre-trial detention:**

'Article 120. § (1) Those who are obliged or entitled to appear in a procedural act may attend via a telecommunication device […].'
'Article 121. § (1) The court, the prosecution or the investigative authority may order the use of a telecommunication device ex officio or as requested by the summoned or notified person to appear at the procedural act.'
'Article 122. § (5) The use of a telecommunication device may be ordered with the consent of the defendant a) to provide the attendance of the defendant […] in a meeting related to the judicial ordering of a coercive measure limiting the personal liberty. […]'

Furthermore, despite concerning the hearings of the defendant, Article 387 paragraph (3) can be discussed here as well which constitutes that the **hearing of the defendant may only be commenced after two hours of notifying the defence counsel**; in other words the police has to wait for the counsel:

'Article 387 (3) If the defendant is reasonably suspected by committing an offence states his/her intention of notifying a counsel or the investigating authority or the prosecution appoints a counsel, the investigating authority or the prosecution notifies the defence counsel and postpones the hearing until the arrival of the defence counsel, but for at least two hours. If within the two hours:
a) the counsel does not appear
b) the suspect or the person reasonably suspected by committing an offence consents to the commence of the hearing after consulting with the defence
the investigating authority or the prosecution commences the hearing of the suspect.'
'(6) For the practice of the rights outlined in paragraph (1) points b)[28] and e)[29] the court, the prosecution or the investigation authority can postpone the beginning or performance of the procedural act for at least one hour if the defendant was unable to prepare for the defence or consult with the counsel before the procedural act through no fault of their own.'

Finally, it has to be noted that the **defence** is not only **mandatory** when the defendant is detained but when their personal liberty is only limited by coercive measure, in other words **when the defendant is under a criminal supervision or a restraining order**.
'Article 44 The participation of a defence counsel is statutory if […]
b) the defendant is subjected to a coercive measure limiting the personal liberty, […].'

2. Appointment of ex officio defence counsels

Under the old CCP surveys of various actors showed that the system of the ex officio appointment of defence counsels (who provide criminal legal aid to indigent defendants) suffered from severe deficiencies. Such counsels often failed to participate in proceedings in the investigative stage, and the **quality of their performance was believed to be worse than that of retained counsels**.

[28] 39. § (1) The defendant is entitled to […] receive sufficient time and opportunity by the court, the prosecution and the investigation authorities […].
[29] 39. § (1) The defendant is entitled to […] e) consult with the defence counsel without control […].

In the HHC's view one of the central problems related to the ex officio defence counsel system was the way defence counsels were appointed. In the HHC's view the low quality of ex officio defence work is to a great extent also due to the fact that the **authorities** (including the investigative authorities, i.e. in most cases the police) **were completely free to choose the lawyer to be appointed** under the old CCP. The HHC's research results also showed that some attorneys base their law practice principally on ex officio appointments, so **they may become financially dependent on the member of the police** who takes decisions on appointments. This situation as a whole posed a severe **threat to effective defence**.

The **new CCP** basically changed the system of the ex officio appointed lawyers. Under the new law based on the decision of the investigative authorities and the courts that a lawyer must be appointed, **the Hungarian Bar Association selects the defence counsel in alphabetical order through an automatized system.** The legislative and practical modification of the appointment system is doubtless **a significant step of development**. The system however suffers from various shortcomings. Since there has been no sufficient time allocated for the preparatory and pilot phase practical problems emerge in the course of the real operation. In certain counties and the capital for example the registry of lawyers available during weekends and out of working hours is not yet operating, the availability of lawyers is not followed-up therefore many interrogations take place without the lawyer because of his/her hindrance. In cases when the appointed lawyer is absent the authority appoints the lawyer which is the reversion to the previous system.

3. Access to a lawyer in detention

A number of penitentiary institutions take measures resulting in the restriction of the right of access to a lawyer. Certain institutions **limits consultation preceding the signing of the retainer to a few minutes**, and it happens that the **member of the penitentiary personnel is within sight and hearing distance**, he/she can hear the consultation. There are institutions which set the condition to the entry of the lawyer that the **retainer is registered in the internal registration system of the penitentiary**, although such condition is not provided by the law. Additional measures are frequently taken by penitentiary institutions resulting in the restriction of the right of access to a lawyer (e.g. long time spent on security and administrative measures before the entry of the lawyer resulting in the **limited duration of the consultation**, installation of **video-recording device in the consultation room**, physical circumstances given in the consultation room leading to the **restriction of the confidentiality of consultation**). In case of appointed defence counsels, limited communication opportunities in pre-trial detention are multiplied by the shortcomings of the appointed defence counsel system. According to HHC's research, short notice and inappropriate (via postal letter, outside office hours) notification of the defence counsels about investigative acts is a frequent problem. If the defence counsel does not appear at the first interrogation, the detainee cannot consult him/her via phone in the penitentiary institution.[30]

As to the access to a lawyer in penitentiaries, the HHC communicated with the Chief Prosecutor's Office who shared the majority of HHC's concerns.[31] The reaction of the National Penitentiary Headquarters - upon HHC's information note - included no detailed reaction, only a brief statement namely that no systematic problems exist in the penitentiary system related to the access of detainees to lawyers.[32] Yet the problems, that have significant detrimental effect to the right to access to a lawyer, still persist.

