

Conditions in Hungarian Prisons: Challenges in Addressing Overcrowding and other Inhuman Circumstances

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1. Introduction

My thesis is about the condition of prisons in Hungary. Although the inhuman treatment of prisoners has been a problem for decades in the country, during the last few years, it started to gain a bigger publicity. More and more reports were published by different NGOs such as the Hungarian Helsinki Committee or by state institutions such as the Office of the Commissioner for Fundamental Rights (Ombudsman's Office). As a result of these reports and different judgements of the ECtHR, the state realized that effective steps and measures must be taken in order to consolidate the situation.

In the centre of my thesis there is a case from 2015, the *Varga v Hungary* case, although I would like to emphasize, that I will not only focus on this case. Nevertheless this case has a significant effect on the present conditions of Hungarian prisons. Before this case there were several others before the ECtHR, which also focused on the circumstances – in particular the overcrowding in Hungarian prisons, but it was the *Varga v Hungary* case which made the ECtHR recognize that there are structural problems in the Hungarian system. Thus, the ECtHR called the Hungarian state to take effective measures in order to decrease the overcrowding and provide an effective remedy for the prisoners.

In my thesis, first of all, I will shortly present those human rights issues, which are related to the circumstances of Hungarian prisons. In the next chapter, I will look at the most significant facts about Hungarian prisons. In this chapter I will use statistical data from different sources and I will also use data from my interviews to depict a more complete picture about the present circumstances of Hungarian prisons. My thesis mostly focuses on the overcrowding of prisons because this is the most significant problem and this is the one, which was the main issue of the *Varga v Hungary* judgement. However, there are several other serious problems with prison conditions like insufficient hygienic conditions, bedbugs, cockroaches and rodents. In the chapter about the circumstances of Hungarian prisons – chapter *Facts about Hungarian Prisons* – on the one hand, I will focus on the overcrowding and other problems, which overlap with overcrowding. On the other hand, I present the other problems found in prisons.

After these chapters, I will turn to the most significant part of my thesis. Firstly, I will try to enumerate those most important factors and phenomena which could contribute to the overcrowding of prisons. Here I will analyze legal customs such as the excessive application of pre-trial detentions, as well as, unfortunately, changes like the new and stricter Criminal

Code. In the next – and last – part of my thesis, I will focus on those possible technical solutions, which are or, in my view, should be planned and carried out. As I have mentioned before, in the *Varga v Hungary* case the ECtHR declared that there are structural problems in Hungary and the Court called the state to take effective measures to solve them. The Court defines two main problems; firstly the overcrowding and secondly, the absence of an effective remedy. There are some techniques which will be or have been already used by the state in order to decrease the overcrowding, such as the construction of new prison places and buildings or certain alternative measures instead or beside of deprivation of liberty. Nonetheless, what seems the most important effect of the *Varga v Hungary* judgement is the fact that the parliament passed a new act, which came into force 1 January 2017, to provide an effective remedy for prisoners. I will analyze this act in detail and look at its influence on the system. However, it is important to emphasize that this act is quite recent, so it is not possible to give a comprehensive analysis of its effects.

2. Methodology

In my thesis, I will address the following main research question:

Do the circumstances of Hungarian prisons violate the prohibition of inhuman and degrading treatment and what can be done to change the existing situation?

In order to do so, I will try to answer the following sub-questions:

- 1. What are the conditions in Hungarian prisons?*
- 2. How will the judgements of the European Court of Human Rights influence the situation of prisons and the system of jurisdiction?*
- 3. What are the most relevant reasons behind the overcrowding of prisons?*
- 4. What can the possible solutions be?*
- 5. How do/will these solution techniques work?*

In my thesis I use two methods in order to answer these questions. Firstly, I use the relevant literature and legal materials; secondly, I use data from interviews. With the help of different books, articles and other legal materials, I could describe the present circumstances in Hungarian prisons and the legal protection of prisoners' human rights according to the domestic, regional and international law. The aim of my interviews was to complete these facts with personal opinions and to show how these phenomena, techniques and changes work in practice. I had four interviewees; a judge, an attorney and two prosecutors. My interviews

focused on three main topics; firstly, the circumstances in prisons and the most common and/or serious complaints of prisoners, secondly their opinion about the new act, which was introduced to provide an effective remedy for the prisoners and thirdly, their opinion about the possible reasons behind overcrowding and the possible solution techniques of this problem. Although I wanted to ask their opinion about all of these issues, there are differences between my interviews, of course. Depending on their profession of my interviewee, I focused on certain questions more than on others.

Before I started writing, I had already known that I was going to face certain problems. The greatest problem was the description and analysis of the Hungarian legal system in English. Most of the literature and, unfortunately, also the legal materials were in Hungarian so I had to translate them. I tried to find the most accurate English equivalent, but there are some expressions which cannot be translated into English. This was especially true for certain legal expressions because some of them do not exist in the legal system of English speaking countries. Nonetheless, this problem does not hinder the understanding of my thesis. The other problem, which I encountered during the writing process, was the lack of access to the judiciary. I have already mentioned that I made four interviews. I planned to conduct more interviews with judges, however, I had to get an official permission, which usually was not provided. Furthermore, I had to wait a lot for the authorizations and denials, thus I was not able to make more interviews. Nonetheless, I tried to choose my interviewees from all the fields of jurisdiction. Furthermore, I managed to conduct interviews with eminent professionals with considerable expertise and relevant experiences. Thus, I think despite of the problems, my interviews make the picture more complete and offer insights from some persons closely involved in the administration of justice in Hungary.

3. International Legal Background to Overcrowding of Prisons

In this chapter, those most significant international legal materials will be presented which are connected to the protection of imprisoned persons. It is a widely accepted rule that all persons deprived of their liberty should be treated with respect for their human rights. Nonetheless, in several cases the present circumstances of prisons do not ensure the protection of human rights of inmates. Thus, in the following I would like to present those human rights violations, which frequently occur in prisons and those most important legal documents, which try to prevent those human rights violations.

The most significant and frequent problem in the case of prisons is overcrowding. In Europe prison overcrowding is a recurring problem. According to the 2015 report of the Council of Europe, in many states prisons are overcrowded, and even in those states where the total number of prisoners is lower than the available capacity for prisoners, specific prisons still often suffer from overcrowding¹ because of an inadequate balancing system. A previous report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also highlights that the overcrowding of prisons is a frequent problem across Europe, especially in Central and Eastern Europe and it underscores that “the phenomenon of prison overcrowding continues to blight the penitentiary system [...] and seriously undermines attempts to improve conditions of detention”.²

As we can see, the overcrowding of prisons is a relevant and current problem in Europe; thus, there are several legal documents concerning to this issue. One of the most important statements is that the “overcrowding is an issue of direct relevance to the CPT’s mandate”.³ With this the CPT acknowledged that certain circumstances in prisons such as overcrowding can cause inhuman or degrading treatment.

The prohibition of torture and inhuman or degrading treatment is one of the most fundamental values of a democratic society. Torture and inhuman or degrading treatment are prohibited by almost every important human rights document, at international, as well as, regional or national level. The prohibition of torture can be found in the Universal Declaration of Human Rights, in the International Convention on Civil and Political Rights and in the UN Convention Against Torture – just to mention some of the most important international human rights instruments.

Since my thesis focuses on the overcrowding of Hungarian prisons, I will examine the topic through the prism of the European Convention on Human Rights. As mentioned above, the prohibition of torture and inhuman or degrading treatment is one of the most fundamental human rights, so it is not surprising that it is included in the European Convention on Human

¹ White Paper of Prison Overcrowding. European Committee on Crime Problems. [PC-CP (2015) 6 rev 4]. Council of Europe. p. 3

[http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/PC-CP%20\(2015\)%206_E%20Rev%203%20White%20Paper%203%20March%202016.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/PC-CP%20(2015)%206_E%20Rev%203%20White%20Paper%203%20March%202016.pdf)

² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 11th General Report [CPT/Inf (2001) 16] para 28-29 <http://www.cpt.coe.int/en/annual/rep-11.htm>

³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2nd General Report (translation: Budapest-Capital Regional Court Criminal Division: Summary of the Regulations of Compensation Proceedings Resulted from Inadequate Accommodation Violating Basic Human Rights) [CPT/Inf (92) 3]. para 46 <http://www.cpt.coe.int/en/annual/rep-02.htm>

Rights. Article 3 of the Convention states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.⁴ Furthermore, the European Court of Human Rights declared that Article 3 “prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim’s behaviour”.⁵

As mentioned above, the CPT stated that overcrowding is an issue of direct relevance to the CPT’s mandate. What are those minimum standards, the absence of which can cause inhuman or degrading treatment? What are those issues, which are connected to the overcrowding of prisons? In the followings, I will answer these questions using the most significant legal materials.

The Standard Minimum Rules for the Treatment of Prisoners regulates several areas. It states that all accommodation especially sleeping accommodation “shall meet all requirements of health, due regard being paid to climate conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.⁶ It also regulates the size of windows because they have to be large enough for reading and working. The artificial light shall be sufficient for working and reading, as well. Furthermore, sanitary, bathing and shower installations shall be adequate and the using of these installations should be ensured as frequently as necessary. Moreover, every prisoner shall be provided with a separate bed and sufficient bedding which shall be clean and changed when it is necessary.⁷ Besides that the Standard Minimum Rules for Treatment of Prisoners mentions several other rules, but the focus here remains on those issues which cause problems in the Hungarian Prisons. We can read very similar rules in the Recommendation No. R (99) 22 adopted by the Committee of Ministers of the Council of Europe. The document also emphasizes that the provided accommodation shall respect human dignity and, as far as possible, the right to privacy. Furthermore, it also highlights the importance of health and hygiene, sufficient floor space, lighting, heating and ventilation system or the size of windows.⁸

Overcrowding in prisons can easily create situations which can violate the right to human dignity or the right to privacy. In those prisons, it is not possible to ensure the adequate health

⁴ European Convention on Human Rights Article 3.

⁵ Szél v. Hungary (2011) para 15 European Court of Human Rights

⁶ Standard Minimum Rules for the Treatment of Prisoners. First United Nations Congress on the Prevention of Crime and the Treatment of Offenders para 10

https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

⁷ Ibid 11-19

⁸ Recommendation No. R (99) 22. Committee of Ministers of the Council of Europe para 18.1-18.2

and hygiene conditions. Furthermore, one of the most important problems of overcrowded prisons is that they cannot guarantee the sufficient floor space for the prisoners; thus, they violate the right to privacy. These are the issues which we can read *inter alia* in the CPT's reports. It is mentioned that overcrowding prisons can entail cramped and unhygienic accommodation, constant lack of privacy, reduced out-of-cell activities, although according to the minimum standards one hour per day outside exercise would be sufficient. Moreover, overcrowding prisons entail reduced out-off-cell activities due to the fact that the demand outstrips the staff and facilities available, overburdens health-care services, increases tension, and hence, more violence occurs between prisoners and between prisoners and staff.⁹

As the overcrowding of prisons is a relevant problem in Europe, the Committee of the Ministers of the Council of Europe has drafted some basic principles connected to this issue. It states *inter alia* that the maximum capacity of penal institutions should be set¹⁰ and also that the prison conditions that infringe prisoners' human rights are not justified by the lack of resources.¹¹

4. The constitutional Guarantees and Limitations of the Right to Liberty and the Prohibition of Torture and Inhuman or Degrading Treatment or Punishment

In my opinion there are two very significant human rights, which are relevant in the case of the topic of my thesis. These are the right to liberty (and its limitations), and the prohibition of torture. Of course, there are other human rights which overlap with these rights, like the right to life or the respect for human dignity but, for purpose of this thesis, these are the most related human rights. Thus, in the first part of this chapter I will examine the right to liberty by the Fundamental Law of Hungary and other relevant laws. Furthermore, in the second part of this chapter I will examine the connection between the prohibition of torture and inhuman or degrading treatment and the overcrowding of prisons.

Article 4 of the Fundamental Law of Hungary guarantees the right to liberty. This right has some limitations. As Article 4 (2) of the Fundamental Law provides “no one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid

⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 7th General Report [CPT/Inf (97) 10] para 13 <http://www.cpt.coe.int/en/annual/rep-07.htm>

¹⁰ Recommendation No. R (99) 22. Committee of Ministers of the Council of Europe para 6

¹¹ Recommendation Rec(2006)2. Committee of Ministers of the Council of Europe para 4 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8d25

down in an Act”.¹² The restriction of freedom can occur in two different ways: firstly, it can be based on the decision of the court and secondly, it can occur before the decision. The possibilities and circumstances of pre-trial detention will be dealt with in a separate chapter of my thesis.

The right to liberty also has four guarantees. Firstly, the guarantee is that everyone has the right to be informed promptly of the reason for his/her arrest. Although the Fundamental Law does not concretely contain this guarantee but the different articles of the Act on Criminal Proceedings ensure this guarantee.¹³ Secondly, the right to be brought promptly before a judge. This right is ensured by the most important international (i.e Article 9 paragraph 3 of the ICCPR) or regional conventions (Article 5 Paragraph 3 of the ECHR). The Fundamental Law of Hungary also guarantees this right: “any person suspected of having committed a criminal offence and taken into detention, shall, as soon as possible, be released or brought before a court. The court shall be obliged to hear the person brought before it and shall forthwith take a decision with a written reasoning to release or to arrest that person”.¹⁴ The third guarantee is the right to be heard. And finally, the right to compensation in case of unlawful arrest. This guarantee can also be found in the Fundamental Law: “everyone whose liberty has been restricted without a well-founded reason or unlawfully shall have the right to compensation”.¹⁵

As it was mentioned above, the prohibition of torture and inhuman or degrading treatment is one of the most fundamental human rights. The Fundamental Law of Hungary states that “no one shall be subject to torture, inhuman or degrading treatment or punishment”.¹⁶ According to the relevant standards included in international and regional human rights treaties we can claim that certain circumstances in prisons can cause inhuman or degrading treatment. As it was detailed in the previous chapter overcrowding can easily entail certain issues which could cause serious harm for the inmates. One of the most important and frequent issues is the size of living space. Although adequate size of cells or living space is necessary on the behalf of the protection of right to privacy and the prohibition of inhuman or degrading treatment, in overcrowding prisons it is not possible to ensure these rights. In Hungary, where the

¹² Fundamental Law of Hungary Art 4 (2)

<http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

¹³ Halmai Gábor – Tóth Gábor Attila (2008) Emberi jogok p. 679 (translation: Halmai, Gábor – Tóth, Gábor Attila (2008) Human Rights).

¹⁴ Ibid Art 4 (3)

¹⁵ Ibid Art 4 (4)

¹⁶ Fundamental Law of Hungary Article 3 (1)

overcrowding of prisons is an old and more and more serious problem, there were rules in the respect of adequate size of prison cells. Although the former decree regulated the size of cells, this decree was amended in 2010. The amended Decree no. 6/1996 provides the following in its section 137:

“(1) The number of persons allocated to a cell... should be determined in a manner that each detainee should have, in so far as possible, 6 cubic meters air space and, in case of male detainees, 3 square metres living space, in case of juvenile and female detainees, 3.5 square metres living space.

