

## The Solution Plans of the Hungarian Government to Overcome Prison Overcrowding

**Abstract:** The case-law of the Strasbourg Court exemplifies that detainees in Hungary are often placed in overcrowded penitentiary institutions, which does not comply with the requirement of dignified, healthy detention conditions. For example, in 2015 the Court established in 6 cases that Hungary had violated the prohibition of inhumane, degrading treatment as a result of the overcrowding of penitentiary institutions. In connection with the overcrowding, the European Court of Human Rights ordered Hungary to eliminate the structural problems in its law enforcement system.

The present study describes the Solution Plan of the Hungarian Government to overcome prison overcrowding and tries to demonstrate that the current plan does not offer a real solution to the systemic problem of overcrowding.

**Keywords:** prisons, overcrowding, solution plan, new penitentiary institutions

### I. A pressing problem – solution plans

In its decision published on 10<sup>th</sup> March 2015 (Varga and others v. Hungary)<sup>1</sup>, the European Court of Human Rights (ECtHR) ordered Hungary to eliminate the structural problems in its law enforcement system. Considering that around that time there were approximately 450 applications to the ECtHR which had been filed from Hungary and which objected to the conditions of detention, the Strasbourg panel concluded that due to overcrowding, violations of rights occurred in the country on a systemic level and that the resolution of the violations would require partly general, partly individual measures.

As a preliminary point it can be established that unfortunately, the general measures of the Hungarian government have not yet been aimed at the comprehensive revision of the criminal justice system. Based on the Action Plans sent to the Committee of Ministers of the Council of Europe so far, it can be declared that the principal objective of the government is to establish new penitentiary institutions and to reactivate the institutions which were closed in the past, i.e. to increase the number of places.

### II. Capacity Expansion in Penal Institutions

Resulting from the Strasbourg judgements against Hungary<sup>2</sup>, the programme for increasing the number of places started in 2010. In the framework of this, among other things, a new prison quarter was opened in the Budapest Penitentiary and Prison, where 41 cells were built partly through work performed by detainees. Similarly, the facility in Martonvásár was put into operation again after having been closed down due to financial reasons. The recently

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<sup>1</sup> Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, Judgment of 10 March 2015

<sup>2</sup> First, the detainee László Szél applied to the Strasbourg court (Application no. 30221/06, Judgment of 7 June 2011) due to the conditions of his detention in the Budapest Penitentiary and Prison. In the case it was established that the convict completing his 15-year prison sentence was held in a cell with the floor area of 8.3 m<sup>2</sup> for more than 21 months. Besides the complainant, three other detainees were held in the same cell, the personal living space thus being 2.76 m<sup>2</sup>. During another 21 months of his detention he was held in a cell with the floor area of 6.3 m<sup>2</sup>; the living space for one of three detainees was 3.15 m<sup>2</sup>. He also submitted that the toilets in the cells were separated only by a curtain, thus intimacy was not ensured.

The judgement established that the overcrowding and the non-hygienic detention conditions had detrimental effect on the human dignity of the detainee, and therefore violated the prohibition of inhumane and degrading treatment. In the case the detainee was paid 12,000 EUR as compensation by the ECtHR.

handed over Martonvásár facility of the Central Transdanubia National Penitentiary Institution is able to accommodate 126 detainees.

In its Action Plan submitted on 9 December 2015 to the Committee of Ministers<sup>3</sup>, the Hungarian Government concluded that the Hungarian Prison Service with the support of the Ministry of the Interior would increase the number of available prison places by 899 between 1 January 2015 and 5 November 2015 and also plan to increase the capacity of the prison estate by 734 places between 2016 and 2017. According to the planned capacity-building projects between 2015 and 2019 (new low-security regime in Állampuszta National Prison; new prisons in Kunmadaras, Ózd, Csenger, Komló and Kemece), the establishing of 3640 newly available places will begin in 2017 and will have been completed by 2019.