[30] For more information, see HHC's report on 'The Right of Access to a Lawyer and Legal Aid in Criminal Proceedings in Hungary', 2018: https:// www.helsinki.hu/wp-content/uploads/HHC_Access_to_a_Lawyer_and_Legal_Aid_201803.pdf
[31] https://www.helsinki.hu/wp-content/uploads/MHB_vedelemhez_jog_serulese.pdf
https://www.helsinki.hu/wp-content/uploads/Legfu_valasza_vedelemhez_valo_jog.pdf
[32] https://www.helsinki.hu/wp-content/uploads/BvOP_valasza_vedelemhez_valo_jog.pdf

Life-long and actual life-long imprisonment

1. Legal situation regarding life-long and actual life-long imprisonment

In its recent decision in Vinter and Others v. the United Kingdom, delivered by the Grand Chamber, the European Court of Human Rights held that „in the context of a life sentence, Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds. [..] the Court would also observe that the comparative and international law materials before it show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter. It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention."

The relevant Hungarian legal provisions do not meet these requirements as it both **allows imposing life sentence where the possibility of the review of the sentence takes place after 40 years**, and makes it possible – and in certain cases even compulsory – to **impose actual life sentence, i.e. detention without the review of the sentence ever.**

Article 34 of Act C of 2012 on the Criminal Code (hereinafter: "Criminal Code") provides that detention shall last either for a definite time or it shall be life-long. Article 42 sets forth that in case the court imposes life sentence, it shall determine the earliest possible time of the conditional release or **exclude that possibility**. Article 43 says that if the court did not exclude the possibility of conditional release, it shall determine its earliest time in 25 years and **its latest time in 40 years**. This shows that the even in case of the life sentences with the possibility of parole the earliest time of the review of the sentence may exceed the twenty-five years period required by the ECtHR by fifteen years.

Article 44 of the Criminal Code enumerates the crimes for which an actual life sentence can be imposed; these are the most serious war crimes, crimes against humanity and other violent crimes. Paragraph 2 of the same Article provides that **it shall be compulsory to exclude the possibility of the review of the life sentence** if the perpetrator is a multiple violent recidivist (meaning he or she was sentenced for the third time for a violent crime) or the crimes listed in the Article 44 were committed in a criminal organisation. If certain conditions are met, imposing a life imprisonment is also mandatory under the Criminal Code.

Furthermore, **the possibility of imposing actual life sentence is now enshrined in the Fundamental Law**, in force since 1 January 2012, Article IV (2) of which goes as follows: „No person shall be deprived of his or her liberty except for statutory reasons or as a result of a statutory procedure. Life imprisonment without parole shall only be imposed in relation to the commission of wilful and violent offences." Including the actual life sentence into the constitution results that related provisions of the Criminal Code and court decisions setting out and imposing actual life sentence may not be challenged before the Constitutional Court of Hungary anymore and the Constitutional Court cannot examine the constitutionality of the provisions allowing actual life sentence.

The possibility of life sentence without of parole was examined by the ECtHR in two cases. In the Magyar v. Hungary case (Application no. 73593/10), the **Court deemed a life sentence without any real prospect of release as a violation of Article 3 of the Convention**. Although in the communication the Government reasoned that the clemency of the President of the Republic (which he or she can use to pardon any convict) is a real possibility of reducing the sentence, the Court ruled it as an unsuitable alternative to a foreseeable reduction as its requirements are unclear, and the prisoner is unfamiliar with the required tasks to achieve (e.g. good behaviour) in order to receive a pardon.

After the Court ruled the domestic rules as a violation, the national law was amended. Hungary introduced a **'mandatory pardon procedure' for detainees serving a whole life sentence**, which is to be conducted ex officio after 40 years of detention. In the course of the procedure, a judicial board adopts a

recommendation on the granting of clemency (pardon), but the procedure concludes with the fully discretional clemency decision of the President of the Republic.

The Court examined the altered rules of life imprisonment in the T.P. and A.T. case (Application nos. 37871/14 and 73986/14), which ended with a final judgement on March 2017. Again, the **Court held that there had been a violation of Article 3 of the Convention**. Firstly, the 40 years period was deemed too long compared to the international standards and the case-law of the Court. Secondly, the whole mandatory process still terminates with the discretional decision of the president, who is not obliged to provide any reasoning even if he decides against the proposal of the judicial board hence the procedure is still deficient of the clear requirements for the eligibility for a parole.

2. Detention conditions of lifers and actual lifers

According to the statistics provided by the National Penitentiary Headquarters, the **number of prisoners serving an actual life sentence was 54** on 31 December 2017.

Act CCXL of 2013 (hereinafter: Penitentiary Code) establishes the legal bases for operating the so-called **HSR Unit (long-term special unit) for detainees serving long-term imprisonment**, exceeding 15 years, and those sentenced to life term imprisonment. These inmates may be placed into a special unit provided that their special treatment and placement is justified by their behaviour, their skill for cooperation showed in the course of the execution of the imprisonment and on the basis of an individual security assessment. The Head of the National Penitentiary Headquarters shall appoint the penitentiary in which this special unit shall be established. The unit shall consist of so-called special security cells (*különleges biztonságú zárka*) and related areas, and shall be **separated from the rest of the penitentiary institution**. Detainees may be placed to this special unit upon the decision of the committee within the penitentiary dealing with admission and detention issues (*Befogadási és Fogvatartási Bizottság, BFB*). If the preconditions of placing the detainee in the unit cease to prevail, the placement of the detainee in the unit shall be terminated. After the termination of the placement, one year shall pass before the detainee may be placed in the unit again. The placement should be revised in every three months.