(2) The living space is to be calculated by taking into account the floor space of the cell reduced by the area occupied by furniture and other equipment.

(3) The size of individual cells... should reach 6 square metres, if possible.”¹⁷

The former version of the decree used the term of *at least* (6 cubic metres and 3 or 3.5 square metres living space) instead of *in so far as possible* or *if possible*. After the visit of the CPT in 2013, it was mentioned in its report that after the amendment of 2010 the regulation of the size of living space is no longer a strict legal requirement but more an objective.¹⁸

However, this amendment was cancelled by the 32/2014 decision of the Hungarian Constitutional Court. In 2014 the Constitutional Court declared that the amendment is against Article 7 and Article 10 paragraph 1 of the ICCPR, Article 3 of ECHR and the Article Q, T and 3 of the Fundamental Law of Hungary. The decision states that according to the standards under the EU law¹⁹, the smallest adequate size of living space is at least 4 square metres thus, the 3 and 3.5 square metres which are mentioned by the amendment or even by the former version of the decree entails inhuman and degrading treatment of the detainees. So this amendment is a breach of the above mentioned articles and violates the prohibition of torture and inhuman or degrading treatment and punishment. Furthermore, the Constitutional Court found that the amendment is also unconstitutional and offends against international treaties because of the using of the term *in so far as possible* or *if possible*. The decision states that according to the amendment of the decree, it would not be even illicit if the living space has

¹⁷ 6/1996 IM Decree section 137 (see also Varga and Others v Hungary para 13)

http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400016.IM

¹⁸ CPT/Inf (2014), p. 20 <http://www.cpt.coe.int/documents/hun/2014-13-inf-eng.pdf>

¹⁹ Living space per prisoner in prison establishments: CPT standards. (2015) p. 1
<http://www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf>

been absolutely withdrawn for the detainees.²⁰ As a result of the decision of the Constitutional Court, the Hungarian Parliament accepted a decree, which claims that the sufficient amount is *at least* 6 cubic metres air space and 4 square metres living space per inmates.²¹

5. Facts about Hungarian Prisons

My thesis examines the conditions of Hungarian prisons and the circumstances of detainees. For this analysis it is indispensable to present certain facts about the Hungarian prisons. In this chapter, I will present shortly the different categories of detention centres. After that, since my paper mainly focuses on the overcrowding and other inhuman or degrading conditions of prisons, I would like to examine this situation by the help of statistical data. I would like to state in advance that some of my data will not be the most recent ones. In this part of the chapter I will use data from a Hungarian review (Börtönstatisztikai Szemle – Review of Statistics of Prisons) and from the newest report of the CPT. However, this Hungarian review has a publication from 2016 the last CPT report is from 2013. Although, the CPT has a report from 2015, it focuses on the treatment and conditions of detention of foreign nationals deprived of their liberty. The CPT report deals with the issue due to the fact that during the summer of 2015, as a result of the refugee crisis, an unprecedented number of foreign nationals fled to Hungary and the Hungarian Parliament adopted several legislative amendments concerning in particular asylum and criminal legislation.²² Subsequently, I would like to complement this part with my own experiences and the experiences of my interviewees. And finally, in the last part of this chapter, I would like to present the main problems of detainees based on the data provided by my interviews.

In Hungary, there are three main types of detention centres. In light security prisons, so-called “fogház” the detainees can move free, the cells are usually open and they can do shopping. Furthermore, if the behaviour of the detainee is appropriate he/she can work outside the prison. The medium security prisons are called “börtön” in the Hungarian system. In these institutes the supervision is harder and stricter. However, in the case of good behaviour the detainees have the possibility to do work or other activities in the yard of the prison. The high security prisons are called “fegyház”. In these institutes free movement of the detainees is

²⁰ 32/2014 Decision of the Hungarian Constitutional Court p. 19

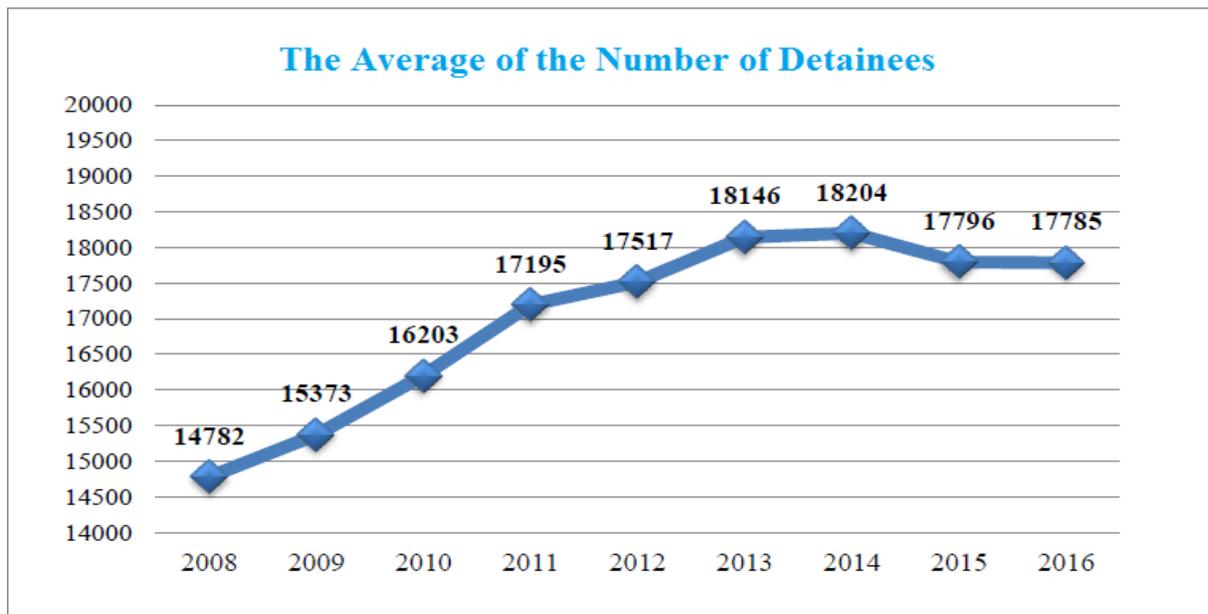
<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK14149.pdf>

²¹ 16/2014 IM Decree para 121. http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400016.IM

²² Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment CPT/Inf (2016) 27 p. 4
<http://www.cpt.coe.int/documents/hun/2016-27-inf-eng.pdf>.

very limited. They can move only with permission and under control and in other cases the doors of the cells are always closed

Now I would like to introduce the most important statistical data. As the table below shows, the number of the detainees constantly increased until 2014. However, in 2015 we can see a significant decreasing (from 18204 to 17796) and this number decreased again in 2016 although not so significantly.

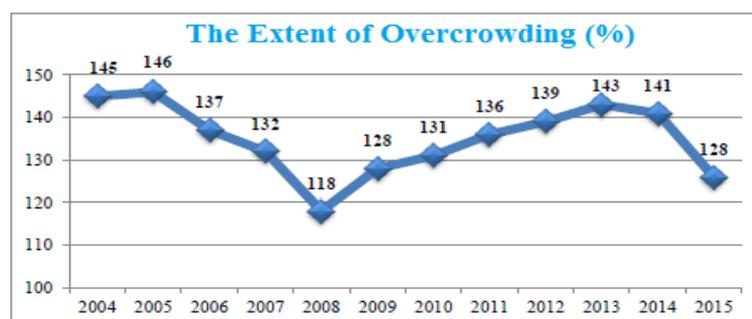


1. Table

Source: Börtönstatistikai Szemle 2016/1. Büntetés-végrehajtási Szervezet p. 4 (translation: Review of Statistics of Prison

2016/1) <http://bv.gov.hu/download/7/3c/61000/B%C3%B6rt%C3%B6nstatistikai%20Szemle%202016%20I.pdf>

As the next table shows, overcrowding of prisons is a long-term problem in Hungary. We can see that during the last ten years the average of the saturation of prisons always was above 100 per cent. Although it decreased constantly until 2008 after this year it started to increase again while it almost reached the highest value from the former years.



2. Table

Source: Börtönstatistikai Szemle 2016/1. Büntetés-végrehajtási Szervezet p. 8 (translation: Review of Statistics of Prison 2016/1)

<http://bv.gov.hu/download/7/3c/61000/B%C3%B6rt%C3%B6nstatistikai%20Szemle%202016%20I.pdf>.

If we examine the data of the other countries of the region we can see that the situation of the Hungarian prisons regarding to overcrowding is not just above the level of the European Union but also above the level of other Central European countries. The following table compares the extent of overcrowding in five different Central-Eastern European countries, in the Czech Republic, Slovakia, Poland, Romania and Hungary between the years of 2012 and 2014.

Overcrowding of Prisons in Central Europe (%)			
	2012	2013	2014
Czech Republic	106,3	77,7	93,2
Slovakia	102,6	89,8	89,9
Poland	96,8	81,2	88,2
Romania	118,9	116,3	109,1
Hungary	138,8	144,9	142
Council of Europe	97,7	94,2	91,6

3. Table

Source: Börtönstatisztikai Szemle 2016/1. Büntetés-végrehajtási Szervezet p. 22 (translation: Review of Statistics of Prison 2016/1)

<http://bv.gov.hu/download/7/3c/61000/B%C3%B6rt%C3%B6nstatistikai%20Szemle%202016%20I.pdf>.

We can see that Romania is the only country in the region, beside Hungary where the overcrowding constantly was over 100 per cent during this period and even in this country the extent of overcrowding was significantly lower than in Hungary. Furthermore, in the case of Romania there was a decrease between 2012 and 2014.

In order to comprehend the situation more precisely, I would like to present the extent of overcrowding per prison.

The Average of the Saturation and Headcount of Detainees					
National Prisons			County Prisons		
	Headcount	Saturation		Headcount	Saturation
Allampuszta National Prison	1052	129%	Bács-Kiskun County Remand Prison	272	114%
Balassagyarmat Strict and Medium Regime Prison	499	155%	Baranya County Remand Prison	180	105%
Budapest Strict and Medium Regime Prison	1509	151%	Békés County Remand Prison	113	131%
Kalocsa Strict and Medium Regime Prison	386	161%	Borsod-Abaúj-Zemplén County Remand Prison	396	132%
Middle-Transdanubium National Prison	1282	118%	Budapest Remand Prison	1624	153%
Márianosztra Strict and Medium Regime Prison	716	149%	Győr-Moson-Sopron County Remand Prison	191	121%
Pálhamla National Prison	1432	123%	Hajdú-Bihar County Remand Prison	229	129%
Sátoraljaújhely Strict and Medium Regime Prison	408	155%	Heves County Remand Prison	175	139%
Sopronkőhida Strict and Medium Regime Prison	783	152%	Jász-Nagykun-Szolnok County Remand Prison	181	129%
Szeged Strict and Medium Regime Prison	1620	134%	Somogy County Remand Prison	141	109%
Szombathelyi National Prison	1312	89%	Szabolcs-Szatmár-Bereg County Remand Prison	194	137%
Tiszalök National Prison	777	111%	Tolna County Remand Prison	100	103%
Vác Strict and Medium Regime Prison	819	148%	Veszprém County Remand Prison	210	106%
Youth Detention Centre	794	98%	Zala County Remand Prison	89	105%
Total	13389	134%	Total	4095	122%

4. Table

Source: Börtönstatisztikai Szemle 2016/1. Büntetés-végrehajtási Szervezet p. 7 (translation: Review of Statistics of Prison 2016/1)

<http://bv.gov.hu/download/7/3c/61000/B%C3%B6rt%C3%B6nstatistikai%20Szemle%202016%20I.pdf>.

Without giving a detailed analysis of the table above, I would like to emphasize some interesting data. Firstly, it is important to highlight that these data are the most recent ones and, as the table shows, the extent of overcrowding was over 100 per cent in national as well as in county prisons. Furthermore, the table shows that the overcrowding is a more relevant problem in national prisons than in county prisons. Regarding national prisons, there are more places where the extent is considerably exceeding even the Hungarian average, there are several facilities where the saturation is around or even over 150 per cent. Moreover, as the data show, there are just a few prisons where the saturation is under 100 per cent, thus the balancing program will not be able to solve this situation in itself. In addition, the balancing problem can lead to other problems. For instance, it can cause organisational difficulties owing to the transportation of inmates from one establishment to another. Furthermore, it can lead to further restrictions of visits because the prisoners will be frequently held far away from their families and these problems can easily increase the tension between the staff and inmates, as well as among the prisoners themselves.²³

In addition, it would also be important to examine the most relevant problems of Hungarian prisoners. Not surprisingly, the most frequent complaint is the overcrowding. As the tables and data above show, overcrowding is a real problem in almost all of the Hungarian prisons, so most of the prisoners are forced to live in cells where the adequate living space is not ensured. The problem of overcrowding is so significant that it is not surprising that all of my interviewees emphasized it. One of my interviewees who works in Fejér County said the following when I asked him about the situation: *“Bad. Very bad. First of all, all of these prisons are overcrowded. The extent of overcrowding is around 120-140 per cent, which is not very bad comparing with the national average.”* This statement is confirmed by the table below. The prisons in Fejér County belongs to the Middle-Transdanubium National Prison and as the table shows the extent of overcrowding was 118 per cent in 2016. Which is truly under the national average but still overcrowded. One of my other interviewees said the following about the overcrowding:

“one of the biggest problems is the overcrowding. It almost became a cliché that Hungarian prisons are overcrowded. The compulsory 3 square metre does not exist. There are smaller and bigger cells but, in my opinion, it actually does not

²³ Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment CPT/Inf (2014) 13 p. 20
<http://www.cpt.coe.int/documents/hun/2014-13-inf-eng.pdf>.

matter if there are 2 persons in a 5 square metre cell or 20 in a 40 square metre cell. For example, I saw a cell in Kőhida which was 4-5 square metres so if one of the prisoners stood up the other had to sit down”.

We can read similar example in one of the monitoring of the Hungarian Helsinki Committee. According to this, in the Bács-Kiskun County Penitentiary Institution in some cells the moving space is so small that some of the inmates have to sit on the toilette cover while eating.²⁴ As a solution, certain prisons use triple bunk beds, although, the National Prison Administration has already ordered the avoidance of using them.²⁵ One of my interviewees also mentions this problem and according to his sources the using of triple bunk beds also happens in the more modern prisons as well. As he said:

“I heard that in Szombathely, which is one of the most modern prisons in the country, they change the two bunk beds to three bunk beds, regardless that it is not regular. Moreover, I have heard from more independent sources that before supervision they remove the three bunk beds and after it they move them back”.

