

ZSUZSANNA JUHÁSZ*

The Systemic Problem of Prison Overcrowding

Prison overcrowding and inadequate conditions of detention are recurring problem for many countries in Europe. According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: CPT) published reports currently 30 Council of Europe member states face this problem and have to deal with its negative consequences for prisoners and staff. In a number of cases the European Court of Human Rights (hereinafter: the Court) has found that accommodation in overcrowded and non-sanitary conditions constitutes inhuman or degrading treatment and thus violates Article 3 of the European Convention on Human Rights¹.

While the average world prison population rate is 144, in Hungary the prison population rate² was 184 in 2014, which means that more than 18.000 prisoners were held in penal institutions³. This average number of prisoners corresponds to 141%⁴ overcrowding, considering that the official capacity of Hungarian prison system is almost 13.000. Because of the huge prison population and prison overcrowding it can be observed some important effects of the overcrowding, as poor detention conditions, cramped accommodation, lack of adequate space, constant lack of privacy, reduced out-of-cell activities, increased tension and hence.

I. Applications against Hungary concerning prison overcrowding

In its judgment issued on 10 March 2015 in the Varga and Others v. Hungary case⁵ the European Court of Human Rights set out that the overcrowding of penitentiaries in Hungary constitutes a structural problem. The Court has shown that the limited personal

* Associate Professor, University of Szeged

¹ „No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

² Also known as imprisonment rate, which shows the number of prisoners per 100.000 of the general population.

³ In 2014 73, 1% of the total prison population was convicted, 24.6% pre-trial detainee, 1.5% under confinement as a penalty, and 0.8% compulsory psychiatric treatment. The number of inmates was 17.711 at the end of the first half year of 2015. The data was provided by the National Prison Service Headquarters, Review of Hungarian Prison Statistics 2/2015. p. 4.

⁴ It's important to note that while the average overcrowding rate is 141%, in some prisons (Jász-Nagykun-Szolnok County Remand Prison, Heves County Remand Prison) the overcrowding index was more than 170 %, which means extremely high overcrowding. National Prison Service Headquarters, Review of Hungarian Prison Statistics 2015. p. 8.

⁵ Application nos 14097/12; 45135/12; 73712/12; 34001/13; 44055/13 and 64586/13, Judgment of 10 July 2015.

space⁶ (1.5 to 3.3 square metres) available to all six current and former detainees in different penitentiary institutions (in Baracska, Budapest, Debrecen, Pálhalma, Sopronkőhida, Szeged, and Szolnok), the time spent away from their cells, the lack of privacy when using the lavatory, inadequate sleeping arrangements, insect infestation, the poor ventilation, restrictions on showers had amounted to degrading treatment.

The Court found that there are approximately 450 applications currently pending against Hungary in which the applicants complain similar inadequate conditions of detention, as the Court has previously also found a violation of Article 3 in the judgment of *Szél v. Hungary*⁷; *István Gábor Kovács v. Hungary*⁸; *Hagyó v. Hungary*⁹ and *Fehér v. Hungary*¹⁰.

The Court reiterates that the inadequate conditions of detention originated in a widespread problem within the Hungarian prison system, justifying a pilot-judgment procedure¹¹ of the recurrent and persistent nature of the problem identified. In this pilot-judgment the Court also set out that Hungary should produce within six months from the date the judgment became final a plan to resolve the overcrowded nature of its prisons. It is important to point out that according to the judgment the solution would be the reduction of the number of prisoners by more frequent use of non-custodial measures and minimizing the use of pre-trial detention. The Court pointed to the recommendations of the Committee of Ministers to encourage prosecutors and judges to use alternatives to detention and redirect their criminal policy towards the reduced use of detention.

⁶ In connection with the living space for prisoners, the legal rules previously in force [Decree 6/1996. (VII. 12.) of the Minister of Justice] declared, that “if possible, the number of people to be placed in a cell shall be defined in a way that adult male prisoners has a 3 m² of moving space, while for woman and juveniles 3,5 m². The Hungarian Constitutional Court annulled that provision in 2014 October and ruled that regulation constituted a violation of the ban on inhuman and degrading treatment. In the decision the Constitutional Court urged the legislators, to adopt a new regulation introducing a mandatory minimum space – requirement for detainees. According to the new provision “the number of people to be placed in a cell shall be defined in a way that adult male prisoners has at least 3 m of moving space, while for woman and juveniles a minimum of 3,5 m².” [Decree 16/2014. (XII. 19.) of the Minister of Justice, Article 121. §]

⁷ Application no. 20221/06; Judgment of 7 June 2011.