To some extent, rules on the rights of detainees placed in this special unit are the same as the rules for those detainees who are placed to special security cells or units. Namely:

- detainees are under constant supervision;
- cells shall be closed during the whole day and detainees may move within the penitentiary only with permission and under supervision; and
- detainees may carry out work only within the special unit or at a place determined by the governor of the penitentiary institution.

Furthermore, the Penitentiary Code provides for the following restrictions and rights concerning the inmates placed in the special unit for long-term prisoners:

- the participation of detainees in the organisations of inmates may be restricted;
- inmates detained in the unit may participate in cultural, sporting and free time group activities only with a separate permission issued by the head of the penitentiary institution or only within the special unit;
- the objects which may be kept in the cell of the detainees may be subject to limitation;
- the frequency of having visitors and receiving and sending packages may be increased.

Currently, the convicts serving a life sentence are imprisoned in three penitentiary institutions; the majority of the prisoners are in Szeged, and the rest of them are in the penitentiary institution of Budapest and Sátoraljaújhely.

HHC recommendations:

- **Abolish the institution of life imprisonment without the possibility of parole** from both the respective laws and the Fundamental Law of Hungary.
- **Establish a review system for those already sentenced to whole life imprisonment** which complies with the standards set by the ECtHR with respect to the decision-making process and its timing, and which provides a real prospect of release.
- **Ensure that a review** complying with the standards set by the ECtHR **takes place no later than 25**

years after the imposition of every life sentence, with further periodic reviews thereafter.

- **Ensure that the rights violations suffered by the applicants** in the *László Magyar v. Hungary* group of cases **are fully remedied** and that they are eligible for parole no later than 25 years after the imposition of their sentence.

Judicial and Observation Psychiatric Institute

The Judicial and Observational Psychiatric Institution (hereafter referred to as: "IMEI") was visited by the CPT in 2005 and 2009. In both reports the CPT's delegation expressed its concerns regarding the location of the IMEI. The CPT declared that "**it would be highly desirable for the IMEI to be relocated; this would help to ensure that a medical, rather than a penal, ethos prevails**. The Committee urges the Hungarian authorities to find a solution as a matter of priority". According to the Government Decree 171/2018. (IX. 25.) on the increase of the capacity of penitentiary institutions, the IMEI from 31 October 2020 will be relocated to Berettyóújfalu, 270 km from Budapest. In the view of the HHC **the location of the institution raises serious problems** in terms of visits by the relatives and professional staff (psychiatrics, psychologists, doctors, nurses, etc.) to be recruited.

Hungary's Ombudsperson in its mandate as the National Preventive Mechanism (hereafter referred to as NPM) paid a visit to the IMEI on 16-18 February 2016 and published the report on the visit in 2017. **The NPM raised serious concerns regarding the institution**. The capacity of the institution is 311, the average number of inmates in 2015 was 228. The inmates have two main categories: a) patients, whose forced medical treatment was ordered by the court or for whom the IMEI was designated in the judicial decision, b) inmate sent from other prisons for treatment of mental problems (which typically arose after the sanction was imposed). Should an inmate need psychiatric treatment or observation, s/he would likely be sent to this institution in case the institution receiving her/him does not have a psychiatrist and/or psychologist on staff, or the nature/severity of the mental problem would require that.

Beyond observing the **bad physical conditions** the report states that **people living with disabilities might be placed in the institution for petty offences, although the confinement of people living with disabilities are explicitly excluded by law**. Confinement for Petty Offences (see also below in the present report) shall be implemented in penitentiary institutions. Government Decree 173/2013 (V.30.) provides an exhaustive list of those institutions where confinement might take place. The list does not include the IMEI however in practice those who are confined and need special mental care are sent and treated in the IMEI without any legal authorization. According to the data the HHC received from IMEI, in 2012 three persons were sent to the institution for 11, 4 and 3 days respectively.

Compulsory psychiatric treatment is the involuntary psychiatric treatment of mentally ill offenders, ordered and supervised by the criminal system, which is executed in the IMEI. According to the Criminal Code, as of 1 July 2013 the **length of the treatment has become indefinite**, possibly sustained life-long. The time of the eventual release is not prescribed by law, it is a subject to periodical judicial review, as opposed to people sentenced to prison who have their release dates set by a sentencing court. According to the Criminal Code, **detainees placed in IMEI may remain institutionalized for a longer period of time than the maximum prison term they would serve were they to be so sentenced to prison**. According to the reply of HHC's FOI request submitted in March 2017, there are 9 detainees, who have been placed to IMEI prior to 2000.

	Offence	Date of Admission to the IMEI
1	homicide	17/05/1993
2	homicide	12/08/1993
3	homicide	27/05/1993
4	homicide	24/02/1995

5	homicide	01/08/1995
6	homicide	02/04/1997
7	battery	01/07/1997
8	battery	22/06/1998
9	battery, violence against public officials	29/09/1998

Detainees in the IMEI are **forced to take psychiatric medication,** and the medication – as unofficial sources and NGO-monitoring experiences suggest — is claimed to be old-fashioned medication which has more severe side effects than more modern medications. The HHC brought a lawsuit on behalf of a detainee who was unlawfully medicated. In June 2013 the Metropolitan Court of Appeal established the violation of the detainee's inherent personal rights and obliged the IMEI to pay HUF 5 million as non-pecuniary damages because the IMEI staff subjected him to the so called "**chemical straitjacket**": the indiscriminate usage of multiple anti-psychotic drugs.