Beyond the overcrowding, there are several other problems which overlap with it. First of all, the providing of out-of-cell activities. As one of my interviewees said, its frequency and period really depends on the prison. Furthermore, the size of the yard also matters. As my interviewee said, *“in certain prisons it is minimal. There are prisons where the size of the yard is as big as a football field. In another, which is quite a modern building, it was built in the '80s, the only ‘yard’ is on the roof, surrounded by fence and it looks like a cage. Prisoners can’t see any green there”.* Furthermore he adds that that the quality of out-off cell activities also really differs. *“There are prisons where the prisoners are allowed much more activities than in others. For example, it occurs that prisoners are allowed to do their walking but nothing else.”* This problem also connects to the overcrowding because this situation makes more difficult the work of the staff so they let out the inmates much less in certain prisons. The other most typical complaint overlapping with overcrowding is the provided time for taking a shower. Most of my interviewees emphasized this problem. As one of them said it causes problems that *“for example in the morning inmates have to stand in line for a long time. If there are 15 inmates in one cell and there is just one toilet and two taps, then it is pretty hard to be ready in time. Nonetheless it conforms to the norm if there is just one*

²⁴ Ibid p. 4.

²⁵ Hungarian Helsinki Committee Report to the Council of Europe (2013) p. 5 http://helsinki.hu/wp-content/uploads/HHC_Rule_9_communication_Szel_Kovacs_v_Hungary.pdf.

separated toilet but it causes problems and inconveniences for the inmates". This statement was confirmed by one of my other interviewees:

"I had a case when the detainee complained that he did not have time to finish anything in the morning. There are 12 people in the cell two taps and they have 10 minutes to get ready. So there are really serious problems with the housing and in certain cases they truly live among inhuman circumstances. Of course a prison cannot be the best place to live but certain expectations like adequate size of living space, a clean environment, normal meals and health care are elementary. Or at least they should be."

Moreover, there are also problems with the condition of prisons. The most typical problem beyond overcrowding is the existence of bedbugs and other insects. Because I have only four interviewees they could not give me a whole picture about every prison of the country. But if we see their opinions we can assume that it causes problem in most of the prisons. Just to mention a few example according to my interviews in Pálhalma prison most of the complaints are about rodents and for instance in Sándorháza prison inmates complain about cockroaches. Or one of my other interviewees said the following about this problem:

The hygienic circumstances are terrible in the shower and in the cells. Falling plaster and walls, rust, insects, cockroaches. Although shower cabins are separated, the plastic wall between them is, in most cases, broken. Furthermore, the insufficient warm water and time are also general problems. The problem of insects, cockroaches and bedbugs also exists in the cells. There are just a few prisons where the inmates do not complain about it. But at least they usually get compensation for it because it is easy to prove."

Besides information about problematic conditions in prisons I have heard also about positive changes as well. According to one of my interviewees in Székesfehérvár prison, for example, the treatment was successful and after that the inmates do not complain about bedbugs. But unfortunately such positive examples are few.

Furthermore, the inmates are complaining about the insufficient ventilation or heating system. As my interviewee said,

"during the summer [the temperature] is usually unbearable. There is absolutely no ventilation or current of air. The windows are usually not open or if they are just

the upper part. There are only few prisons with big open windows. Furthermore, because of the small windows, natural light is minimal. In addition, the situation in Veszprém prison can be interesting. It is an attractive building, which was built in the early 2000s. Here are huge windows but a few years ago a kind of thin board was placed in front of them to block the view. So they are sitting there all the time without natural light”.

The next typical problem is the food. This was also emphasized by all of my interviewees. As one of them described the situation:

“food is usually a tragedy. Bad dairy products, tainted cold cuts. Hardly any meat, fruits and vegetables never. Dishes are unrecognizable and are full of fat. It is almost impossible to bear for those people who do not get extra packages. They can do shopping in the prison but it is also difficult because there is not enough stuff. It occurs that someone wants to buy, for example, 3 litres of milk and he has the money however, he can buy only one litre because someone else also needs some and there is not enough milk.”

However, it is important to add that my other interviewees did not paint such a dark picture about the food. They acknowledged that food was generally not good and the complaints are justifiable but they did not say that food would be tainted.

And finally, one of the most important and serious problem is the health care in prisons. I have heard several terrible stories from my interviewees about the horrible health care in prisons. For example, one of them told me that he *“had a case where the detainee had a very serious blood pressure problem. When he was out, he could treat it by taking two pills but these were very expensive. After he was arrested he could not buy them and the prison provides inmates with the cheapest drugs. So he had to take 18 different pills, which did not perfectly adjust his blood pressure but it caused different side-effects”* But that is just one example and there are lots of others. One of my other interviewee said the following about the health care conditions:

“I heard from several inmates that according to a saying – in Sopronkőhida Prison – water in Sopronkőhida is a cure for everything”. So they almost never get medicine when they are sick. It is a complicated and long process anyway. You have to get a permission to get medicine from outside. Even if you get it, it is

*usually just after you have recovered because getting permission is a long process
It must be quite hard to be in prison with fever without any drugs”.*

Another problem is the hygienic conditions of the hospital. In 2015, the report of the Ombudsman about the prison hospital caused a widespread outrage in the country. Unfortunately, there is no English version of the report, but I have included a link because in the annex there are pictures, which can be important to see.²⁶ One of my interviewees also has a distressful opinion about the hospital;

“maybe the worst is the hospital in Tököl. I had a client in the summer who was pregnant, so she was at the maternity ward in Tököl Prison. She told me that because the plumbing did not work she had to flush the toilet with a pitcher. I was there a year ago and truly there are terrible conditions. I know it is kind of a cliché but people could shoot a World War II movie there. I have no idea when it was renovated last time, probably never.”

The above mentioned report by the Ombudsman also mentions the problem with the plumbing, thus it means that during the last two years the hospital did not solve it.

These problems and complaints truly do not paint a good picture about the condition of Hungarian Prisons. As it was mentioned above, and confirmed by all of my interviewees’ opinion, overcrowding causes the biggest problems. Not just the overcrowding itself but it also infers several other problem. Thus in the next part of my thesis I will look at those structural problems which may have contributed to the emergence of the present situation.

6. The Most Important Structural Problems behind Overcrowding

Here I will present three different issues, which in my view have played a significant role in the emergence of overcrowding in Hungarian Prisons. Firstly, I will write about the tightening jurisdiction, which after the new Criminal Code, made the situation worse. Secondly, I will examine the practice of pre-trial detentions in the Hungarian legal system. As we will see the application of pre-trial detention can also contribute with the emergence of overcrowding. And finally, I will analyse the operation of the former remedy system. Although, this topic

²⁶ Az alapvető jogok biztosának jelentése az AJB-1424/2015. számú ügyben (translation: Report of the Office of Commissioner for Fundamental Rights about AJB-1424/2015 case)
https://www.ajbh.hu/documents/10180/1957691/OPCAT+jelent%C3%A9s+a+Bv.+K%C3%B6zponti+K%C3%B3rh%C3%A1z%C3%A1nak+vizsg%C3%A1lat%C3%A1r%C3%B3l+1424_2015/f3d4a832-67b2-4cce-9674-01430cb0ffa5?version=1.0

does not constitute structural problem which would cause overcrowding, the ineffective remedy system had a significant role in the emergence of the present situation in Hungary.

6.1. Tightening Jurisdiction

The new Criminal Code (Act C of 2012) came into force on 1 July 2013. The new Criminal Code was widely criticized because it tightened the previous Criminal Code in several aspects. Beside the new Criminal Code, other jurisdictions occurred, which also contributed to the increasing of overcrowding of prisons. When I asked my interviewees about certain techniques and methods, which contributed to the overcrowding of Hungarian prisons most of them also emphasized the role of the new and stricter Criminal Code. As one of them said

“the new Criminal Code is much stricter. After 2012/2013 the number of detainees has significantly increased and the prisons are not able to place them but they have to”. One of my other interviewees drafts very similarly: one of the important reason behind overcrowding is “the new Criminal Code. The situation was not the best before it but it seems obvious that it just made things worse. It was not good for anything, it only deteriorated the situation. It was based on a wrong perception because I think that good criminal policy means good social policy”.

However, in one of my other interviewees' view the new Criminal Code had also some positive effects, which made the jurisdiction less strict. As he said; “the new criminal code is stricter from some aspects but it is not from others. For example it became less strict regarding recidivism. In the former system if somebody was sent to a light security prison he/she could be released after the two-thirds of his/her sentence. In the case of medium security prisons it was three-quarter and in the case of high security prisons it was four-fifths. According to the new criminal code, the type of the prison does not matter and everyone – except for example recidivists – can be released after the two-thirds of the sentence.” But he also acknowledged that “for example the application of the median of the sentence increases the overcrowding.” Thus, based on these opinions we can see that the introduction of the new Criminal Code has an impact on the situation of overcrowding. In this chapter, I will shortly present those new rules, which made the new Criminal Code stricter because, in my view, these increased the overcrowding. The new Criminal Code aggregates numerous sanctions, maintains life imprisonment without eligibility for parole and the three-strike provisions.²⁷ As

²⁷ Hungarian Helsinki Committee Report to the Council of Europe (2013) p. 9 http://helsinki.hu/wp-content/uploads/HHC_Rule_9_communication_Szel_Kovacs_v_Hungary.pdf.

all of these amendments have an impact on the overcrowding, it is important to analyse each of them.

6.1.1. Life imprisonment without eligibility for parole

Comparing with other amendments of the new Criminal Code, this change does not affect a lot of people but still this is the most significant change of the new Criminal Code. The European Court of Human Rights has issued several judgements²⁸ in the last few years where it stated that life imprisonment without parole or at least without a real possibility of parole entails the violation of Article 3 of the Convention.

In the case of Hungary, life imprisonment without parole is particularly interesting. It is important to mention that life imprisonment without parole can also be found in the Fundamental Law of Hungary: “no one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences”.²⁹ In addition the Criminal Code in its section 43 declares the following: “if the court has not precluded eligibility for parole with a sentence of life imprisonment, the earliest date of release on parole shall be after serving twenty-five years, or at least forty years”.³⁰ At this point I would like to highlight that after the new Criminal Code came into force in 2013, there were two cases before the ECtHR and in both cases the Court held that there had been a violation of Article 3 of the Convention. In the case of *László Magyar v Hungary* the plaintiff was sentenced life imprisonment without parole and the Court stated that this sentence was a violation of Article 3 (prohibition of inhuman and degrading treatment) and a violation of Article 6 paragraph 1 (right to fair trial within a reasonable time) of the Convention because of the excessive length of the criminal proceedings in his case.³¹ The other judgement, the *T.P. and A.T. v Hungary* case, focused on the rule of the Criminal Code, which was cited before. The Court held that there had been a violation of Article 3 of

²⁸ *Vinter and Others v the United Kingdom* [Application Nos. 66069/09, 130/10, 3896/10]; *Öcalan v Turkey* [Application Nos: 2469/03, 197/04, 6201/06, 10464/04]; *Harakchiev and Tolumov v Bulgaria* [Application Nos: 15018/11, 61199/12]; *Murray v the Netherlands* [Application No: 10511/10].

²⁹ Fundamental Law of Hungary Art IV. Para 2.

³⁰ Act C of 2012 on the Criminal Code. Section 43 (1) http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf.

³¹ *Magyar v Hungary* (application no. 73593/10) para 58, 66 <https://lovdata.no/static/EMDN/emd-2010-073593.pdf>.

the Convention because of the lengthy period (forty years) the applicants were required to wait before the commencement of the mandatory clemency procedure.³²

6.1.2 Median Time of the Punishment

Secondly, it is important to mention the introduction of sentencing guidelines concerning the median time of the imposed punishment. The sentencing guidelines were introduced in 2010 and they set out a significantly stricter way to count the median of the imprisonment to be imposed by the judge.³³ This measure means that the judges are obligated to justify if they want to impose a punishment, which is more lenient than the median. This is one of the most important decisions which occurred in the last years because it has the most significant effect on the judicial system and the overcrowding of prisons. Beyond the fact that this measure is very strict, it also enormously increases the saturation of prisons especially in those counties where milder judgements are usually made.

6.1.3 Petty offences punished with confinement

In 2010, it became possible to punish petty theft with deprivation of liberty. This amendment significantly contributed to the overcrowding of prisons. Furthermore, in 2012 this amendment was added into the Act II. of 2012 on Misdemeanours and Misdemeanour Procedure and the Misdemeanour Registry System. This act made it possible to apply confinement for the third misdemeanour within a 6-month period to any petty offence, even if none of the misdemeanours committed would be otherwise punishable by confinement.³⁴ The Act II. of 2012 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.³⁵ As a consequence of this amendment not just the overcrowding of prisons increased but it also brings on certain human rights issues because it violates Article 6 of the Convention, the right to fair trial. The UN Working Group on Arbitrary Detention also emphasized this problem in its report from 2013. The report states that “the Working Group interviewed a number of detainees who were serving time in confinement for offences such as not wearing a seatbelt, having a broken bicycle light, jay walking, walking across the street under the influence of

³² T.P. and A.T. v Hungary (application no. 37871/14 and 73986/14) [http://hudoc.echr.coe.int/eng#{"itemid":\["001-166491"\]}](http://hudoc.echr.coe.int/eng#{).

³³ Hungarian Helsinki Committee Report to the Council of Europe (2013) p. 9 http://helsinki.hu/wp-content/uploads/HHC_Rule_9_communication_Szel_Kovacs_v_Hungary.pdf.

³⁴ Ibid p. 11 (see also: Act II. of 2012 para 23 https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200002.TV).

³⁵ Ibid p. 11 (see also: Act II. of 2012 para 12, 15 https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200002.TV).

alcohol and so forth. [...] It seemed that an automatic conversion of a fine to confinement took place without the offender being in court to challenge the confinement.”³⁶ Nonetheless, these confinements are usually not long. However, as they are frequent, this amendment can increase the overcrowding indeed.

6.1.4. Three strikes law

Finally, the last change which I would like to highlight in this chapter is the introducing of the three strikes law. The principle behind this law is similar to the above mentioned one. It was introduced in 2010. This law is about that in certain cases judges are obligated to impose a life sentence. Furthermore, it was made stricter by the new Criminal Code in 2012 because it “prescribes that in certain instances it is mandatory for judges to impose a life sentence without the possibility of parole on habitual violent recidivists.”³⁷ This amendment, although, did not significantly contribute to the overcrowding of prisons but it clearly represents the ideology and principles behind most of the legislation changes from the last years.

6.2 The Practice of Pre-trial Detentions

6.2.2. The regional regulation

Article 5 of the European Convention on Human Rights regulates the pre-trial detentions in the region. As the Convention states, everyone has the right to liberty except the “lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so”.³⁸ Although the pre-trial detention is necessary in certain cases, however, as it is a serious limitation of the right to personal liberty, the European Court of Human Rights has laid down strict rules regarding its application. The first and one of the most significant rules is concerning the time of the pre-trial detention. In several cases the Court has stated that the suspect has to be brought to justice forthwith, although it does not mention what “forthwith” means exactly. Nonetheless, between the year of 2010 and 2014, the European Court of Human Rights stated in more than 400 different cases that the member states breached Article

³⁶ UNWGAD. Mission to Hungary. UN General Assembly (2013) para 112 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/072/58/PDF/G1407258.pdf?OpenElement> .