⁸ Application no. 15707/10; Judgment of 17 January 2012.

⁹ Application no. 52624/10; Judgment of 23 April 2013.

¹⁰ Application no. 69095/10; Judgment of 2 July 2013.

¹¹ The pilot judgment procedure was developed as a technique of identifying the structural problems underlying repetitive cases against the countries and imposing an obligation on State to address the problems. One of the aims of this procedure is to allow the speediest possible redress to be granted at the domestic level to the large numbers of people suffering from the structural problem. In this procedure the Court’s task is not only to decide whether a violation of the Convention, but also to identify the systemic problem and to give clear indications of remedial measures access to resolve it. The first judgment in which the Court responded to the resolution of the Committee of Ministers was *Broniowski v Poland* (Application no. 31443/96; Judgment of 22 June 2004). This case concerned a compensation scheme for Polish citizens displaced after the Second World War. See: Factsheet – pilot judgments. http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf. and SZEMESI SÁNDOR: *Az emberi jogok európai örékének új fegyvere: a pilot judgment eljárás a strasbourgi bíróság gyakorlatában.* [New weapon of the european guard of human rights: the pilot judgment procedure in the case law of the European Court of Human Rights.] *Jog Állam Politika: Jog - és Politikatudományi Folyóirat* [Law State Politics: Review of Law and Political Sciences] 4/2013, pp. 47–63.; SZEMESI SÁNDOR: *Egy lehetséges válasz a szisztematikus jogsértésekre: a pilot judgment eljárás az Emberi Jogok Európai Bírósága gyakorlatában.* [A possible answer for the systematic infringement: the pilot judgment procedure in the case law of the European Court of Human Rights.] <http://www.uni-miskolc.hu/wwwdeak/Collegium%20Doctorum%20Publikaciok/Szemesi%20S%E1ndor.pdf>

Following the delivery of the leading case of *Varga and Others v. Hungary*, the number of incoming applications against Hungary concerning prison overcrowding has drastically increased (from 250 to 700 applications)¹². For example in the case of *Gégény v. Hungary*¹³ the Court also held that there had been a violation of Article 3 of the Convention, because the applicant's placement in a cramped cell for most of the day was not temporary. He has been held in inadequate conditions (the toilet was located inside the cell and occasionally only a curtain separated the toilet from the living area, the cell was infected with parasites, detainees were permitted to take a shower once a week in unhygienic conditions), lacking any privacy, for more than thirteen years.

The Strasbourg Court in its judgments of 10 December 2015 held that there had been violation of Article 3 of the European Convention in cases *Balogh and Others v. Hungary*¹⁴, *Bota and Others v. Hungary*¹⁵, *Ligeti and Others v. Hungary*¹⁶, *Polgár and Others v. Hungary*¹⁷ too. In its judgment issued on 07 January 2016 in case of *Tamási and Others v. Hungary*¹⁸, *Magyar and Others v. Hungary*¹⁹, *Juhász and Others v. Hungary*²⁰, *Bakos and Others v. Hungary*²¹, *Bóday and Others v. Hungary*²² also held that had been violation of Article 3 of the Convention.

The applicants relied on Article 3 of the Convention and complained of the inadequate conditions of their detention (the toilet not separated from the rest of the cell, infestation of the cell with insects, only cold water in the cell, shower only once a week, lack of adequate heating and sufficient natural light, no proper ventilation in the cell). The Court has also shown that the limited personal space (less than 4 square metres²³ in every case) available to all detainees, aggravated by the cumulative effects of their other conditions

¹² European Committee on Crime Problems – Council for Penological Co-operation: *White Paper on Prison Overcrowding*. Strasbourg, 24 September 2015. p. 25.

¹³ Application no. 44753/12; Judgment of 16 October 2015.

¹⁴ Application nos. 26982/12, 131/13, 6764/13, 19712/13, 19892/13, 37487/13, 42486/13, 42808/13, 43610/13, and 43868/13; Judgment of 10 December 2015.

¹⁵ Application nos. 34753/12, 34754/12, 45140/12, 45848/12, 48473/12, 56357/12, 56362/12, 56368/12, 58632/12, 72055/12, 73195/12, 76492/12, and 79146/12; Judgment of 10 December 2015.

¹⁶ Application nos. 29176/12, 30412/12, 34750/12, 11581/13, 13378/13, 36245/13, 46623/13, 51719/13, 76213/13, and 80997/13; Judgment of 10 December 2015.