### **III. Occupancy-balancing program**

In its Action Report submitted on 23 March 2015 to the Committee of Ministers<sup>4</sup> and in the Action Plan submitted on 3 July 2015<sup>5</sup>, the government expects the so-called occupancy-balancing programme to decrease overcrowding. The point of this programme is that detainees will be reallocated nationwide from crowded penitentiary institutions to less crowded ones. Beyond doubt, the method used since 1 October 2008 could result in more proportionate accommodation, however, at the same time it could entail family relations to become less tight. As the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) pointed out, “[t]he overcrowding “balancing” process is not an effective long-term response and generates immediately a number of serious problems for the prison management, staff and prisoners. The inmates spend a significant amount of time being transferred from one establishment to another, which leads to organisational difficulties. Moreover, prisoners were frequently held far away from their families and, as a result, suffered in practice from further restrictions on visits. This has led to tension between staff and inmates, as well as among prisoners themselves.”<sup>6</sup>

### **IV. Legislative actions**

In the latest Action Plan the Government mentions two objectives with regard to the reduction of the prison population: a completely new legal institution, namely the reintegration custody, and a notice form.

#### **IV. 1. Reintegration custody**

The reintegration custody was introduced in Hungarian law by Act CCXL of 2013 on the Execution of Punishments, Measures, Coercive Measures and Confinement for Petty Offences (Prison Code) on 1st April 2015. This legal institution is available for detainees who spend their imprisonment for the first time in prisons or medium security prisons and there are not more than 5 years term of imprisonment for them to be completed. The main point of the reintegration custody is that a convict who has fulfilled the statutory conditions may spend the last 6 months of his/her penalty outside the prison in a designated home.

A significant element is that the duration of the reintegration detention is counted within the duration of the imprisonment. The decision regarding the reintegration custody is taken by a law enforcement judge. In the course of making his/her decision, the judge in

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<sup>3</sup> DH-DD (2015) 1373E/17 December 2015

<sup>4</sup> DH-DD (2015) 622E/15 June 2015

<sup>5</sup> DH-DD (2015) 753E/10 July 2015

<sup>6</sup> [CPT/Inf (2014) 13]; § 39.

charge of overseeing the conditions and enforcement of sentences examines the family circumstances of the detainee and requests the opinion of the detainee's probation officer and detention facility. If the opinion of the probation officer is favourable, the judge specifies the behavioural rules and the territory of movement applicable to the convict. The transmitter of a 10-dkg remote monitoring device which is buckled on the leg of the reintegration detainee constantly sends signals to a centre in the nearest penitentiary institution; the movement of the detainee is constantly monitored and checked. The detainee is obliged to stay in the place specified by the judge in charge of overseeing the conditions and enforcement of sentences throughout the duration of the reintegration monitoring, and the detainee is allowed to leave the place only for specific purposes and for a specified period.

The system operates on a voluntary basis. According to the Prison Code this new instrument may be requested by either the prisoner or his/her attorney and may also be initiated by the penal institution.

The first release took place in the month after the programme entered into force – on 8 May 2015, from the Szeged Penitentiary and Prison. Considering that the possibility of monitoring will be available to co-operating detainees who show exemplary behaviour during the execution of their sentences, it could be an important motivation factor for detainees, similar to the release on parole. A crucial effect for penitentiary authorities could be that reintegration monitoring could bring about the decrease in the prison population and the detention expenses. The first detainee released in that way described reintegration monitoring as 99% release, 1% shackles. None the less the new instrument could facilitate the reintegration of convicts also by allowing them to work, and participate in education or training.

According to the Action Plan, since its introduction, judicial permission has been granted in 176 cases<sup>7</sup>.

#### **IV. 2. Notice form**

According to the same Action Plan, another element of the legislative action is the so-called notice form. The essence of this instrument is that since 1 January 2015, instead of judicial authorities, the National Prison Service Headquarters (NPSH) has become responsible for sending the notice form to a convicted person in order to have them begin their incarceration in cases regulated by the Prison Code (Sections 84-85 §). The intention of the legislator was to choose the most suitable institution for the persons who are to be served with a summons to report in order to serve a penalty involving deprivation of liberty. This also means that NPSH keeps taking into account the capacity reports of the individual facilities in order to reduce the burden on the overcrowded prisons.