The unofficial responses received from prison staff and psychologists only reinforce the HHC's experiences in interacting with detainees with psycho-social disabilities who were placed in other detention facilities after their medication was determined in the IMEI. The HHC has experienced numerous times that detainees arriving from the IMEI, where they supposed to receive the appropriate medication or their medication was supervised, cannot communicate, fall asleep during discussion and are addicted to medication.

Petty offence detention and confinement for petty offences

1. The legislative background of petty offences

The range of petty offences punishable with confinement has been widened in general already in 2010 by an act extending the possibility of confinement to petty offences against the property. The same law allowed for the confinement of juveniles. Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Misdemeanour Registry System (hereafter referred to as: "Law on Petty Offences") upheld the extended list of offences punishable with confinement, and made it possible to apply **confinement for the third misdemeanour within a 6-month period to any petty offence**, thus even if none of the petty offences committed would be otherwise punishable by confinement. Furthermore, the Law on Petty Offences allows for automatically changing a fine or community service to confinement without hearing the offender in case he/she fails to pay the fine or carry out the work. The procedure allowing the deprivation of liberty without hearing the offender violates the European Convention on Human Rights.

Confinement shall be carried out in a penitentiary institution. The following table summarizes the data published by the Ministry of Interior on the number of fines or community service sentences that were automatically changed to confinement. It is obvious from the below chart that the number of charges changed to confinement radically increased:

Types of sentences changed to confinement	**2013**	**2014**	**2016**	**2017**
on the spot fine	29 705	90 329	76 314	77 589
community service	256	431	246	58
fine	7 986	17 641	31 664	36 863
sentence non-defined	3 549	4 137	831	93
All sentences changed to confinement	**41 496**	**112 538**	**93 766**	**114 603**

2. The situation of homeless people in the petty offence system

"Anti-homeless" rules were already previously criticized by UN experts on extreme poverty and on housing who called on Hungary to reconsider the legislation on criminalizing homelessness. In its Decision 38/2012. (XI. 14.) the Constitutional Court abolished, among others, the respective provisions of the Law on Petty Offences, stating that criminalizing the status of homelessness is unconstitutional, since it violates human dignity.
The recently adopted **Seventh Amendment to the Fundamental Law** prohibited residence in public spaces (rough sleeping). The changes of the Law on Petty Offences entailed by the amendment of the Fundamental Law entered into force on 15th October 2018. Until now, local governments have had the right to decide about banning homelessness in their area, but as of October 15th 2018, **homelessness is a petty offence in the whole country**, and homeless people are made to be offenders, rough sleeping entails police action and launch of a petty offence procedure.

Earlier, an infringement of the "rules of residing on public premises for habitation" was punishable with community service or a fine. The new regulations allow for confinement if the provisions of the Law are numerously violated by the homeless person. The procedure is the following. First, the police warn the homeless person. If a person is warned three times in 90 days, on the fourth occasion, the police are obliged to initiate the petty offence procedure. In such a case, the **offender of a petty offence must be immediately brought to 72 hour detention. The custody lasts until the final decision of the court, which may take up to 60 days.** After three occurrences, the petty offence is punishable by community service or confinement (1-60 days). A person who has been convicted by a court twice in six months **may only be sentenced to custody**; community service or warning are not options anymore. A major police action took place between October 15th-17th, intending to force homeless people out from public spaces. In the first court procedures homeless people were warned by the courts. During the trial the offenders were not let in the same room where the trial was held, but they were heard through telecommunications tools while being seated in the adjacent room.

The HHC is of the view that the **anti-homeless laws, including the obligatory confinement of the "offenders" are inhuman, violating human dignity and not in compliance with international laws** and the ECHtR case-law.

3. The situation of juveniles in the petty offence system

The Law on Petty Offences regarding juveniles results in an absurd and unacceptable situation. With regards to juvenile offenders, Article 105 (3) of the Criminal Code states that a measure or punishment involving the deprivation of liberty may only be applied if the aim of the measure or punishment cannot otherwise be achieved. Thus, even in case of the perpetration of a criminal act, deprivation of liberty can only be a last resort. The law, however, still does not change the rule that it is possible to use deprivation of liberty for juvenile offenders in the case of less serious, less dangerous offences. According to the Law on Petty Offences, there is still a possibility of **confinement for juvenile petty offence offenders**, as well as for the transfer of fine into confinement in case the fine is not paid. According to the Law on Petty Offences, only juvenile offenders over 16 years of age can be sanctioned with community service. In a recent case a juvenile was fined for illegal prostitution (the offender was called to justice for being forced to be a prostitute) was changed to confinement. The Petty Offence Working Group – where the HHC is a member organization – made a submission to the European Court of Human Rights, referring to the international Convention on the Rights of the Child, and on articles 3., 6., 8. and 13. of the European Convention of Human Rights and Fundamental Freedom.

Apart from the fact that the juvenile's confinement itself for a petty offence is contrary to international norms the placement of juveniles in the course of deprivation of liberty conflicts the international standards. According to the Law on Petty Offences, **confinement of juveniles is executed in a penitentiary institution;** the possibility of carrying out the confinement in a juvenile correctional facility is excluded. Therefore the Law on Petty Offences goes contrary to Article 19 of the Beijing Rules, the commentary of which explicitly states that if a juvenile must be institutionalized, the loss of liberty should be restricted to the

least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, and giving priority to correctional or educational institutions. The Ombudsperson established in its report that it is an abuse of the juveniles' right to satisfactory physical, mental and moral development if their confinement does not take place in a juvenile correctional facility or a juvenile penitentiary institution.