¹⁷ Application nos. 29213/13, 36214/13, 44381/13, 44661/13, 44763/13, 46576/13, 46587/13, 46588/13, 46644/13, and 51608/13; Judgment of 10 December 2015.

¹⁸ Application nos. 65853/13, 66364/13, 67136/13, 67607/13, 69003/13, 71318/13, 71359/13, 71523/13, 72597/13, and 79737/13; Judgment of 7 January 2016.

¹⁹ Application nos. 16599/12, 29759/12, 34757/12, 45132/12, 45141/12, 69916/12, 73694/12, 46646/13, 56700/13, 57386/13, and 58862/13; Judgment of 7 January 2016.

²⁰ Application nos. 6467/13, 31957/13, 33715/13, 44029/13, 44056/13, 45122/13, 64543/13, 593/14, 597/14, and 1384/14; Judgment of 7 January 2016.

²¹ Application nos. 29644/13, 31766/13, 32647/13, 33213/13, 62914/13, 64329/13, 18212/14, and 20263/14; Judgment of 7 January 2016.

²² Application nos. 53398/13, 54330/13, 55601/13, 56806/13, 65103/13, 18201/14, 21840/14, 22180/14, 22958/14, and 23555/14; Judgment of 7 January 2016.

²³ The CPT considers 4 square meters per person as a minimum requirement in shared accommodation and 6 square meters for a single occupancy prison cell. The Strasbourg Court take into account this standard, but in the case of *Sergey Babuskin v. Russia* (Application no. 5993/08.; Judgment of 28 November 2013, §50) stressed that it could not decide how much personal space should be allocated to a detainee. That depends on many relevant factors, such as the duration of detention, the possibilities for outdoor exercise and so on. See also *Gégény v. Hungary* (Application no. 44753/12; Judgment of 16 October 2015, § 24.).

of detention, had not satisfied the standards established by the Court's case law. The Court further notes that the applicants did not have at their disposal effective remedy by which to submit their complaints concerning their conditions of detention.

As it can clearly be seen the problems remains acute and the Hungarian authorities should react rapidly in order to secure appropriate conditions of detention for prisoners.

II. Action Plan of the Government of Hungary

In its Action Plan submitted on 9 December 2015 to the Committee of Ministers the Hungarian Government mentions two means to achieve the reduction of overcrowding as general measures: expansion of capacity program and legislative actions.

II. 1. Expansion of capacity program

According to the Plan, one of the solutions to mitigate overcrowding is the building of new prisons and units. Although the CPT and numerous international organizations emphasized that providing additional accommodation cannot on its own offer a lasting solution, the plan of the Government to increase the capacity of the penitentiary institutions it seems that as primary solution.

The Government concluded in the Action Plan that the Hungarian Prison Service with the support of the Ministry of Interior increased the number of available prison places by 899 between 1 January 2015 and 5 November 2015 and also planning to increase the capacity of the prison estate between 2016 and 2017 with 734 places. According to the planned capacity-building projects between 2015 and 2019 (new low-security regime in Állampuszta National Prison; new prisons in Kunmadaras, Ózd, Csenger, Komló and Kemece) the establishment of 3640 newly available places will begin in 2017 and will be completed by 2019. It is not hard to see that extensive prison construction will also increase the prison population and no offer a real solution to the systematic problem of overcrowding. It could be a solution only if the increase of the prison population comes to a halt.

II. 2. Legislative actions

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

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

voluntary basis. According to the Prison Code this new instrument may be requested by either the prisoner or his/her attorney and may also be initiated by the penal institution. According to the Action Plan since its introduction judicial permission was granted in 176 cases.²⁴

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

According to the Action Plan other element of the legislative action is the so-called notice form. The essence of this instrument that since 1 January 2015, instead of the judicial authorities, the National Prison Service Headquarters (NPSH) has become responsible for sending the notice form to the convicted person in order to have them begin their incarceration in cases regulated by the Prison Code (paragraphs 84-85 §). The intention of the legislator was to choose the most suitable institution for the persons who are to be served with a summons to report in order to serve a penalty involving deprivation of liberty. This also means that NPSH keeps taking into account the capacity reports of the individual facilities in order to reduce the burden on the overcrowded prisons. In my opinion this instrument can help to achieve the goals of reintegration, but insufficient for preventing overcrowding. It needs to be highlighted in this regard that the number of inmates continuously rises and the harsh criminal policy may result in an even higher number of person being sent to prison and/or being imprisoned for far longer terms. Considering that the average overcrowding rate is 141%, and we can find low overcrowding rates only the prisons built in PPP construction²⁵, the NPSH have to face real challenge with regard to placement.