#### **V. Conclusions**

Although the CPT and numerous international organizations emphasize that providing additional accommodation cannot offer a lasting solution on its own, according to the Action Plan of the Hungarian Government, increasing the capacity of penitentiary institutions is the primary solution. The ECtHR rulings against Hungary due to the overcrowding of Hungarian penitentiary institutions so far have ordered Hungary to pay approximately 250,000 EUR as compensation. It is beyond doubt that increasing the number of places and constructing new penitentiary institutions will be cost several times the sum. To the question whether these investments estimated to be worth several tens of billions will bring about the desired

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<sup>7</sup> See: Action Plan of the Government of Hungary 9 December 2015. p. 8. The total case was 569, out of which 524 were requests from the prisoner or his/her lawyer and 45 were initiated by the prison authorities.

objective, i.e. whether overcrowding can be reduced through these investments, we shall respond with a definite no. As a specific example, the Tiszaalök and Szombathely penitentiary institutions built in the form of a PPP scheme (based on the cooperation of the state and the private sector) could be mentioned. As a result of the opening of the two institutions, the average occupancy indicator of the detention facilities decreased from 132% to 118% in 2007. The two facilities provided for the accommodation of 1,500 detainees in total, but in 2009 the number of detainees continued to rise, and the number of places was also decreased by the temporary vacation of prison quarters. Owing to these factors, the average occupancy indicator increased to 124% and 128% according to the 31 December 2009 status<sup>8</sup>.

Unless the capacity-building projects are accompanied by a comprehensive legal reform, the extensive prison construction will also increase the prison population and not provide a real solution to the systemic problem of overcrowding. It could be a solution only if the increase of the prison population comes to a halt.

Taking into account that the increased use of imprisonment and the increased length of imprisonment are important factors leading to overcrowding, the early release schemes like reintegration custody are very important in connection with solving the problem. Nevertheless it should be added that this legal institution is insufficient by itself. So, it can be an effective long-term response, but the reintegration custody alone cannot reduce the rates of imprisonment.

In our opinion, the instrument of the notice form can also help to achieve the goals of reintegration, but it is not sufficient enough for preventing overcrowding. It needs to be highlighted in this regard that the number of inmates continuously rises and the harsh criminal policy may result in an even higher number of persons being sent to prison for a much longer period. Considering the fact that the average overcrowding rate in Hungary is 141% and that we can find low overcrowding rates only in prisons built within the PPP scheme, the NPSH has to face a real challenge with regard to the placement.

It can be noted that according to the Action Plan, the Hungarian Government is ready to consider further legislative actions in the near future. We hope that new governmental measures will be sufficient to solve the reduction of overcrowding. A good example that could be considered is the plan submitted by the Italian Government following the pilot judgment in the case of *Torreggiani and others v. Italy*<sup>9</sup>.

### **Summary**

In its pilot decision published on 10 March 2015 the European Court of Human Rights ordered Hungary to eliminate the structural problems in its law enforcement system. The Strasbourg panel concluded that due to overcrowding, violations of rights occur in the country on a systemic level, and the resolution of which violations required partly general, partly individual measures.

The general measures of the Hungarian government have not yet been aimed at the comprehensive revision of the criminal justice system. It can be declared that the principal government objective is the capacity expansion in penitentiary institutions. Our opinion is that unless the capacity-building projects are accompanied by a comprehensive legal reform, the Solution Plan of the government will not offer a real solution to the systemic problem of overcrowding.

We maintain that the fight against the overcrowding of prisons presumes a comprehensive strategy. The first step to be taken is an analysis of the reasons leading to

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<sup>8</sup> Hungarian Prison Service Yearbook 2009, p. 18.

<sup>9</sup> Application nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10; Judgement of 8 January 2013

overcrowding. In addition, both the current and the planned justice policy shall be monitored constantly in terms of what effects those could have on the development of the prison population. Because the key factor contributing to prison overcrowding is the punitive criminal law, it is necessary, inter alia, to review and revise Hungary's criminal justice system.

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