HHC recommendations:

- The use of non-custodial sentences, such as **community service and mediation as independent sanctions should be enhanced**.
- The variety of non-custodial sanctions should be widened, especially in case of juvenile petty offenders.
- Petty offence confinement should be abolished in case of juveniles. In the context of the currently applicable regulation, **petty offence confinement in case of juveniles** should be enforced in juvenile reformatories not in juvenile prisons.
- In case of **multiple petty offences** committed by one person, custodial sentences imposed for each petty offence should not be cumulated. In order to avoid the exceeding length of detention, the calculation of custodial sentences imposed for a series of petty offences should be based on the principle of proportionality.

Police establishments

1. Pre-trial detention in police cells

Pre-trial detention as a main rule shall be implemented in a penitentiary institution.[33] However, based on prosecutorial decisions – in case investigative measures demand so – pre-trial detention is executed in police cells. The duration of pre-trial detention executed in police custody cannot exceed 60 days.[34]

The HHC conducted a monitoring visit (following up a previous NPM visit conducted in 2015) in the Central Holding Facility of the Metropolitan Police Headquarters of Budapest in December 2016. Physical conditions (including the lack of toilets in the cells) raised serious concerns. According to the information shared by the National Police Headquarters, financial assets were allocated to the renovation of the cells in 2017.[35] The NPM conducted a monitoring visit in 2017 but has not reported about any significant progress.[36]

2. Normative framework on 72-hour detention and police custody

72-hour detention is the temporary deprivation of the suspect's liberty without a judicial decision. It can be ordered if there is a well-grounded suspicion that the concerned person has committed a criminal offence punishable with imprisonment, provided that his/her pre-trial detention is likely, or if the perpetrator was caught on act or his/her identity could not be identified (this latter case was introduced by the new regulation of the Act XC of 2017 on the Code of Criminal Procedure). This form of detention may last up to 72 hours, after which – unless the court orders another coercive measure requiring judicial order – the suspect shall be

[33] Act CCXL of 2013 on the Implementation of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement, Article 388
[34] Act XC of 2017 on the Code of Criminal Procedure, Article 299 (2)
[35] The report of the HHC on the Central Holding Facility of the Metropolitan Police Headquarters is available at https://www.helsinki.hu/wp-content/uploads/MHB_jelentes_Gyorskocsi_utcai_fogda_20161208_vegleges.pdf
[36] The report of the NPM on the Central Holding Facility of the Metropolitan Police Headquarters is available at http://www.ajbh.hu/documents/10180/2809026/OPCAT+jelent%C3%A9s+a+BRFK+K%C3%B6zponti+Fogda+l%C3%A1togat%C3%A1s%C3%A1r%C3%B3l+496_2018.pdf/da6b3adb-61c5-89a6-72ba-327124b4288b

released.[37] 72-hour detention is implemented in police jails.[38] The authorities shall notify the major individual named by the suspect about the order and the place of detention within 8 hours. However, it can be denied if the efficiency of the criminal procedure or the protection of the life or physical integrity of an individual so requires.[39]

The 72-hour detention may be preceded by **police custody** under Act XXXIV of 1994 on the Police. The police officer *shall* arrest and present to the competent authority a person who is caught in the act of committing a criminal offence and *may* arrest a person who is suspected of having committed an offence. (Persons taken into police custody are not regarded as defendants – suspects –, since the suspicion has not been formally communicated to them.) The police may maintain the deprivation of liberty until it is absolutely necessary, but for not longer than eight hours. If the objective of the detention has not been realised, this term may be prolonged by four hours on one occasion.[40] The time spent in police custody shall be taken into account when the time spent in the 72-hour detention is calculated.[41]

Ill-treatment

1. General overview of prosecuting ill-treatment by officials

The **success rate of reporting ill-treatment and forced interrogation has been extremely low**, between 0% and 6.56% in the past seven years. In comparison, reports on "violence against an official person" resulted in an indictment in 60% to 72% of the procedures in the same period.[42]

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

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

[37] CCP, Article 274
[38] Act CCXL of 2013 on the Implementation of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement, Article 427(2)
[39] CCP, Article 275(1)-(2)
[40] Police Act, Article 33(3)
[41] CCP, Article 274(5)
[42] Source: Chief Prosecutor's Office. For further data, see: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HUN/INT_CCPR_ICS_HUN_21527_E.pdf, pp. 18–19.

2016	68	42%	95	58%	0	0%
2017	31	25%	83	68%	8	6.56%

Furthermore, even when an indictment takes place, the **success rate of the prosecution** (which on average exceeds 95%) **remains low**: it was e.g. only 69.53% in the first six months of 2014 in cases of abuses committed by official persons. Beyond the difficulties of proving such cases, this may be attributed to a certain degree of lenience on the part of the authorities, shown also by the **mild sentences**.

In addition, since 2012, the Minister of Interior is entitled to decide upon the eligibility of police officers sentenced to suspended imprisonment, thus, to **allow police officers to continue their work even if they have been convicted for ill-treatment for suspended imprisonment**,[43] a power which has been used by the Minister several times. This sends a clear message to the potential perpetrators of torture and ill-treatment that their misuse of power may be tolerated by the organization.

Detainees making allegations of ill-treatment by police officers do not have the right to be examined by an independent physician. **The presence of police officers at medical examinations became the main rule**.

The decrease of the number of penitentiary staff is a problem also from the perspective of the prevention of **inter-detainee physical attacks**. These incidents meet frequently the passivity of the authorities. All necessary measures (including the maintenance of sufficient capacity) should be taken in order to prevent inter-detainee violence.