³⁷ Hungarian Helsinki Committee Report to the Council of Europe (2013) p. 11 http://helsinki.hu/wp-content/uploads/HHC_Rule_9_communication_Szel_Kovacs_v_Hungary.pdf.

³⁸ ECHR Art 5 para 1 (c)

5 of the ECHR and the Court has found the periods of pre-trial detention lasting between 2.5 and 5 years to be excessive.³⁹

Furthermore, the European Court of Human Rights in its practice applies certain criteria. It mentions 5 points which establish the lawful grounds of the pre-trial detention: “(1) the risk that the suspect will fail to appear for trial; (2) the risk the suspect will spoil evidence or intimidate witnesses; (3) the risk that the suspect will commit further offences; (4) the risk that the release will cause public disorder; (5) the need to protect the safety of a person under investigation in exceptional cases”.⁴⁰ The Court in the case of *Ambruszkiewicz v Poland* claimed that the “detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned to be detained”.⁴¹ Thus, if these circumstances or risks, which were emphasized above, do not exist, no one should be deprived of his liberty. Furthermore, the judgement of pre-trial detention must be sufficiently reasoned and it cannot be general or abstract and it also should not use stereotyped forms of words.⁴²

6.2.2. Statistical data of the Pre-trial Detentions in Hungary

The pre-trial detentions significantly contribute to the overcrowding of Hungarian prisons. As we can see in the table below, the extent of pre-trial detainees have made up almost one-third of the prison population, during the past few years.

Date	Number of pre-trial detainees*	% of pre-trial detainees as compared to the total prison population*	Number of pre-trial detainees per 100,000 inhabitants**
31 December 2009	4,502	29.3%	45
31 December 2010	4,803	29.6%	48
31 December 2011	4,875	28.4%	49
31 December 2012	4,888	27.9%	49
31 December 2013	5,053	28.0%	51
31 December 2014	4,400	24.6%	44

5. Table

Source: Hungarian Helsinki Committee (2015) The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making http://www.helsinki.hu/wp-content/uploads/PTD_country_report_Hungary_HHC_2015.pdf

³⁹ Hungarian Helsinki Committee (2015) The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making p. 7, 9 http://www.helsinki.hu/wp-content/uploads/PTD_country_report_Hungary_HHC_2015.pdf

⁴⁰ Ibid p. 7-8

⁴¹ Ibid p. 8 (see also: *Ambruszkiewicz v Poland* App 38797/03 4 May 2006 para 3)

⁴² Ibid p. 7

We can also see from the data of the table that between the years of 2009 and 2013 the number of pre-trial detainees continuously increased but in 2014 it decreased by 20 per cent. As it was mentioned in one of the previous chapters, the average of the extent of overcrowding is about 149 per cent, so the reduction of the pre-trial detentions could contribute to the normalization of prison circumstances. In contrast, according to the study of the Hungarian Helsinki Committee this situation does not actually improve or change. In Hungary the judicial practice strongly contributes to the situation because the success rate of prosecutorial motions aimed at ordering pre-trial detention is above 90 per cent.⁴³ One of my interviewees also emphasized this problem;

“in my view, there are too many pre-trial detentions. In several cases they are detained unnecessarily. Formally, they are alright but there are still too many. Although alternative measures like house arrest or geographical ban exist, these are very rarely used. However, it depends on the charge. For example, house arrest is not a good solution if the accused is charged with internet frauds, for instance. Moreover, in the case of homicide it is obvious that he/she should be arrested. Even if the escape of the accused does not seem plausible, there is a chance that they may hurt themselves. Apart from these, I have to admit that pre-trial detention is frequently applied without a solid reason.”

6.2.3 The legal background of pre-trial detentions in Hungary

First of all it is important to mention that Article 5 of the Fundamental Law of Hungary ensures the right to liberty and personal security. Furthermore, Paragraph 3 of the same article states that “any person suspected of having committed a criminal offence and taken into detention shall, as soon as possible, be released or brought before a court. The court shall be obligated to hear the person brought before it and shall forthwith take a decision with a written reasoning to release or to arrest that person”.⁴⁴ It is also important to mention the decision 66/1991 (XII. 21.) of the Constitutional Court regarding to the pre-trial detention. This decision, similarly to the practice of the European Court of Human Rights found that “the legal deprivation of personal liberty may also result in an ill-founded infringement. Restrictive provisions may be deemed constitutional only if the restriction is necessary and proportionate, as compared to the envisaged and constitutionally acknowledged aim of the

⁴³ Ibid p. p

⁴⁴ Fundamental Law of Hungary Article 5 para 3

provision”.⁴⁵ Beyond that the legal provisions pertaining to pre-trial detention and coercive measures in general are set out by Act XIX of 1998 on the Code of Criminal Procedure. The Article 129 (2) contains the followings:

(2) The defendant may be subjected to pre-trial detention in the case of a criminal offence punishable with imprisonment and if

a) he/she has absconded or hid from the court, the prosecutor or the investigation authority; he/she has attempted to abscond, or during the procedure another criminal procedure is launched against him/her for an intentional criminal offence punishable with imprisonment;

b) taking into account the risk of his/her absconding or hiding, or for any other reason, there are well-founded grounds to presume that his/her presence at the procedural acts may not be ensured otherwise;

c) there are well-founded grounds to presume that if not taken into pre-trial detention, he/she would – through influencing or intimidating the witnesses, eliminating, forging or hiding material evidence or documents – frustrate, hinder or endanger the evidentiary procedure;

d) there are well-founded grounds to presume that if not taken into pre-trial detention, he/she would accomplish the attempted or prepared criminal offence or would commit another criminal offence punishable with imprisonment.”⁴⁶

We can see that in the case of the Fundamental Law, as well as, in the case of the criminal procedural code there are several similarities between Hungarian laws and the ECHR, as well as, the decisions of the European Court of Human Rights and the Hungarian Constitutional Court. But there are still a lot of problems in the law and also in the judicial practice in Hungary. As it was mentioned above, the main practical problem is the high success rate of prosecutorial motions aimed at ordering pre-trial detention. The consequences of this practice will be presented below, so in this chapter I will only focus on the analysis of the legal framework.

⁴⁵ Decision 66/1991. (XII. 21.) of the Constitutional Court section IV (translation: Hungarian Helsinki Committee (2015) The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making) <https://www.opten.hu/66-1991-xii-21-ab-hatarozat-j202402.html>

⁴⁶ Article 129 of the Act XIX of 1998 on the Code of Criminal Procedure (translation by Hungarian Helsinki Committee (2015) The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making)

In this respect, one of the most important problems was the introduction of the so-called “unlimited” pre-trial detention. Before the first instance judgment is delivered, the pre-trial detention can reach a duration, which entails its termination. Article 132 of the Code of Criminal Proceedings provides as follows:

“Pre-trial detention shall be lifted in case

- a) its term reaches one year and a criminal procedure is conducted against the defendant for a criminal offence punishable with a prison term of up to three years;*
- b) its term reaches two years and a criminal procedure is conducted against the defendant for a criminal offence punishable with a prison term of up to five years,*
- c) its term reaches three years – in all cases beyond the ones listed under points a) and b), except for the case where the pre-trial detention was ordered or upheld after the promulgation of the first instance judgment, and in case a third instance procedure or a repeated trial is ongoing.”⁴⁷*

However, in November 2013 this article was amended. This amendment states that there is no time limit for pre-trial detention in those cases when the criminal procedure is conducted against the defendant for a criminal offence punishable with up to 15 years of imprisonment or life-long imprisonment. This amendment can violate the right to liberty and also can increase the overcrowding of prisons. This amendment was a reaction to a specific case in 2013. On 4th October 2013 two members of the so-called “Ároktő gang” escaped from house arrest after their release from pre-trial detention. They spent four years in pre-trial detention and were released owing to the above cited act. Although they were caught within a few days, this amendment came into force very soon on 18 November 2013 presumably to prevent the third member of the gang from being released on 22 November 2013.⁴⁸

Nonetheless, in the last few years there were some positive measures regarding to the decreasing of pre-trial detention. Firstly, in 2014 and in 2015 the Code of Criminal Procedure was amended and for now, the access to case files related to pre-trial detention is ensured in order to comply with the Right to Information Directive. It was an important step because in the last years there were more cases before the European Court of Human Rights where the

⁴⁷ Ibid Art 132

⁴⁸ Hungarian Helsinki Committee (2015) The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making p. 14, 18

Court decided that the Hungarian legal proceedings during the pre-trial detention violated Article 5 (4) of the ECHR, the principle of the equality of arms.⁴⁹ The second significant step forward was that in May 2013 the police put into operation the “electronic monitoring system” as the practical condition of house arrest. However, as this table shows until 2014 it did not lead to a significant decrease in the number of pre-trial detainees.

Year	Prosecutorial motions aimed at ordering pre-trial detention	Coercive measures ordered by the court		
		pre-trial detention	geographical ban	house arrest
2009	5,960	5,591	97	57
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

Table 6

Source: Hungarian Helsinki Committee (2015) *The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making* http://www.helsinki.hu/wp-content/uploads/PTD_country_report_Hungary_HHC_2015.pdf

In my view, the fact that this technical possibility did not cause a significant change in the number of pre-trial detainees also demonstrates the problematic nature of the judicial practice. Although the possibilities exist to reduce this number and, consequently, diminish the overcrowding of Hungarian prisons, the judicial practice does not accommodate the inclusion of these new methods.

6.3. The Right to an Effective Remedy in the Hungarian Judicial System

The right to an effective remedy is ensured under Article 13 of the ECHR. Although this article states that everyone has the right to an effective remedy before a national authority, this remedy did not work properly in the case of violating fundamental rights through prison conditions. The ECtHR judgement in *Varga v Hungary* stated that the state did not ensure the right to effective remedy for the plaintiffs and it obligated the Hungarian state to change the practice.

Until 1 January 2017 there were possibilities for the prisoners to file a complaint against prison conditions violating human rights. They could turn to the Supreme Court (Kúria) or other civil courts. Although there were possibilities to get a remedy, the Hungarian courts usually announced a verdict against the plaintiffs. For example, in a verdict the Supreme

⁴⁹ Ibid p. 19

Court recognized that detention as such could not deprive detainees of other fundamental rights, and the Supreme Court also acknowledged that the circumstances of the detention, in particular the insufficient living space, constituted an infringement of the plaintiff's personality rights, nonetheless, the claim was dismissed because the Supreme Court declared that the circumstances did not cause pecuniary damages for the plaintiff.⁵⁰ The Supreme Court delivered a similar verdict on 8 April 2013, when it claimed that overcrowding in itself did not entail compensation liability.⁵¹ Another case, where the plaintiff was held in detention for ten days in conditions incompatible with section 137 of Decree no. 6/1996, the Supreme Court held that the sole fact that "the plaintiff had been accommodated in a cell where the minimum living space could not be ensured did not establish the authorities' liability".⁵² In a judgement of 4 November 2011, the Debrecen Court of Appeal established that "although the plaintiff had been detained in overcrowded cells without adequate sanitary facilities, Hajdú-Bihar County Prison was not liable for the alleged damages since the overcrowding had been caused by objective reasons outside its scope of liability"⁵³. These examples are just a few of those thousands of cases, which failed before the Hungarian judiciary. In the *Varga v Hungary* case the Strasbourg Court found that although the domestic remedy was accessible, it was ineffective in practice.⁵⁴ Furthermore, it called the Hungarian State to introduce a new remedy, which would meet both in theory and in practice the requirements of the European Convention.

In those cases, which were before the Strasbourg Court, the Court upheld the state's responsibility in respect that the prison conditions were violating fundamental rights. In these cases, the plaintiffs complained about the overcrowding in their cells and about other human rights violating circumstances such as inadequate sanitary facilities and insufficient out-of-cell activities. But the common element in these cases was the inadequate living space. As it was mentioned in one of the previous chapters, according to the CPT, the minimum living space would be 4 square metres. In contrast, in the Hungarian law it was 3 square metres for male prisoners and 3.5 square metres for female and juvenile prisoners. Furthermore, this decree had been changed in 2010 and the new version said that prisons have to meet this

⁵⁰ *Varga v Hungary* (2015) [Application Nos: 14097/12, 45135/12, 73712/12, 34001/12, 44055/13, 64568/13] para 18 [http://hudoc.echr.coe.int/eng#{"itemid":\["001-152784"\]}](http://hudoc.echr.coe.int/eng#{).

⁵¹ *Ibid* para 21

⁵² *Ibid* para 19

⁵³ *Ibid* para 24

⁵⁴ *Ibid* para 106

requirement if it is possible. This is the amendment which was dismissed by the Hungarian Constitutional Court in 2014.

As a consequence of the decision of the European Court of Human Rights in the *Varga v Hungary* case, the Hungarian Parliament had to change several acts and practices in order to ensure the right to effective remedy. Thus the Parliament on 25 October 2016 passed the Act CX/2016, which came into force on 1 January 2017. This new act reforms the remedy system. It ensures the possibility of effective remedy in those cases which were dismissed before in Hungary and now are in Strasbourg. Approximately 4500 cases are waiting for decision before the ECHR⁵⁵ but now these cases will have a retrial in Hungary. In the following part of this chapter, the new remedy possibilities will be presented according to the Act CX/2016.

7. Possible Solution Techniques

As a result of the *Varga v Hungary* judgement, the state had to face with the situation of the Hungarian prisons and make a promise to take effective steps to eliminate the overcrowding or, at least, decrease the saturation of prisons. The ECtHR obligated the Hungarian state to establish a time frame for the reduction of saturation of prisons and for an effective remedy system. In this chapter, I would like to analyze the measures taken by the state to address the overcrowding of prisons, as well as other measures which if introduced could help with the situation.

7.1. Decriminalization

This technique is one of those which are not really applied by the state. In one of my previous chapters, about the stricter criminal code and other new acts which made the jurisdiction stricter, I have already looked at those new points of the criminal act, which can or already have increased the overcrowding. Thus, while not analyzed further in this chapter. I have deemed it important to mention it since, according to the opinion of the Council of Europe, this would be the first step in the direction of decreasing prison overcrowding. Recommendation No. R (99) 22 of the Council of Europe mentions among its basic principles that “deprivation of liberty should be regarded as a sanction or measure of last resort” and emphasizes that the member states “should consider the possibility of decriminalizing certain

⁵⁵ Fővárosi Törvényszék Büntető Kollégium: Összefoglaló anyag az alapvető jogokat sértő elhelyezési körülményekből eredő sérelmen alapuló kártalanítási eljárás szabályairól p. 2 (translation: Budapest-Capital Regional Court Criminal Division: Summary of the Regulations of Compensation Proceedings Resulted from Inadequate Accommodation Violating Basic Human Rights)

types of offence or reclassifying them so that they do not attract penalties entailing the deprivation of liberty”.⁵⁶ Thus without these important adjustments to the administration of the criminal justice system the success or usefulness of any other technique is questionable.