III. Conclusions

To conclude, I would like to underline that the Hungarian prison and sanction system flawed for a number of reasons, among them the size of the prison population, overcrowding and effects of overcrowding, the costs of the huge prison population, aspects of punitive criminal law, excessive use and long periods of pre-trial detention, lack of proper alternatives. Because the key factors contributing to prison overcrowding is the punitive criminal law and overuse of pre-trial detention²⁶, inter alia we have to review and revision of our criminal justice legislation (e.g. abolition actual life imprisonment, regulations in which the judge has to exclude the conditional release, the “unlimited” pre-trial detention) taking measures to reduce the use and the duration of pre-trial detention, improving the use of alternatives to pre-trial detention and imprisonment instead of building more new institutions and new

²⁴ The total case was 569, out of which 524 were requests from the prisoner or his/her lawyer and 45 were initiated by the prison authorities.

²⁵ Szombathely National Prison and Tiszaölk National Prison.

²⁶ The proportion of prisoners in pre-trial custody in the total amounts to 24.6% in 2014. Expressed in numbers, the numbers of prisoners in pre-trial custody until the sentence at first instance was 3446, and 851 in cases the pre-trial detention serving a non-final prison sentence imposed. A Büntetés-végrehajtási Szervezet Évkönyve 2014. (Hungarian Prison Service Yearbook 2014) 17. p. and Börtönstatisztikai Szemle (Review of Hungarian prison statistics) 1/2015. 9. p.

places for prisoners. As mentioned earlier it's necessary to provide adequate space for prisoners, but capacity expansion in penal institutions cannot be regarded as a long-term solution and leads to higher populations rates.

However, it is also important to highlight that significant numbers of offenders are imprisoned because they could not pay fines. So we need suitable alternative measures and have to use them, because the underuse of alternatives (for example house arrest instead of pre-trial detention) is general phenomenon.

We also need to modernize prison facilities and have to assist prisoners on release to prevent their return to prison.

In the light of the size of overcrowding we need action and we need action urgently. It can be noted that according to the Action Plan, the Government planning consider further legislative actions in the near future. We hope that new governmental measures will be sufficient to solve the reduction of overcrowding. A good example that could be considered is the Plan submitted by the Italian Government following the pilot judgment in the case of *Torreggiani and Others v. Italy*²⁷.

JUHÁSZ ZSUZSANNA

A BÖRTÖNÖK TÚLZSÚFOLTSÁGÁNAK STRUKTURÁLIS PROBLÉMÁJA

(Összefoglalás)

A büntetés-végrehajtási intézetek túlszűfolttsága és a nem megfelelő fogvatartási körülmények a legtöbb európai országot jellemzik. Az Emberi Jogok Európai Bírósága számtalan ítéletében mondta ki, hogy a fogvatartottak elhelyezése túlszűfolt és a higiéniai követelményeknek nem megfelelő feltételek között embertelen és megalázó bánásmódnak tekinthető, így sérti az Emberi Jogok Európai Egyezmények 3. cikkében lefektetett tilalmat.

A honi fogvatartó intézetekre jellemző túlszűfolttságra és az inadekvát fogvatartási körülményekre hivatkozással a Strasbourgi Bíróság a Varga és mások Magyarország elleni ügyében jutott arra a következtetésre, hogy a probléma hazánkban rendszerszintűen fordul elő. Erre tekintettel a testület arra kötelezte Magyarországot, hogy azonosítsa a strukturális problémát és az ítélet jogerőre emelkedésétől számított 6 hónapon belül készítsen akciótervet a túlszűfolttság megoldása érdekében.

A magyar kormány által 2015. december 9-én benyújtott akcióterv a túlszűfolttság csökkentésére irányuló eszközként egyrészt a férőhelyek bővítését jelölte meg, másrészt jogi lépésként a reintegrációs őrizetet, valamint a szabadságvesztés megkezdésére az elítéltek BVOP általi felhívását határozta meg. Az akcióterv ismeretében leszögezhető, hogy az önmagában nem alkalmas a probléma kezelésére. Új végrehajtási intézetek építése ugyanis a fogvatartotti népesség számának emelkedését fogja eredményezni, ahogy a reintegrációs őrizet intézménye, illetve a BVOP felhívása sem képes önmagában hatékony megoldást nyújtani.

²⁷ Application nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10; Judgment of 8 January 2013.