2. A specific case of mass ill-treatment of inmates

In the past few months the HHC has received **numerous accounts on ill-treatment by prison guards in the Szombathely National Penitentiary**. Inmates claim inter-detainee violence an everyday event. Detainees considered being at risk of self-harm or who allegedly behave violently are handcuffed by the guards and hooked high on the corridor's fence inside the penitentiary. They left hanging for long (12) hours. There have been cases when inmates "wet and shit" under themselves because of the suffering. In the vast majority of the cases these acts remain unreported and therefore unpunished. Guards discourage victims from launching an official procedure.

Apart from the reports by inmates, the HHC is informed about two cases in which the inmate victims made a report about the ill-treatment through their lawyers. Both procedures are on-going at the time of writing the present report. In one of the cases the lawyer requested the internal investigation of the penitentiary which established that the inmate was "locked to an object" as a consequence of his self-harming behaviour. This action of the guards did not cause any injuries, contrary, it was the inmate who was to injure himself while being handcuffed. The penitentiary did not initiate any criminal proceedings. Furthermore a guard from the penitentiary personally mentioned to an attorney of the HHC the practice of the abusive handcuffing.

Monitoring in penitentiary institutions

As regards independent monitoring of detention in penitentiaries by domestic human rights institutions, two issues played a significant role: (1) the access of NGOs to detainees and (2) the operation of the OPCAT National Preventive Mechanism.

The HHC concluded cooperation agreements with a number of national authorities (the National Penitentiary Headquarters, the National Police Headquarters, and the Immigration and Asylum Office) and documented the enforcement of human rights in detention facilities systematically for a long time. For instance, the agreement with the National Penitentiary Headquarters was first concluded in 1999 and then re-concluded on a number of occasions, latest in 2016. It granted the HHC access to penitentiary institutions and ensured

[43] Act XLIII of 1996 on the Status of Members of the Armed Forces, Article 56 (6a)

direct contact with detainees also as potential clients. Based on the agreement, the HHC conducted 77 monitoring visits to penitentiary institutions and documented whether the treatment of detainees is in compliance with domestic legislation and international human rights framework. **In 2017 national authorities have terminated unilaterally the agreements. As a consequence, the HHC ceases to be entitled to conduct systematic monitoring visits** to police detention facilities, penitentiary institutions, immigration jails, asylum jails, reception centres for asylum seekers and the Border Guards' immigration detention facilities. Consequently, the **civilian, independent legal control and the possibility of wide ranging counselling were annihilated** in these detention facilities that has limited the possibilities of torture prevention initiatives and increased the risk of torture and ill-treatment. HHC continues to receive letters from detainees, consequently we know that detention conditions and the treatment of detainees continues not to comply in full with international standards.

After the ratification of the OPCAT, the Commissioner for Fundamental Rights (the Ombudsperson) was designated to be the National Preventive Mechanism (NPM) in Hungary. The NPM, which started its operation in 2015, has demonstrated a development in its methods of monitoring, recommendations included in recent reports became more specific and pragmatic, and international standards are duly referred to in its findings. However, the **monitoring methods demand further development** when it comes to thorough evaluation of facts and follow-up: strict and direct follow-up is lacking even in cases when severe violations of the CAT are revealed by the monitoring visits. The publication of the reports is extremely slow: it takes usually more than 6 months. The NPM has conducted **monitoring visits annually to 8–13 detention facilities, which is a low number,** considering that the NPM's mandate covers over 650 facilities, from penitentiaries to psychiatric institutions.

A certain level of cooperation with the members of the Civil Consultative Body (CCB), including the HHC was established by the NPM. However if more substantive contribution of CCB members would be allowed by the NPM, the efficiency of the NPM could be improved. Also, the NPM **does not include legal experts of the CCB into its monitoring teams, although it could be a solution for problems deriving from the lack of its capacity**, and could facilitate the acceleration of the publication of reports and the increase of the number of monitoring visits per year. When discussing the cooperation of the NPM with the CCB, the **Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** in its report on the official SPT visit conducted in Hungary in March 2017 recommended that *„the NPM engage more directly and independently with civil society organizations, including, at a minimum, through their increased participation in NPM visits, internal trainings, outreach activities, in report writing and in dialogue with the authorities."*[44]

Police training on hate crimes

The **topic of hate crimes does not feature prominently in the basic training of police officers, judges, prosecutors and lawyers**. While some introductory courses on social sciences include information on prejudices and how they can lead to violence, the discussion often remains on a very abstract level not connected to the work of professionals. Provisions of the Criminal Code on hate crimes are part of the Criminal Law courses, but receive minimal attention compared to other crimes affecting vulnerable groups such as partnership violence or human trafficking. While some **specialized training courses** on hate crimes have been organized targeting police officers, prosecutors and judges, they have **reached a low number of professionals**, and were often organized by NGOs and without any public funding. From 2013 to 2018, in total approximately 380 police officers, 80 judges/prosecutors and 30 lawyers have been reached by the trainings organized by NGOs.

[44] SPT Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism, p 6
http://www.ajbh.hu/documents/14315/2605713/CAT-OP-HUN-R2+ENG.pdf/b62f5918-432c-788b-0319-34b58d5686dd

In addition, Hungary was the pilot country for the **Council Europe HELP e-training on hate crimes**. The training was launched in 2016 under the supervision of the Chief Prosecutor's Office, and approximately 30 judges and prosecutors were involved.