7.2. Balancing Program

Although, there was no real progress regarding decriminalization or one might even say that there were even step backwards, it is important to acknowledge that during the last years, especially after the judgement of the *Varga v Hungary* case several positive changes have occurred. One of those is the so-called balancing program.

The balancing program is the oldest program out of those addressed in my thesis. It was necessary because of the disproportionate overload of county remand prisons. In 2008, when the program started, the Hajdú-Bihar County Remand Prison, the Szabolcs-Szatmár-Bereg County Remand Prison, the Borsod-Abaúj-Zemplén County Remand Prison and the Budapest Remand Prison were the most overcrowded. The aim of the balancing program was mainly the mitigation of the saturation of these prisons.⁵⁷ If we check the x. table of my thesis, we can see that even in 2016, the saturation of these prisons is not just over 100 per cent but also over the average of the saturation of county prisons (122 per cent). However, the balancing program can be considered partly successful. It truly mitigates the overload of county prisons and moved some burden to other not so overcrowded prisons. In 2014, 6574 detainees were transferred to other institutions and the average rate of the saturation of prisons decreased.⁵⁸ Nonetheless, the balancing program could not be a solution for a country like Hungary. In a county, where even the lowest extent of overcrowding is over 95 per cent a balancing program in itself is not able to solve the problems. Although, the situation of extremely overloaded prisons was consolidated, this technique has also enhanced the saturation in those prisons which were not overcrowded before, or where the extent of overcrowding was low. In addition, as mentioned above in the chapter *Facts about Hungarian Prisons*, the CPT emphasizes other problems regarding the balancing program. It states that “overcrowding ‘balancing’ is not an effective long-term response and generates immediately a number of

⁵⁶ The Recommendation No. R (99) 22. Council of Europe. para 1.1, 1.4

[http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/Recommandation%20\(99\)%2022%20F.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/Recommandation%20(99)%2022%20F.pdf).

⁵⁷ Büntetés-végrehajtási Szervezet Évkönyve 2010 p. 10 (translation: The Yearbook of Prison Service 2010) <http://bv.gov.hu/evkonyv>.

⁵⁸ Büntetés-végrehajtási Szervezet Évkönyve 2014 p. 13 (translation: The Yearbook of Prison Service 2010) <http://bv.gov.hu/download/d/71/f0000/A%20B%C3%BCntet%C3%A9s-v%C3%A9grehajt%C3%A9si%20Szervezet%20%C3%89vk%C3%B6nyve%202014.pdf>.

serious problems for the prison management, the staff and the prisoner. 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”.⁵⁹ When I asked my interviewees about the balancing program, one of them also emphasized this problem: the system tries “to take into account that the prison should be close to the detainees’ families but it is hardly manageable because in East Hungary, where the crime rate is the highest, there are not enough prisons. But on the whole, the program helped a lot with the decreasing of overcrowding.”

Furthermore, this statement is confirmed by one of the reports of the Hungarian Helsinki Committee. Just to give an example, in 2012 during fieldwork they met a woman who, after having been transferred, could not see her family with her nine children for more than a year.⁶⁰

7.3. Construction of New Prison Places

First of all it is important to point out that the construction of new prison places or buildings is not able to solve the problem of overcrowding. As it was mentioned in the *Criminalisation* chapter above, the decriminalization of certain types of offences would be the first step to decrease the extent of overcrowding. Moreover, as the above cited recommendation of the Council of Europe claims “the extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding”.⁶¹ Nonetheless, in Hungary the problem of overcrowding is so determinate that it cannot be solved without the construction of new buildings or places.

This solution technique was the most long-term one. During the last decade, when the overcrowding of prisons, as well as the continuous raising of the number of detainees became obvious and general, the governments usually tried to solve this problem with the construction of new prisons.

⁵⁹ Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment CPT/Inf (2014) 13 p. 20

⁶⁰ Embertelen túlszűfoltóság a magyar börtönökben. Háttéranyag az Emberi Jogok Európai Bíróságának túlszűfoltósággal kapcsolatos döntéséhez. Hungarian Helsinki Committee (2015) p. 4 (translation: Inhuman Overcrowding in Hungarian Prisons. Materials for the Decision of The European Court of Human Rights about the Overcrowding) http://helsinki.hu/wp-content/uploads/Varga_v_Hungary_hatteranyag.pdf.

⁶¹ The Recommendation No. R (99) 22. Council of Europe. para 1.2
[http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/Recommandation%20\(99\)%2022%20F.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/Recommandation%20(99)%2022%20F.pdf).

The first program, which started in 2004, was the PPP (Public-Private Partnership) project. The PPP project, as its name shows, is based on the union of the public and private sectors. The aim of this project was to build two prisons for 700 people per prison. According to the first plan there were two approaches regarding the distribution of tasks between the public and private sector. According to the first approach, the private sector would have been responsible only for the building process and any other tasks would have been the responsibility of the public sector. But finally the second approach was accepted where, beyond the building, most of the tasks (like meal, transport, etc.) were carried out by the private sector.⁶² Thus, by the year of 2008 two prisons had been built in the frame of PPP-project one in Tiszalök and one in Szombathely. The selection of these two places was significant. The objective was to find a place where the existing prisons are among the most overcrowded ones. For example, in North East Hungary, where the Tiszalök prison was built, there was only one prison in Sátoraljaújhely for three counties, the area of which is approximately 19 397 km².⁶³ The build-up of these two prisons had two main objectives. Firstly, the decreasing of overcrowding and secondly, the ensuring of those standards which are required by the CPT. Among several other problems the CPT emphasized that in the Hungarian prisons there is no possibility to provide adequate out-of-cell programs for the inmates because most of the rooms which were built, for example, in order to provide education, were transformed to living places in order to decrease overcrowding. Thus, these new prisons tried to conform to the European standards.⁶⁴ However, these two prisons were not able to solve the problem of overcrowding. Of course, it decreased overcrowding at some extent but – partly because the overcrowding is a more serious problem and partly because the continuous rise of the number of the inmates – they could not provide a sufficient solution in themselves. Moreover, Tiszalök National Prison became overcrowded as well (see Table 4).

Between the years of 2014 and 2015 the construction process continued. By the year 2015 several other places were constructed, furthermore, some of them were completely new buildings. Investments were made including, but not limited to, the followings: in the above mentioned Szombathely National Prison was enlarged by 396 places, the Borsod-Abaúj-Zemplén County Remand Prison was expanded by a new building for 500 persons, the Állampuszta National Prison and the Middle-Transdanubium National Prison were also given

⁶² Radnay József A PPP-projekt előkészítése, szervezeti háttere, a szerződés fő elemei p. 2 (translation: The Preparation and Background of the PPP-project and the Main Elements of the Contract).

⁶³ Csere László A Tiszalökön PPP-konstrukcióban épülő bv. intézet megvalósításának előzményei p. 4 (translation: The Antecedent of the Build-up of Tiszalök Prison in PPP-project).

⁶⁴ Ibid p. 1.

new buildings with 108 places for the Állampuszta National Prison and 126 for the Middle-Transdanubium National Prison. For 2015, 899 new places were constructed so the overcrowding decreased to some extent.⁶⁵

As a result of the *Varga vs Hungary* case a new construction process started in 2016. After the judgement it became obvious that along with other techniques the continuing of construction of prisons is still important. Moreover, according to my interviewees this would be the most important and most effective solution. As one of them said; *“the only real solution technique would be the construction of new prisons.”* The Decree 268/2016 (VIII. 31) claimed that the construction of new prison places is especially important for the government. The objective of this prison construction program is the construction of eight buildings in eight different settlements until 2018; in Békés, Csenger, Heves, Kemece, Komádi, Komlói, Kunmadaras and Ózd. For the implementing 1.2 billion HUF (3.88 million EUR) in 2016, 30.4 billion HUF (96 million EUR) in 2017 51.3 billion HUF (166 million EUR) in 2018 and 20 billion HUF (64.6 million EUR) will be set aside in 2019.⁶⁶ The implementation of these plans was confirmed by one my interviewees. As he said; *“according to plan by 2018, new prisons will have been built in Tolna and Békés counties. They had planned another building in Baracska, too but it was cancelled. But it is quite likely that the other plans will be carried out and it will decrease the overcrowding.”* Furthermore, all of my other interviewees also stated that it seems that the works will be finished for 2018-2019, which will finally offer a solution to the problem of overcrowding of prisons.

7.4. Alternative Measures

The application of alternative measures has three main objectives: firstly, the decreasing of overcrowding, secondly, the decreasing of costs and thirdly the facilitating of the reintegration into the society. In the case of Hungary, I would like to emphasize two kinds of alternative measures: the house arrest and the reintegration custody.

House arrest has existed since 2003 and its application is laid down by the Decree 6/2003 (IV. 4.).⁶⁷ The main difference between house arrest and reintegration custody is that house arrest is applicable only in the case of pre-trial detention. Although house arrest has been an existing

⁶⁵ Büntetés-végrehajtási szervezet Évkönyv 2015 (translation: The Yearbook of Hungarian Prison Service 2015) p. 40-41 <http://bv.gov.hu/download/b/a/7/61000/%C3%89vk%C3%B6nyv%202015%20v%C3%A9gleges.pdf>.

⁶⁶ Sereg András (2017) Rács helyett nyomkövető p. 1 (translation: Tracking Device instead of Bars) <http://www.jogiforum.hu/hirek/37109>.

⁶⁷ 6/2003 (IV. 4) Decree <http://net.jogtar.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=A0300006.IM>.

measure since 2003, it is rarely applied. This fact can be explained by the custom of the justice system, which usually prefers pre-trial detention instead of other measures, as it was mentioned above in the chapter of *Practice of Pre-trial Detentions*. In 2013, the electronic monitoring system was installed to make application of house arrest easier and safer but the number of house arrested persons has not significantly increased. This fact is confirmed by the report of the Hungarian Helsinki Committee. According to this report, at the end of 2014, after the electronic monitoring system had been installed for a year, the number of suspects in pre-trial detention was 2274, while in house arrest this number was only 154. At the end of September of the same year, the number of pre-trial detentions was 2119, while the number of suspects in house arrest was 138, thus the proportion has not changed.⁶⁸

In contrast to house arrest, reintegration custody is a more recent measure. It was laid down by the amendment of Act 2013 CCLX. Although, it came into force only on 1 January 2015, it had been already mentioned by a Government Decision in 2011.⁶⁹ This decision contained firstly the application of the electronic monitoring system, which was finally installed in 2013. The installation of this system was absolutely significant because this made the application of reintegration custody and house arrest possible, although the latter had already existed in theory since 2003.

The reintegration custody is an alternative form of punishment because it targets not the general punishment aims but the reintegration of convicts into the society.⁷⁰ This measure has several preconditions. Firstly, it is applicable only in the case of those prisoners who were sentenced for the first time. Recidivists cannot ask for reintegration custody. Furthermore, it is applicable only in the case of not serious crimes, where the sentence does not exceed five years and if the prisoners spent their detention in low (fogház) or medium (börtön) security prisons. Moreover, it is applicable in the case of those crimes which were not committed against human beings. These preconditions serve the objective to maintain the sense of security and trust in the state within the society. The reintegration custody can increase certain fears in the society but with these preconditions these can be eliminated.⁷¹ The next important

⁶⁸ Hungarian Helsinki Committee (2015) *The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making* p. 8.

⁶⁹ 1040/2011 (III. 9.) Government Decision.

⁷⁰ Bogotyán Róbert (2015) *A zsúfoltság csökkentésének útjai a börtönépítésen túl Börtönügyi Szemle 2015/1 p. 10* (translation: *The Different way of Decreasing Overcrowding beyond Construction of Prisons*).

⁷¹ *Ibid.*

precondition is that the prisoner has to voluntarily undertake the reintegration custody.⁷² This point is important from two aspects, from a financial and from a psychological one. The financial aspect means that the prisoner will be able to finance the costs of his/her reintegration custody. The installation of the electronic monitoring system is his/her responsibility thus it is significant to give the possibility to undertake the custody voluntarily. Furthermore, the other aspect is the psychological one. Even between the strict rules of prisons in some occasions the prisoner has the possibility to ignore the control but in the case of reintegration custody all of his/her steps would be under control. And the legislature considered that this situation can be more stressful for some.⁷³

The application of different alternative measures can be a good solution for the decreasing of overcrowding of prisons. In addition these are in accord with the basic principles of the CPT which emphasize that deprivation of liberty should be regarded as a sanction or measure of last resort. Thus, alternative measures are good and it seems that the Hungarian judicial system is using them more often. Mostly my interviewees were also satisfied with reintegration custody and acknowledged that, aside from some problems, it is a good solution technique. As one of them said: *“it seems a good program and only two escapes have happened, yet. Unfortunately, I granted reintegration custody to one of them but it had not been predictable. But the program is successful. More and more of them get jobs in the reintegration custody or study something or get a driving licence. So it seems that the detainees use this opportunity”*. According to him the program works. On one hand, it helps to decrease the overcrowding of prisons and on the other hand, it gives a great possibility to prisoners for reintegration. Nonetheless, there are some problems with the program. One of my interviewees enumerated some:

“for example, some detainees do not have a family whose house they could move in. Or – because most of them are very poor – a lot of houses do not have electricity or coverage. For example I had a case where the detainee lived near the Romanian border and there the signal was confused by the other country. He said that there was sign in one of the rooms but not in the others, however, it was not a problem for him as he would stay in the room with coverage. Well, unfortunately we could

⁷² 2013. évi CCLX törvény para 187/A (translation: Act CCLX of 2013)
https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300240.TV.

⁷³ Bogotyán Róbert (2015) A zsúfoltság csökkentésének útjai a börtönépítésen túl Börtönügyi Szemle 2015/1 p. 13 (translation: The Different way of Decreasing Overcrowding beyond Construction of Prisons).

not accept it. It would have been better for him because he was old and sick but we could not do anything.”

But after that she also adds that *“there are problems with the reintegration custody but I think it is basically a good practice”*. Thus, I can say that my interviewees were satisfied with the program, although, they acknowledged its practical problems and potential faults. Furthermore, as it was mentioned above there were some critics that the judicial system does not use the reintegration custody – or other alternative measures – very often, although, it has the possibility. However, according to my interviewees the alternative measures are used more and more often so it seems the judicial system just needed more time to change its former routine.

