

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1186 meeting (3-5 December 2013) (DH)

Item reference: Action report (14/10/2013)

Communication from Hungary concerning the X.Y. group of cases against Hungary (Application No. 43888/08)

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Réunion : 1186 réunion (3-5 décembre 2013) (DH)

Référence du point : Bilan d'action

Communication de la Hongrie concernant le groupe d'affaires X.Y. contre Hongrie (requête n° 43888/08) (*anglais uniquement*).

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## **Group Action Report of 11 October 2013**

### **in the cases of**

**X.Y. v. Hungary (Appl. No. 43888/08, judgment of 19/03/2013),  
A.B. v. Hungary (Appl. No. 33292/09, judgment of 16/04/2013),  
Baksza v. Hungary (Appl. No. 59196/08, judgment of 23/04/2013), and  
Hagyó v. Hungary (Appl. No. 52624/10, judgment of 23/04/2013)**

### *Introductory case summary*

All four cases concern the issue of the length of detention on remand (violation of Article 5 § 3 – insufficient reasoning by the courts) and the equality of arms in proceedings for release from pre-trial detention (violation of Article 5 § 4).

Further, in the case of *X.Y. v. Hungary* a violation of Article 5 § 1 was found on account of the unlawfulness (under domestic law) of the applicant's detention in the period between 18 February and 11 March 2008. In the case of *Hagyó v. Hungary* a violation of Article 3 was found on account of the conditions of the applicant's pre-trial detention (overcrowding) and a violation of Article 8 and 13 was found on account of the restriction of the applicant's contacts with his common-law wife and the ineffective determination of his complaint against that restriction.

### *I. Payment of just satisfaction and individual measures*

In the case of *X.Y. v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (18,000 EUR) as well as in respect of costs and expenses (4,500 EUR) was paid to the applicant on 22 August 2013 (amount paid: 6,756,075 HUF; exchange rate: 300.27).

In the case of *A.B. v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (6,500 EUR) as well as in respect of costs and expenses (4,500 EUR) was paid to the applicant on 10 October 2013 (amount paid: 3,109,155 HUF; exchange rate: 296.11).

In the case of *Baksza v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (6,500 EUR) as well as in respect of costs and expenses (4,500 EUR) was paid to the applicant on 6 September 2013 (amount paid: 3,315,510 HUF; exchange rate: 301.41).

In the case of *Hagyó v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (12,500 EUR) as well as in respect of costs and expenses (6,000 EUR) was paid to the applicant on 23 September 2013 (amount paid: 5,522,805 HUF; exchange rate: 298.53).

All four applicants having been released from detention by the time the judgment of the Court was delivered, no further individual measures were considered necessary.

## *II. General measures*

### **a) Equality of arms in *habeas corpus* proceedings**

The head of the Criminal Division of the Supreme Court, in his Opinion No. BKv. 93. of 4 May 2011, issued a guidance on the interpretation and application of the relevant provision of the Code of Criminal Procedure governing access to the investigation file in the *habeas corpus* proceedings which was in essence confirmed by the Constitutional Court's decision no. 166 of 20 December 2011. He pointed out that the public prosecutor has a discretion to decide which of the documents obtained up to that time he regards such as substantiating the motion, therefore it is for the public prosecutor to decide what evidence he regards sufficient for a judicial decision favourable to the motion. Such evidence supporting the motion, and hence to be submitted at the session in writing or orally, include by all means the evidence which served as a basis for ordering the investigations and for notifying the reasonable suspicion to the suspect, as well as the facts which prove or substantiate the existence of a particular ground for pre-trial detention. The Opinion points out that the session of the investigating judge is an adversarial judicial proceeding where the suspect and the counsel may get acquainted with the evidence submitted by the motioning public prosecutor and may, within the framework of the session, submit their defence against those evidence. At sessions held on motions for ordering pre-trial detention the investigating judge's access to documents is also restricted to the documents attached to the motion or submitted at the session by the prosecutor. Thus, following from the adversarial nature of the court proceedings, it is not for the session and not for the investigating judge to restrict, in the interest of the success of the investigations, the right of access of those who attend the session. It is for the public prosecutor to decide what evidence he considers sufficient for a judicial decision granting his motion while he restricts access to the rest of the documents of the investigations in the interest of the success of the investigations.

In light of the above development, no legislative measures are considered necessary in order to ensure compliance with Article 5 § 4 of the Convention.

### **b) Other issues**

As regards the violations of Article 5 § 1 (in the case of *X.Y. v. Hungary*) and Article 13 (in the case of *Hagyó v. Hungary*), they resulted from an individual judicial error and therefore no general measures are necessary in this respect. As regards the violation of Articles 3 and 8 (in the case of *Hagyó v. Hungary*), the relevant general measures are dealt with by the Government's Group Action Plan in the cases of István Gábor Kovács and Szél. As regards Article 5 § 3, it is recalled that the general measures concerning excessive length of pre-trial detention were already adopted in the context of the cases of Imre, Maglódi, Csáky and Bárkányi against Hungary (see Resolution CM/ResDH(2011)222).

### **c) Publication and dissemination**

The judgments have been published on the website of the Government (see: <http://igazsagugyiinformaciok.kormany.hu/az-emberi-jogok-europai-birosaganak-iteletei>) and have been disseminated to the competent national authorities.

### *III. Conclusions of the respondent state*

The Government consider that the measures adopted have fully remedied the consequences for the applicants of the violations found by the Court in their respective cases and are adequate and sufficient for preventing similar violations in the future and therefore Hungary has complied with its obligations under Article 46, paragraph 1 of the Convention.

Budapest, 11 October 2013



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