Members of the **police hate crime network do not have to undergo any induction training**. The experience of NGOs' show that interactive trainings contribute to the development of skills of attendees to a large extent. However, cases often get stuck at the local level, and never get to the specialized investigators, thus broader training efforts are needed.

Concerns regarding the independence of the judiciary

1. General overview

Hungary's Fundamental Law nominally states the **independence of individual judges**, but it lacks a clear statement that courts constitute a separate branch of power and shall be independent.[45] It also does not provide a basic guarantee for the independence of the organization of the judiciary. Nevertheless, the cardinal law on the organization and administration of the courts stipulates that judges are independent and shall not be influenced or instructed in relation to their judicial activities.

Furthermore, the National Justice Office's (NJO) President, issued the so-called Integrity Code in 2016 that regulates several aspects of judicial behaviour and thus **affects the independence of the individual judges**. Many judges felt that these norms lacked any legitimate ground and were dangerously uncertain.[46]

Recently, an increasing number of **judges have spoken up critically**.[47] Behind these criticisms lurk sensitive issues concerning judicial independence: the appointment of judges, selecting judicial leaders and the NJO President carrying out other administrative tasks without meaningful control by the court organization. Despite these shortcomings, judges have exercised largely impartial and independent decision-making at the level of individual cases, resisting both political interference and pressure from an overly centralised judicial administration.

2. The overcentralization of court administration

In 2011-2012, the government introduced **fundamental changes** to the judicial system. Although 30 separate provisions of the relevant laws were later amended in response to the serious concerns raised by the Council of Europe's Venice Commission (VC),[48] the organization of the **judicial system has remained centralized and still endangers the independence of the judges and the fairness of court proceedings**.

The central administration of courts is based on a unique institutional solution: all responsibilities belong to the President of the NJO who is elected for nine years by Parliament. The current President, Ms Tünde Handó, is a close friend of PM Orbán's family and is married to Mr József Szájer, a member of the European Parliament (EPP), who is a founder of Fidesz and drafted the Fundamental Law.

The NJO President has wide-ranging **powers over the appointment, evaluation and promotion of judges, the launch of disciplinary procedures and the case allocation scheme is overly centralized and non-transparent**. The effective supervision of these powers remains difficult. The

[45] European Commission for Democracy through Law (Venice Commission), Opinion on the new Constitution of Hungary, CDL-AD(2011)016 (20 June 2011), para. 102.
[46] Budapest Beacon, 'Handó's Integrity Code used to bust judge for allowing cousin to bring lunch to the office', 5 September 2017.
[47] Budapest Beacon, "These fears are totally legitimate" – Update to our judge interview series, 8 March 2018.
[48] Venice Commission, Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary, CDL-AD(2012)020-e, (15 July 2015).

President of the NJO had been entitled to transfer cases from the competent court to another one, allegedly aimed at ensuring the timeliness of justice and the balanced workload of courts. This practice **violated fair trial principles** (e.g. impartiality of courts or the right to a lawful judge), and the lack of detailed and objective criteria for case transfer provided significant discretion for the NJO President in this regard. Despite the strong international criticism,[49] the Government was highly committed to preserving this practice -- hence the rule on case transfers was enshrined in the Fourth Amendment to the Fundamental Law to establish the constitutional basis of the system. In 2013, the practice was finally repealed. However, a special practice still exists today. The NJO President can designate specific judges to cases that otherwise belong to the competence of other courts. Many times, it is not the judges but rather the cases that are in fact transferred from one court to another. The designated judges adjudicate in their original court but proceed in the name of the other court. In the Hungarian system, where case allocation is not fully automatic, this practice may pose risks to compromise the right to a fair trial.

3. Limited powers for judicial self-administration

The autonomous judicial self-governing body, the National Judicial Council (NJC) remained weak: it only has the right to consent regarding the appointment of court presidents who did not receive the approval of the reviewing judges of the court in question. It has also the right of consent in deciding on applications for judicial positions where the NJO President wishes to appoint the applicant in the second or third position in the rankings established by the reviewing board (consisting of judges). However, the NJO President can circumvent this right by declaring a call for applications unsuccessful.[50] Judges and the members of the NJC as employees of the court system are still dependent on the NJO President.

In May 2018, the NJC evaluated the practice of the NJO President with regard to the appointment of judges and judges to senior positions and found that her decisions were not transparent and were not adequately reasoned in writing, in particular when she declared a call for application unsuccessful.[51] The NJC called the NJO President to change her practice and give written reasoning for her decisions and make the decisions transparent.[52]

The NJC's evaluation and report signalized critical fault lines in the relationship between the President and the Council. Following the NJC elections, since January 2018 the NJC included new members who have publicly criticized the NJO President before. This showed that the judiciary, who is electing the NJC members became more critical to the NJO President. Between the general elections in April 2018 and the 2 May NJC meeting on which the critical report was adopted, 6 members and 6 substitute members of the NJC resigned.[53] Several resigned NJC members referred to family affaires or their present commitments as judges or court leaders as a reason behind the resignation, however, the large number of resignations before a critical NJC report was adopted, lead into allegations about other underlying factors, such as the fear from being a member of an overly critical NJC[54] or even the prevention of the NJC to take actions against the President.[55]

Nevertheless, immediately after the resignations, the NJO President claimed in a written statement that the NJC is unable to operate because the quorum is not met. In contrary, at the meeting on 2 May, the President of the Kúria claimed that the NJC is able to function and the NJC unanimously declared at the session that the NJC is indeed functional and quorum requirements are met. On its 16 May meeting, the NJC explained to the members of the judiciary in an open statement the lawfulness of its operation and called the NJO President to comply with NJC requests otherwise it will launch a procedure at the end which the Parliament may vote on