7.5. The Practice of the New Remedy System

7.5.1. Who has right to get compensation?

The Act details what kind of circumstances allows the prisoners to ask for compensation. It mentions separately the absence of the living space prescribed by paragraph 121 of the 16/2014 Decree. Furthermore, it mentions other problems which can cause the violation of the prohibition of inhuman and degrading treatment, hence these factors can provide reason for paying compensation. These are the following: the absence of the separation of toilet; inadequate ventilation; inadequate lighting; inadequate heating; and inadequate pest-control.⁷⁴ Nonetheless, this regulation can lead some practical problems. In some circumstances, which are mentioned by the act, there are objective factors. For example the sufficient living space or the separation of the toilet are objective factors, thus it is easy to identify whether these requirements are met or not. But other factors such as adequate lighting or heating are subjective factors and they are not regulated in the Hungarian law. So in order to ensure proper proceedings, the exact meaning of adequate heating and lighting should be regulated, too. The new act binds the compensation to objective circumstances. This means that the detainees do not have to prove occurrence of the physical or mental harm. So, for example, the fact that there are bedbugs in the cell is enough for asking compensation and the detainee does not have to prove (for example with medical documents) that this fact caused any physical or mental harm. This is a relevant difference compared with civil proceedings.⁷⁵ The

⁷⁴ 2016. évi CX törvény 10/A para 1 (translation: Act 2016/CX).

https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1600110.TV×hift=ffffff4&txreferer=00000001.TXT

⁷⁵ Fővárosi Törvényszék Büntető Kollégium: Összefoglaló anyag az alapvető jogokat sértő elhelyezési körülményekből eredő sérelmen alapuló kártalanítási eljárás szabályairól p. 6 (translation: Budapest-Capital

verification whether the ventilation system is adequate or not can be problematic in practice. Ventilation can be performed through the windows and also through the doors of the cell but the efficiency of ventilation is not the same through windows or doors. It can be problematic to determine the intensity or frequency of ventilation in prisons.⁷⁶

Another question is whether the adequate living space concerns just the cell or other parts of the prison as well. The overcrowding of other areas of the prison can also cause problems, even inhuman or degrading treatment for the prisoners. For example, owing to overcrowding the prison is not able to guarantee the sufficient time for meals, regular bathing or showering or enough out-of-cell activities. The question is whether detainees can claim for compensation because of these circumstances?⁷⁷

Furthermore, according to the criminal procedure code there are three persons who have the right to start it: the convict; his/her lawyer; and after the convict's release his/her legal representative.⁷⁸

7.5.2 The conditions of the compensation proceeding

In the declaration the convict has to report whether the ECHR or the civil court adjudicated compensation earlier for the convict. Another condition is that the conditions violating fundamental rights must take at least 30 days. If the number of days are less the convict is not entitled to compensation. Furthermore, the convict has to submit the complaint for the prison governor before he/she would hand in the compensation application. But the submission of the complaint is not necessary if the convict is under forced medical treatment or if he/she was not able to give in the application because of reasons beyond him/her.⁷⁹

7.5.3 The process of the compensation proceeding

Once the application has been filed the judge shall decide about the compensation. He can reject it if, for example, the application was delayed or, for instance, the ECHR or the civil court has already adjudicated compensation for the victim. The judge can suspend the proceeding as well in two cases. Firstly, if a proceeding is going on before the civil court or if

Regional Court Criminal Division: Summary of the Regulations of Compensation Proceedings Resulted from Inadequate Accommodation Violating Basic Human Rights).

⁷⁶ Ibid p. 7

⁷⁷ Ibid p. 7

⁷⁸ 2016. évi CX törvény 10/A para 5 (translation: Act 2016/CX)

⁷⁹ Ibid 10/A para 6

there is a registered application before the ECHR. However, if these circumstances are not there, the judge decides about the extent of the compensation.⁸⁰

The new act measures the extent of the compensation in days. On the basis of the convict's report they sum the number of those days when the convict lived under circumstances violating fundamental rights. The minimum amount of compensation is 1200 HUF/day the maximum is 1600 HUF/day.⁸¹ This part of the act can cause certain problems. Firstly, the paragraph of the act does not detail which circumstances are sufficient for the judgement of a higher extent of compensation, so the estimate of this will depend on the judicial practice. Another problem can be that the difference between the lowest and the highest sum of the compensation is very small, just 400 HUF, which is approximately 1.30 EUR. Thus, the judges will have just a narrow scope when they make their decision.⁸² Furthermore, if there was compensation adjudicated for the convict's victim, and the convict had not paid it before, they deduct the amount of the victim's compensation from the convict's compensation.

This act has improved in several aspects comparing with the former regulation. Firstly, this act defines more precisely who is entitled to compensation and what circumstances in prisons can entail inhuman or degrading treatment and punishment. Furthermore, another important change in the Hungarian remedy system is that the new decree follows the CPT's guidelines. Thus, the act acknowledges that those living spaces, which are less than 4 square metres, breach the prohibition of torture and inhuman or degrading punishment, so those victims who were detained under such circumstances are entitled to compensation. Another important change is that the detainees have the right to turn to the prison governor. This change means that the act provides another remedy forum for the prisoners and that the institution also can be impeached for the circumstances in prisons. This change is significant because as it was discussed above, there were cases before where the decision claimed that the authorities cannot be liable on the ground that detainees have been accommodated in cells where the minimum living space was not or could not be ensured. Of course, as it was detailed above, there are still several practical problems with this act.

⁸⁰ dr Sörös László (2016) Napidíj az elítéltnak, az alapvető jogokat sértő elhelyezési körülményekért – avagy 2017. január 01. napján hatályba lépő kártalanítás szabályok a 2013. évi CCXL törvényben p. 9 (translation: Compensation for detainees because of the Inhuman Circumstances)

⁸¹ 2016. évi CX törvény 10/A para 3

⁸² dr Sörös László (2016) Napidíj az elítéltnak, az alapvető jogokat sértő elhelyezési körülményekért – avagy 2017. január 01. napján hatályba lépő kártalanítás szabályok a 2013. évi CCXL törvényben p. 10 (translation: Compensation for detainees because of the Inhuman Circumstances)

7.5.4. *The most important technical problems with the Act CCLX of 2013*

First of all, it is important to emphasize that the act is quite recent so there is virtually no practice yet. Thus, on one hand this can mean that other problems will appear or on the other hand, it can happen that those problems, which will be enumerated here, will be solved.

Firstly, according to my interviewees' opinion the compensation of plaintiff's can cause problems. This part of the new act was principally criticized by my interviewees. As one of them said: *"it can easily happen that finally the detainee will not get any compensation because he/she has to pay back everything for the plaintiffs. So then what did we achieve by this? Honestly I do not really understand it."* One of my other interviewees responded similarly: *"it could happen that the detainee gets a certain amount of compensation but because he/she must compensate the plaintiff(s) finally he/she will not get anything. Although his/her rights were violated."* According to one of my other interviewees, this method can entail that the detainees will not hand in the applications. He used an example to confirm his opinion. From 2015, detainees have been allowed to have cell phones. At the first time they were very happy but they started to complain soon about the high minute rates. The National Prison Administration made a contract with Telekom and the rates were around 100 HUF per minute. One of my interviewee compare the new act with this situation.

"In my view, it will be very similar to the case of cell phones about which inmates were very enthusiastic first but later they realised that there are drawbacks, too. In the case of cell phones it was the high rates while in the case of the new act it is the compensation due to the plaintiffs. If the inmates get compensation on the ground of inhuman treatment but at their trial before the civil court compensation was ordered to be paid for their plaintiffs, that sum will be subtracted from their own compensation. When regulation about using cell phones was new, they were very excited. They were very happy that finally they do not have to stand in line and they can phone. But when they heard about the enormous minute rates, they started complaining. Now they are very excited that they can get compensation from 1200 HUF to 1600 HUF per day. But I think there will be a lot of deduction and after a while the prisoners will lose their interest. So it is a kind of an 'I give you something but, at the same time, I will take away something as well' system. Theoretically they adhere to the norms of the European Union but..."

Another important issue, which was briefly mentioned above is the very narrow difference between the minimum and maximum amount of compensation. One of my interviewees, who is a judge complained about this situation:

“I do not know how to decide which complaint was worth 1500 HUF and 1450 HUF respectively. It is a good question. [...] I talked with one of my colleagues who said that if there is overcrowding she will adjudicate 1500 HUF without deliberation. But I think the extent of overcrowding matters as well. It is a good question what I would do if there were other complaints like bedbug bites or anything else.”

And finally, there are technical problems with the new act. One of my interviewees said the following:

“I think it is a very bad act because it will not solve anything. [...] It provides us with very narrow time frames. These are 15-30 day periods. The act does not take into consideration that in the case of unclear complaints the judge has to spend time with the detainee to clarify the complaint. Another problem is the data sent by the prisons. We would like to know how many cases the detainees were kept among inhuman conditions. It can happen that they did not spend their entire sentence in one place because, for example, they were transferred for visit or trial or had to go to hospital or something like that. So in this case we have to collect every data from every institution about the size of the living space and other factors recorded day by day. And we have to know the extent of overcrowding to decide about the amount of the compensation. If the cell is extremely overcrowded then I will give the maximum sum for compensation. If there was one person too many over the limit, then I will give a smaller amount of compensation. But the institutions do not send the data. Or, at least, not correctly. They send me something but I am not able to understand it and the most important data are missing, so I send them back. But it takes time again.

The opinion of my interviewees about the new law was rather negative. They see technical problems, but what is most important, they see other factors which are completely against the aim of the act. Nonetheless, I deem it important to highlight again that we do not have sufficient data, yet so most of these opinions are only assumption, however, the criticism can be justified.

8. Conclusion

In my thesis I tried to answer the question whether the condition in Hungarian prisons violates the prohibition of inhuman and degrading treatment or not. The conclusion is in the affirmative. First of all, this statement was confirmed by the judgement in the *Varga v Hungary* case. Secondly, those conditions, which were detailed partly by my interviewees and partly by the reports of the Hungarian Helsinki Committee also confirm this conclusion. The reports and the judgements mainly focus on the overcrowding, which of course also entails the violation of prohibition of inhuman treatment. Nonetheless, in my view there are other problems, the insufficient hygienic conditions or health care, which are not really mentioned in these materials, although these also violate the prohibition of inhuman and degrading treatment.

The other important issue of my thesis was the possible solution techniques, especially the amendment of the act about the compensation for detainees because of the inhuman circumstances. The point of this act is that the state tried to solve the problem within its jurisdiction but the effectiveness of this measure is questionable. As discussed in detail above, there are several technical problems with this act. Furthermore; it will not necessarily solve the problem of the absence of an effective remedy. As one of my interviewees said, *“it is a perfect escape for the state. Now the prisoners will get the half of that amount of money which they would get in Strasbourg”*. On the other hand, it is a progress comparing with the former system because the compensation is based on objective factors like the size of the living space. Nonetheless, it is important to highlight that until now only a few compensation proceedings have been finished, so we are not really able to assess the effectiveness of the new remedy system. Approximately a year from now, it could be interesting to examine the effects of this amendment or look at the extent of overcrowding after the construction of the new prisons has been finished. Hopefully, due to the different measures I discussed above, the situation in the prisons would have improved.

9. Annex

9.1. Interview 1

Can you introduce yourself?

I work as a lawyer. I mainly work with criminal cases, so I very often visit prisons. In the civil court I had a few compensation cases and now as a result of the decision from Strasbourg and the new act, I have handed in approximately 100 compensation applications.

What are the most frequent problems?

For me the most interesting thing is that – as I have noticed – there are as many customs and rules as prisons.

I have a list of the problems. First of all, the frequency and time prisoners spend in fresh air. This also really depends on the prison but usually this time is very little.

Secondly, the size of the yard. In certain prisons it is minimal. There are prisons where the size of the yard is as big as a football field. In another, which is quite a modern building, it was built in the '80s, the only 'yard' is on the roof, surrounded by fence and it looks like a cage. Prisoners can't see any green there.

Furthermore, it is also an important aspect how many people are in the yard at the same time. Because of the overcrowding, the yard can be also very crowded.

Thirdly, the different activities. For me it also seems utterly ad hoc. There are prisons where the prisoners are allowed much more activities than in others. For example, it occurs that prisoners are allowed to do their walking but nothing else. Or there are other activities like exercising, working outside or visiting the library, etc. First of all, during the pre-trial detention they cannot do anything. That is why they hate it so much, it is very strict and closed. Of course if they are in strict security prisons, guards also very strict but, in the case of pre-trial detention, the charge does not matter: they are locked in their cells for the whole day, except for the one hour walk. The other activities like visiting the library are based on privilege. I have no idea what you should do in order to get this privilege.

Regarding working, usually there are not a lot of possibilities. In those smaller prisons, which were built during the 19th century and are usually in the city centre, it is almost nothing. They could work at the kitchen or there are some maintenance jobs but nothing else. Well, the situation is not much better in the bigger prisons. For example, in Baracska the only possibility is working on a farm, which would not be a problem but the circumstances are terrible. I had more clients who told me that ...

So, it seems that working has more problems than positive effects. So they usually stay in their cells and do nothing because the working conditions are terrible and it is not worth it.

Then ventilation is another problem. During the summer it is usually unbearable. There is absolutely no ventilation or current of air. The windows are usually not open or if they are just

the upper part. There are only few prisons with big open windows. Furthermore, because of the small windows, natural light is minimal. In addition, the situation in Veszprém prison can be interesting. It is an attractive building, It was built in the early 2000s. Here are huge windows but a few years ago a kind of thin board was placed in front of them to block the view. So they are sitting there all the time without natural light.

Furthermore, one of the biggest problems is the overcrowding. It almost became a cliché that Hungarian prisons are overcrowded. The compulsory 3 square metre does not exist. There are smaller and bigger cells but, in my opinion, it actually does not matter if there are 2 persons in a 5 square metre cell or 20 in a 40 square metre cell. For example, I saw a cell in Kőhida which was 4-5 square metres so if one of the prisoners stood up the other had to sit down. Those prisons, which were built according to the guidelines of the Union, are also overcrowded. I heard that in Szombathely, which is one of the most modern prisons in the country, they change the two bunk beds to three bunk beds, regardless that it is not regular. Moreover, I have heard from more independent sources that before supervision they remove the three bunk beds and after it they move them back.

Prisons usually have visiting hours but there are some problems there as well. For example those detainees, who are poor and detained far away from their families, keep writing applications all the time asking to transfer them back because their families are not able to visit them. They usually get the permission but it is a long process and it also causes serious problems for the prisons. However, I had a client who did not get the permission and has not met his family for a year.

Food is another problem. Both its quality and quantity. Food is usually a tragedy. Bad dairy products, tainted cold cuts. Hardly any meat, fruits and vegetables never. Dishes are unrecognizable and are full of fat. It is almost impossible to bear for those people who do not get extra packages. They can do shopping in the prison but it is also difficult because there is not enough stuff. It occurs that someone wants to buy, for example, 3 litres of milk and he has the money however, he can buy only one litre because someone else also needs some and there is not enough milk.

Then about the heating: I was told that there is terribly cold in Sándorháza and Baracska.

What do think about the hygienic conditions?

The conditions are terrible. Maybe the worst is the hospital in Tököl. I had a client in the summer who was pregnant, so she was at the maternity ward in Tököl Prison. She told me that because the plumbing did not work she had to flush the toilet with a pitcher. I was there a year ago and truly there are terrible conditions. I know it is kind of a cliché but people could shoot a World War II movie there. I have no idea when it was renovated last time, probably never.