[49] Venice Commission, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, CDL-AD(2012)001-e (19 March 2012).
[50] Tasks and duties of the National Judicial Council.
[51] National Judicial Council, 'Report of the special committee established for reviewing the decisions, rules and recommendations taken by the National Judicial Council between 15 March 2012 and 30 January 2018'.
[52] National Judicial Council, Summary of the meeting held on 2 May 2018.
[53] National Judicial Council, Summary of the meeting held on 2 May 2018.
[54] Független Hírügynökség, 'Fleeing the purge. One-third of Judicial Council resigns' (19 April 2018).
[55] Patrick Kingsley, 'Viktor Orban's Victory, Hungary's Judges Start to Tumble', The New York Times (1 May 2018).

removing her.[56] On 29 May, all but one presidents of regional courts and regional courts of appeal (who were mostly appointed by the President of the NJO) demonstrated their support to the NJO President and criticized the NJC.[57]

This dispute has significant implications as to whether the NJC can exercise its supervisory powers. The summary of the 6 June meeting of the NJC shows that it turned to the NJO President for detailed, publicly not available data which would enable the NJC to effectively monitor the President's practice with regards to the appointments to senior positions, the distribution of the workload and the evaluation of the court president's work in 2017. This is not the first case when the NJC turns to the NJO for data or information, but to no avail. On 25 May, three members of the NJC went in person to the NJO office to study documents that they previously requested. Access was denied on this day too, but consequently a disciplinary procedure was initiated against these three NJC members.[58] The minutes on what happened on that day were not made public, but were allegedly distributed within the court system.[59] According to media reports, there are judges who claim that this is used by the NJO President to further discredit members of the NJC and the NJC as a whole.

If the disputes on the functional operations and the legality of the NJC continue and the NJO President continues to question the legitimacy of the NJC arguing that there is no quorum, it will undermine even the weak powers the NJC has to supervise the NJO President.

4. Judiciary under increasing political pressure

In 2012 around 10% of judges were **forced into mandatory retirement** due to the rapid lowering of the retirement age of judges from 70 to 62 years. This served the political aim to change the leadership of courts, including court presidents and college leaders who largely came from the most senior members of the judiciary. The European Commission launched an infringement procedure against Hungary in 2012 over the forced early retirement of around 274 judges and public prosecutors. The EU Court of Justice held that these steps were incompatible with EU law as they violated the prohibition of discrimination at the workplace on grounds of age.[60] However, the judges were never reinstated into their senior previous positions.

MPs belonging to the governing party and senior **government officials have fiercely and publicly criticized courts and individual judges for their decisions and have done so in a threatening and intimidating manner**. For example, in 2016, after a first instance court judge acquitted all 15 defendants in the case of an environmental disaster caused by the toxic red sludge in 2010, Szilárd Németh, Fidesz MP, told the press that some judges are "running abroad to complain and to ask for changing the arguably successful legislation" and, although Fidesz respected the "liberal requirement of judicial independence", they would also intend to give effect to such democratic principles as transparency and the accountability of judges.[61]

In April 2018, the Kúria upheld the decision of the National Election Commission (NEC) certifying the results of absentee ballots casted by mail-in parliamentary elections and found that 4,360 ballots were invalid.[62] If the contested ballots were counted, it would have resulted in one additional seat for Fidesz in Parliament, strengthening the two-third majority of the ruling party. On 5 May, the press secretary of the Prime Minister communicated Viktor Orbán's statement: "I think the Kúria has taken away one mandate from our voters with this decision. The Kúria has clearly and seriously interfered in the election. After reading the decision of the Constitutional Court, it is obvious that the Kúria was not intellectually up to this task".[63]

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[56] National Judicial Council, Summary of the meeting held on 16 May 2018.
[57] Jogászvilag, 'Court leaders write open letter to National Judicial Council' (30 May 2018).
[58] 444.hu, 'Disciplinary procedures against judges perceived as siding with opposition' (14 June 2018).
[59] National Judicial Council, Summary of the meeting held on 6 June 2018
[60] European Commission, 'European Commission closes infringement procedure on forced retirement of Hungarian judges' (20 November 2013).
[61] 444.hu, 'Szilárd Németh wants to hold courts accountable' (31 January 2016).
[62] Kúria, Judgment no. Kvk.III.37.503/2018/6 re *Fidesz* v. *National Election Commission* (2018).
[63] 888.hu, 'Orbán: Kúria not intellectually up to this task' (5 May 2018).

Members of the government and the governing party have repeatedly claimed that human rights NGOs and their networks are trying to unduly influence the judiciary. These included statements by Deputy Justice Minister Pál Völner,[64] Csaba Hende, President of the Parliament's Committee on Legislative Affairs[65] and István Hollik, spokesperson of the governing majority's parliamentary group[66] who claimed that trainings, supported by the European Commission through action grants on international human rights law, asylum law and hate crime prevention, pose serious risks to the independence of the judiciary. These statements, which are boosted by government-aligned media, aim to deter the judicial training program from involving NGO expertise and discredit even those legal professionals, including judges and attorneys, who were took part in these trainings as instructors or participants.

[64] Fidesz, 'Soros Network Characterised by Mafia Methods' (1 February 2018).
[65] Hírtv, 'Further changes likely in justice system' (6 June 2018).
[66] Origo, 'Soros-network interfering in justice system' (26 May 2018).