On the other hand there were improvements in other prisons. For example, it was a serious critique a few years ago that toilets were separated only by a curtain from the living space. By now it rarely occurs. I think there are only one or two institutions where they still use this

arrangement; in most of the places toilets are separated. Also, toilets are in the cells and not in the corridor.

The hygienic circumstances are terrible in the shower and in the cells. Falling plaster and walls, rust, insects, cockroaches. Although shower cabins are separated, the plastic wall between them is, in most cases, broken. Furthermore, the insufficient warm water and time are also general problems.

The problem of insects, cockroaches and bedbugs also exists in the cells. There are just a few prisons where the inmates do not complain about it. But at least they usually get compensation for it because it is easy to prove.

What about the health care?

I have already mentioned the circumstances in the prison hospital. But the situation is not better in the prisons themselves. For example, I heard from several inmates that according to a saying in Sopronkőhida Prison – water in Sopronkőhida is a cure for everything”. So they almost never get medicine when they are sick. It is a complicated and long process anyway. You have to get a permission to get medicine from outside. Even if you get it, it is usually just after you have recovered because getting permission is a long process. It must be quite hard to be in prison with fever without any drug.

What do you think about the new remedy system?

The point of the act is that the state tries to solve the problem within its jurisdiction. Now, Strasbourg depended all of the cases until 31 August. I think they are waiting. But I have no idea to what extent it will be effective. For me it seems that they do not really hand in the applications. They are also waiting and hoping Strasbourg may say that the new system is not effective. And in that case it is not worth for them submitting this application because now they can get maybe half of the amount of money they could expect from Strasbourg.

9.2. Interview 2

Can you introduce yourself?

I have been a law-enforcement prosecutor since 2008. So I mainly work with detainees. This partly consists of the enforcement of the law but I think it is psychology as well. I have to keep contact with people, who mainly come from extreme poverty and the communication with them can be very difficult or at least different.

Could you tell me what the most frequent complaints are in different prisons?

There have been several supervisions during the last few years by the CPT and now after the judgment in *Varga v Hungary* case, the ECtHR also pays attention. I work in Fejér County, where are two big prisons. One of them is the Middle-Transdanubian National Prison, which has three buildings, in Székesfehérvár, Baracska and Martonvásár. The Martonvásár Prison is

the least strict, here the detainees can work outside of the territory of the prison. In these prisons there are no typical problems. The CPT report for example criticised in several prisons that toilets were not separated. In these prisons in Fejér County they are. But all of the prisons are overcrowded. Although some efforts have been made, nothing can be done until new prisons are constructed. Until that sometimes one of the cells is overcrowded and other times another one. Here in Fejér County the bedbug infection is rare. For example now it seems that the treatment was successful in Székesfehérvár.

The other prison in Fejér County is the Pálhalma National Prison with three buildings in Sándorháza, Mélykút and Bernátkút. The Mélykút Prison is a women's prison.

You have mentioned prison construction. What do you think about other programs which try to decrease the extent of overcrowding?

For example there is the prison balancing program. During the balancing process they examine more aspects. First of all they check which prisons are able to take part in them and they also study if detainees have any qualifications and which prison would be the best place to use their knowledge. The health condition of the prisoners is also examined.. They try to take into account that the prison should be close to the detainees' families but it is hardly manageable because in East Hungary, where the crime rate is the highest, there are not enough prisons. But on the whole, the program helped a lot with the decreasing of overcrowding.

Another program is the reintegration custody. In the beginning it was a precondition that the person was sentenced the first time. Now it is not a pre-condition anymore but he/she cannot be a recidivist. This system is a good one but I think in some cases it is not fair. Furthermore, the supervision of the detainees in reintegration custody is a huge task. I think they want to release more and more detainees but it will not necessarily work. For example, some detainees do not have a family whose house they could move in. Or – because most of them are very poor – a lot of houses do not have electricity or coverage. For example I had a case where the detainee lived near the Romanian border and there the sign was confused by the other country. He said that there was sign in one of the rooms but not in the others, however,

it is not a problem for him as he will stay in the room with coverage. Well, unfortunately we could not accept it. It would have been better for him because he was old and sick but we could not do anything. So there are problems with the reintegration custody but I think it is basically a good practice. On the other hand it could not really solve the problem of overcrowding because there are a lot of recidivists.

How did the former compensation system work and what were its main problems which led to the Varga v Hungary judgement?

In my view, what led to the Varga judgement has always been a problem in Hungary, namely that the conditions are not comparable with the European standards. Thus, when we joined the EU everyone thought the everything was going to be here like in Western-Europe. But we have to admit that our standard of living is not like in Western Europe, and it is particularly

true in the case of prisons. The prisoners started to complain about the conditions: there is not enough hot water or enough time to take a shower, etc. It was due to the fact that the world has opened and they could see the prison condition in different Western European countries and they also realized that the Hungarian prisons did not reach that level. So I think these complaints were justifiable and well grounded. The aim of punishment should be the deprivation of liberty and not the suffering from the conditions. But we have not reached this level. In the former system if they got any compensation it was not a lot. And the prisoners and also the ECtHR got enough of that.

What do you think about the new act?

I think it is a perfect escape for the state. Now the prisoners will get the half of that amount of money what they would get in Strasbourg. So it would be easier for the state. But for the prisoners it can be good that I think this process will be faster. Now the judges can judge according to objective basics. They can examine the extent of the square metres and sum the number of the days and according to it judge some amount of compensation. But for example it was surprising that they add to the law the compensation of the plaintiff. Thus, it could happen that the detainee gets a certain amount of compensation but because he/she must compensate the plaintiff(s) finally he/she will not get anything. Although his/her rights were violated.

What do the detainees think about the new act?

Now they are happy and continuously hand in the applications. But it is important to add that the plaintiffs' compensation has not happened yet. After that I think this happiness will decrease. Furthermore, I think that the present detainees will not hand in the application now just after they will be released.

According to your opinion to what extent is the system of jurisdiction responsible for the overcrowding?

I think there are not any part of it which would be responsible for the overcrowding. I do not think that, for example, judges pass too strict sentences. But now this system has changed. The new Criminal Code is much stricter. After 2012/2013 the number of detainees has significantly increased and the prisons are not able to place them but they have to. Although there are other options like public work or fine, we cannot send everyone to public work and we have to admit that most of the criminals are very poor, so fine is not an option.

9.3. Interview 3

Can you introduce yourself?

I work as a judge in law enforcement. Thus I work with those people's cases who are already sentenced for imprisonment.

What are the most common complaints in Hungarian prisons?

The majority of complaints is recurring; detainees mostly complain about the overcrowding. The number of applications for compensation for this is very high; we have 172 applications at the Székesfehérvár Court at the moment and we get an average of 35 new ones every week. First of all, I would like to highlight that most of the complaints are absolutely justifiable. The complaints are mostly recurrent. They complain about the overcrowding and another typical problem is the existence of insects and bedbugs. It is important to emphasize that the new act about the compensation of detainees only focuses on the size of living space. And according to some opinions the complaints about food or health care are not part of the new compensation system. However, there are complaints about these problems as well. For example I had a case where the detainee had a very serious blood pressure problem. When he was out, he could treat it by taking two pills but these were very expensive. After he was arrested he could not buy them and the prison provides inmates with the cheapest drugs. So he had to take 18 different pills, which did not perfectly adjust his blood pressure but it caused different side-effects.

Furthermore, they are complaining about food, which is truly not really tasty. They are complaining about not having showers because only the workers can take a shower every day. They miss warm water from the cells. Consequently they make water heaters by themselves in order to be able to drink coffee or tea in the cells but these gadgets are very dangerous. And of course the overcrowding causes other problems. I had a case when the detainee complained that he did not have time to finish anything in the morning. There are 12 people in the cell two taps and they have 10 minutes to get ready. So there are really serious problems with the housing and in certain cases they truly live among inhuman circumstances. Of course a prison cannot be the best place to live but certain expectations like adequate size of living space, a clean environment, normal meals and health care are elementary. Or at least they should be.

What can you tell me about the effects of the new act?

It is really difficult to answer this because we do not have any experiences yet. But I think it is a very bad act because it will not solve anything. The only real solution would be the construction of new prisons. Furthermore, the act provides us with very narrow time frames. These are 15-30 day periods. The act does not take into consideration that in the case of unclear complaints the judge has to spend time with the detainee to clarify the complaint.

Another problem is the data sent by the prisons. We would like to know how many cases the detainees were kept among inhuman conditions. It can happen that they did not spend their entire sentence in one place because, for example, they were transferred for visit or trial or had to go to hospital or something like that. So in this case we have to collect every data from every institution about the size of the living space and other factors recorded day by day. And we have to know the extent of overcrowding to decide about the amount of the compensation.

If the cell is extremely overcrowded then I will give the maximum sum for compensation. If there was one person too many over the limit, then I will give a smaller amount of compensation. But the institutions do not send the data. Or, at least, not correctly. They send

me something but I am not able to understand it and the most important data are missing, so I send them back. But it takes time again.

Another problem can be that the act gives us very little room for manoeuvring regarding the amount of compensation. I talked with one of my colleagues who said that if there is overcrowding she will adjudicate 1500 HUF without deliberation. But I think the extent of overcrowding matters as well. It is a good question what I would do if there were other complaints like bedbug bites or anything else. This 400 HUF difference is very narrow. So I do not know how to decide which complaint was worth 1500 HUF and 1450 HUF respectively. It is a good question.

The next problem with the act is the compensation of the plaintiffs. It can easily happen that finally the detainee will not get any compensation because he/she has to pay back everything for the plaintiffs. So then what did we achieve by this? Honestly I do not really understand it. In my opinion it would have been much better if the state had surveyed the needs and had tried to reach an agreement out of court. I think it would have been better and faster. But this act will not solve the problem. And I do not know what will the ECtHR's opinion be about it.

What is the detainees' opinion?

We receive a lot of applications and this amount has not decreased yet. And I think it will not, until the first decisions about the plaintiffs' compensation are made. But it is important to add that the judges usually do not judge compensation for the plaintiffs. So I think the number of sentences judging compensation will not be so high as to significantly decrease the number of applications submitted in the future.

Does the Varga v Hungary case have any effect on the judiciary?

Not really. But my opinion is that those compensations were justifiable. If a country does not able to create normal circumstances, then it should pay.

What will be the most important changes between the old and the new remedy system?

The most important change will be that we will recognize the infringement more often than the civil court. According to the new system the state has objective responsibility regarding the overcrowding. So if the cell was overcrowded the detainee has the right to get compensation. And the cells are almost always overcrowded. In the civil court the judges look at several other factors.

What happened to those cases which were before the ECtHR?

Now Strasbourg suspended those cases. Firstly I heard that they will transfer back all of the cases but they did not just suspended them. I think they are waiting for the first decisions from Hungary.

What can be some possible solutions for overcrowding?

Firstly, reintegration custody. By now it has become a huge part of my work. It means that we ordered ten cases of reintegration custody per week. In the case of reintegration custody, the detainee gets fetters and the electronic monitoring system controls his/her moves. The judge decides when the detainee can leave his/her home. I usually ask them about their needs.

It seems a good program and only two escapes have happened, yet. Unfortunately, I granted reintegration custody to one of them but it had not been predictable. But the program is successful. More and more of them get jobs in the reintegration custody or study something or get a driving licence. So it seems that the detainees use this opportunity.

Another solution could be the construction of new prisons. Until that this situation will not change. Now with the new act they have the opportunity to an effective remedy, although I have problems with the new act as well. In my opinion, it will not decrease the overcrowding. But now it seems that the new prisons will be built by 2018.

What are the most important reasons behind overcrowding?

First of all it is the new Criminal Code. The situation was not the best before it but it seems obvious that it just made things worse. It was not good for anything, it only deteriorated the situation. It was based on a wrong perception because I think that good criminal policy means good social policy.

Another problem is that the judgements are not unified in different counties. For example you will get a much milder sentence in Fejér County than in Borsod-Abaúj-Zemplén County. The East Hungarian courts are much stricter. But there is dispersion in West Hungary, too. For example Veszprém County passes very strict sentences while Fejér County makes much milder ones.

Furthermore, in Hungary there are a lot of prisons which were built in the end of the 19th century or the beginning of the 20th century. These prisons are not compatible with the European standards. These prisons are absolutely unsuitable for detention. These prisons are in one building with the court, so they are suitable for temporary housing before trial but for nothing else.

9.4. Interview 4

Can you introduce yourself?

I am a prosecutor in Hungary and I work with law enforcement.

We visit prisons two times a week, on Wednesdays I visit the prison in Baracska. This prison belongs to the Middle-Transdanubian National Prison, which has an building in Baracska. Now this is the main building. This prison has three buildings: one in Baracska, one in

Székesfehérvár and one in Martonvásár, which was built in 2015. In Székesfehérvár there are approximately 120 inmates, mainly men but there are also women who are in pre-trial detention. And on Wednesday we also go to Pálhalma, where there are 3 buildings as well: one in Sándorháza, one in Bernátkút and one in Mélykút, with female inmates only. In Sándorháza, there are also pre-trial detainees who came from every part of the country. They are mostly men because the pre-trial detained women are usually sent to Mélykút.

Can you describe the circumstances in these prisons?

Bad. Very bad. First of all, all of these prisons are overcrowded. The extent of overcrowding is around 120-140 per cent, which is not very bad comparing with the national average. The only exception is the Martonvásár prison where the conditions are close to the European standards. For example, there is LCD TV in every cell. Nevertheless, the overcrowding is a problem here as well, but here the prisoners live in “luxury”. The prisoners who live here are can frequently go home or they can work outside the prison.

The worst one is the Pálhalma prison. Here bedbugs cause most of the problems. There are treatments but they are not effective and the prisoners complain a lot about bites. But for example in Baracska this complaint rarely occurs.

What are the typical complains in those prisons?

In Baracska and Székesfehérvár the overcrowding is the most typical complaint. And also during the summer they complain about the insufficient ventilation. But we are not really able to do anything about it. If they open the window, warm air will come in but if they draw the curtain they do not see. In Martonvásár there are usually no complains. This prison answers the requirements of the European Union norms or at least is close to them. All in all the conditions are acceptable there. In Pálhalma most of the complains are about rodents and the overcrowding of course. In Sándorháza they complain about cockroaches. But in Mélykút, which is the female prison, there are not cockroaches.

But inmates find a new reason to complain about from time to time. Recently they have been mostly complaining about the high cell phone rates per minute. They have been allowed to have cell phones since 2015, although it is controlled that they can talk with the contact person only. Of course there are misuses, nevertheless complaints about the rates are justifiable. The National Prison Administration made a contract with Telekom and the rates are around 100 HUF per minute. Although I acknowledge these complaints are justifiable, we

are not really able to do anything about them because it has been a civil contract between the National Prison Administration and Telekom.

Furthermore, there are complains about having a shower. At present taking a shower three times a week is mandatory (earlier it was just two) and if inmates work they can have a shower every day after work. On the other hand, women can take a shower every day whether they work or not. The authorities usually provide it but sometimes the prisoners complain about the insufficient amount of warm water and the limited time. Here I would like to add that in Sándorháza, Mélykút and Bernátkút they are trying to use solar panels to solve the problem of the not sufficient amount of warm water. Furthermore, the overcrowding can also lead to other problems. For example in the morning inmates have to stand in line for a long time. If there are 15 inmates in one cell and there is just one toilet and two taps, then it is pretty hard to be ready in time. Nonetheless it conforms to the norm if there is just one separated toilet but it causes problems and inconveniences for the inmates.

Does the overcrowding lead to any problems regarding meals or out-of-cell activities?

The mandatory time for out-of-cell activities is one hour per day. We received complaints about it but for now we don't anymore. I have no information about complaints regarding meals. They complain about the quality or quantity of food or about its variety but these complaints are not connected to the problem of overcrowding. Anyhow, we cannot solve these problems.

Do you see any structural problems in the justice, which can be responsible for overcrowding?

In my view, there are too many pre-trial detentions. In several cases they are detained unnecessarily. Formally, they are alright but there are still too many. Although alternative measures like house arrest or geographical ban exist, these are very rarely used. However, it depends on the charge. For example, house arrest is not a good solution if the accused is charged with internet frauds, for instance. Moreover, in the case of homicide it is obvious that he/she should be arrested. Even if the escape the accused does not seem plausible, it has a chance that they may hurt themselves. Apart from these, I have to admit that pre-trial detention is frequently applied without a solid reason. But it is not necessarily the fault of the prosecution. In several cases, it is the police that propose pre-trial detention and the

prosecution do not support it and do not propose the pre-trial detention but they suggest some alternative measure.

To what extent was the former remedy system effective?

The former remedy system was not really effective. There were only some civil suits. The former system operated as follows: the prisoners could submit their complaint to the prison governor or the prosecutor. But prisons usually reject the requests and after that the plaintiff could turn to the prosecution. In the former system we were used as means. So we stated the infringement such as the lack of out-of-cell activities or overcrowding or if bedbugs' bites were mistreated, and after that the inmates could submit a request for compensation to the prison governor. The prison governor considered it and if he did not find it grounded the prisoner could hand in a lawsuit within 30 days. Furthermore, they could turn to international forums.

After the information of the first sentences from Strasbourg became known, a new method was introduced and the prisons started to pay compensation. Nonetheless, I do not really know the new system. We will get back hundreds of cases from Strasbourg and it will be distributed between different counties of the country. Vas, Fejér, Pest county and Budapest will be most involved because the biggest prisons can be found there. But we have not experienced yet how the new system works. Now the prisoners are really interested in it and they also have a lot of questions. In my view, it will be very similar to the case of cell phones about which inmates were very enthusiastic first but later they realised that there are drawbacks, too. In the case of cell phones it was the high rates while in the case of the new act it is the compensation due to the plaintiffs. If the inmates get compensation on the ground of inhuman treatment but at their trial before the civil court compensation was ordered to be paid for their plaintiffs, that sum will be subtracted from their own compensation.

When regulation about using cell phones was new, they were very excited. They were very happy that finally they do not have to stand in line and they can phone. But when they heard about the enormous minute rates, they started complaining. Now they are very excited that they can get compensation from 1200 HUF to 1600 HUF per day. But I think there will be a lot of deduction and after a while the prisoners will lose their interest. So it is a kind of an "I give you something but, at the same time, I will take away something as well" system. Theoretically they adhere to the norms of the European Union but... although we do not have any practical experience, yet. However, I heard some news from attorneys that inmates are

asking about civil suit proceedings. So it shows that they are interested in getting compensation but – probably because of the deductions – they will prefer the civil suit proceeding instead of the new system.

Do you see any problems with the new remedy system in advance?

I do not know because there is no any data, yet. But we have problems with the interpretation of the law and there is no agreement among the prison, judges and prosecutors.

In your opinion to what extent is the stricter criminal code responsible for the overcrowding?

The new criminal code is stricter from some aspects but it is not from others. For example it became less strict regarding recidivism. In the former system if somebody was sent to a light security prison he/she could be released after the two-thirds of his/her sentence. In the case of medium security prisons it was three-quarter and in the case of high security prisons it was four-fifths. According to the new criminal code, the type of the prison does not matter and everyone – except for example recidivists – can be released after the two-thirds of the sentence.

But for example the application of the median of the sentence increases the overcrowding. Owing to this system in some counties – for example in Fejér County – where milder judgements were made, now the accused usually get stricter judgements.

Do you see any progress regarding the balancing program or the building of new prisons?

Yes, I see progress. According to plan by 2018, new prisons will have been built in Tolna and Békés counties. They had planned another building in Baracska, too but it was cancelled. But it is quite likely that the other plans will be carried out and it will decrease the overcrowding.

10. List of References

Cases

Ambruszkiewicz v Poland [Application No 38797/03]

[http://hudoc.echr.coe.int/eng#{"itemid":\["001-75345"\]}](http://hudoc.echr.coe.int/eng#{) (visited: 4 May 2017)

Harakchiev and Tolumov v Bulgaria [Application Nos: 15018/11, 61199/12];

<http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-145442&filename=001-145442.pdf> (visited: 04. May 2017)

Magyar v Hungary (application no. 73593/10) para 58, 66

<https://lovdata.no/static/EMDN/emd-2010-073593.pdf>. (visited: 04. May 2017)

Murray v the Netherlands [Application No: 10511/10]. <https://lovdata.no/static/EMDN/emd-2010-010511-2.pdf> (visited: 04. May 2017)

Öcalan v Turkey [Application Nos: 2469/03, 197/04, 6201/06, 10464/04];

[http://hudoc.echr.coe.int/eng#{"languageisocode":\["ENG"\],"appno":\["24069/03","197/04","6201/06","10464/07"\],"documentcollectionid2":\["CHAMBER"\],"itemid":\["001-142087"\]}](http://hudoc.echr.coe.int/eng#{)

(visited: 04. May 2017)

Szél v. Hungary [Application No: 30221/06] <https://lovdata.no/static/EMDN/emd-2006-030221.pdf> (visited: 04. May 2017)

T.P. and A.T. v Hungary (application no. 37871/14 and 73986/14)

[http://hudoc.echr.coe.int/eng#{"itemid":\["001-166491"\]}](http://hudoc.echr.coe.int/eng#{) (visited: 04. May 2017)

Varga and Others v Hungary [Application Nos: 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, 46586/13] [http://hudoc.echr.coe.int/eng#{"itemid":\["001-152784"\]}](http://hudoc.echr.coe.int/eng#{) (visited: 04. May 2017)

Vinter and Others v the United Kingdom [Application Nos. 66069/09, 130/10, 3896/10];

<http://hudoc.echr.coe.int/webservices/content/pdf/001-122664?TID=uynnlohkyr> (visited: 04. May 2017)

Domestic Legislation

6/1996 IM Decree http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400016.IM (visited: 27. April 2017)

6/2003 (IV. 4) Decree
<http://net.jogtar.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=A0300006.IM>. (visited: 27. April 2017)

16/2014 IM Decree http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400016.IM (visited: 27. April 2017)

32/2014 Decision of the Hungarian Constitutional Court
<http://www.kozlonyok.hu/nkonline/MKPPDF/hiteles/MK14149.pdf> (visited: 27. April 2017)

1040/2011 (III. 9.) Government Decision <https://www.opten.hu/1040-2011-iii-9-korm-hatarozat-j157579.html> (visited: 27. April 2017)

Act XIX of 1998 on the Code of Criminal Procedure
https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800019.TV (visited: 27. April 2017)

Act C of 2012 on the Criminal Code
http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf. (visited: 27. April 2017)

Act CX of 2016
https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1600110.TV×hift=ffffff4&txtreferer=00000001.TXT (visited: 27. April 2017)

Act CCLX of 2013 https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300240.TV. (visited: 27. April 2017)

Decision 66/1991. (XII. 21.) of the Constitutional Court <https://www.opten.hu/66-1991-xii-21-ab-hatarozat-j202402.html> (visited: 27. April 2017)

Fundamental Law of Hungary Art, 25 April 2011

<http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf> (visited: 27. April 2017)

Council of Europe Reports and Recommendations

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2nd General Report [CPT/Inf (92) 3].

<http://www.cpt.coe.int/en/annual/rep-02.htm> (visited: 27. April 2017)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 7th General Report [CPT/Inf (97) 10]

<http://www.cpt.coe.int/en/annual/rep-07.htm> (visited: 27. April 2017)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 11th General Report [CPT/Inf (2001) 16]

<http://www.cpt.coe.int/en/annual/rep-11.htm> (visited: 27. April 2017)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT/Inf (2014) 13]

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680696b7f> (visited: 27. April 2017)

Council of Europe. European Convention on Human Rights, 4 November 1950

http://www.echr.coe.int/Documents/Convention_ENG.pdf (visited: 27. April 2017)

Council of Europe, Living space per prisoner in prison establishments: CPT standards. (2015)

<http://www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf> (visited: 27. April 2017)

Council of Europe, Recommendation No. R (99) 22.

https://bip.ms.gov.pl/Data/Files/_public/bip/prawa_czlowieka/zalecenia/9922.pdf (visited: 27. April 2017)

Council of Europe, Recommendation Rec(2006)2.

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8d25 (visited: 27. April 2017)

Council of Europe, Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment CPT/Inf (2014) 13 <http://www.cpt.coe.int/documents/hun/2014-13-inf-eng.pdf> (visited: 27. April 2017)

Council of Europe, Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment CPT/Inf (2016) 27 <http://www.cpt.coe.int/documents/hun/2016-27-inf-eng.pdf>. (visited: 27. April 2017)

Council of Europe. White Paper of Prison Overcrowding. European Committee on Crime Problems. [PC-CP (2015) 6 rev 4].
[http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/PC-CP%20\(2015\)%206_E%20Rev%203%20White%20Paper%203%20March%202016.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202016/PC-CP%20(2015)%206_E%20Rev%203%20White%20Paper%203%20March%202016.pdf)
(visited: 27. April 2017)

UN General Assembly, UNWGAD. Mission to Hungary. (2013) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/072/58/PDF/G1407258.pdf?OpenElement> . (visited: 27. April 2017)

United Nations, Standard Minimum Rules for the Treatment of Prisoners. First United Nations Congress on the Prevention of Crime and the Treatment of Offenders
https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf (visited: 27. April 2017)

Secondary Literature

Books and articles

Bogotyán Róbert (2015) A zsúfoltság csökkentésének útjai a börtönépítésen túl Börtönügyi Szemle 2015/1 (translation: The Different way of Decreasing Overcrowding beyond Construction of Prisons).

Csere László A Tiszalökön PPP-konstrukcióban épülő bv. intézet megvalósításának előzményei (translation: The Antecedent of the Build-up of Tiszalök Prison in PPP-project)

Halmai Gábor – Tóth Gábor Attila (2008) Emberi jogok p. 679 (translation: Halmai, Gábor – Tóth, Gábor Attila (2008) Human Rights).

Radnay József A PPP-projekt előkészítése, szervezeti háttere, a szerződés fő elemei (translation: The Preparation and Background of the PPP-project and the Main Elements of the Contract).

Sereg András (2017) Rács helyett nyomkövető (translation: Tracking Device instead of Bars) <http://www.jogiforum.hu/hirek/37109> (visited: 04. May 2017)

Sörös László, dr. (2016) Napidíj az elítéltek, az alapvető jogokat sértő elhelyezési körülményekért – avagy 2017. január 01. napján hatályba lépő kártalanítás szabályok a 2013. évi CCXL törvényben (translation: Compensation for detainees because of the Inhuman Circumstances)

Reports by National Authorities

Az alapvető jogok biztosának jelentése az AJB-1424/2015. számú ügyben (translation: Report of the Office of Commissioner for Fundamental Rights about AJB-1424/2015 case) https://www.ajbh.hu/documents/10180/1957691/OPCAT+jelent%C3%A9s+a+Bv.+K%C3%B6zponti+K%C3%B3rh%C3%A1z%C3%A1nak+vizsg%C3%A1lat%C3%A1r%C3%B3l+1424_2015/f3d4a832-67b2-4cce-9674-01430cb0ffa5?version=1.0 (visited: 04. May 2017)

Börtönstatisztikai Szemle 2016/1. Büntetés-végrehajtási Szervezet (translation: Review of Statistics of Prison)

2016/1)<http://bv.gov.hu/download/7/3c/61000/B%C3%B6rt%C3%B6nstatistikai%20Szemle%202016%20I.pdf> (visited: 04. May 2017)

Büntetés-végrehajtási Szervezet Évkönyve 2010 (translation: The Yearbook of Prison Service 2010) <http://bv.gov.hu/evkonyv>. (visited: 04. May 2017)

Büntetés-végrehajtási Szervezet Évkönyve 2014 (translation: The Yearbook of Prison Service 2014) <http://bv.gov.hu/download/d/71/f0000/A%20B%C3%BCntet%C3%A9s-v%C3%A9grehajt%C3%A1si%20Szervezet%20%C3%89vk%C3%B6nyve%202014.pdf> (visited: 04. May 2017)

Büntetés-végrehajtási szervezet Évkönyv 2015 (translation: The Yearbook of Hungarian Prison Service 2015) <http://bv.gov.hu/download/b/a7/61000/%C3%89vk%C3%B6nyv%202015%20v%C3%A9gleges.pdf>. (visited: 04. May 2017)

Fővárosi Törvényszék Büntető Kollégium: Összefoglaló anyag az alapvető jogokat sértő elhelyezési körülményekből eredő sérelmen alapuló kártalanítási eljárás szabályairól (translation: Budapest-Capital Regional Court Criminal Division: Summary of the Regulations of Compensation Proceedings Resulted from Inadequate Accommodation Violating Basic Human Rights)

Reports by non-governmental organizations

Hungarian Helsinki Committee (2015) Embertelen túlszűfoaltság a magyar börtönökben. Háttéranyag az Emberi Jogok Európai Bíróságának túlszűfoaltsággal kapcsolatos döntéséhez. (translation: Inhuman Overcrowding in Hungarian Prisons. Materials for the Decision of The European Court of Human Rights about the Overcrowding) http://helsinki.hu/wp-content/uploads/Varga_v_Hungary_hatteranyag.pdf (visited: 04. May 2017)

Hungarian Helsinki Committee Report to the Council of Europe (2013) http://helsinki.hu/wp-content/uploads/HHC_Rule_9_communication_Szel_Kovacs_v_Hungary.pdf (visited: 04. May 2017)

Hungarian Helsinki Committee (2015) The Practice of Pre-trial Detention: Monitoring Alternatives and Judicial Decision-Making http://www.helsinki.hu/wp-content/uploads/PTD_country_report_Hungary_HHC_2015.pdf (visited: 04. May 2017)