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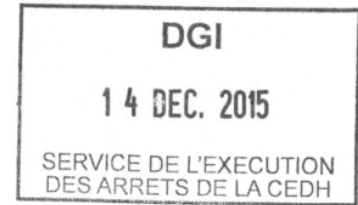
Communication from Hungary concerning the case of István Gábor Kovács group and Varga and others against Hungary (Applications No. 15707/10, 14097/12)

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Réunion : 1250 réunion (8-10 mars 2016) (DH)

Référence du point : Plan d'action mis à jour

Communication de la Hongrie concernant le groupe d'affaires István Gábor Kovács et Varga et autres contre Hongrie (Requêtes n° 15707/10, 14097/12) (**anglais uniquement**)



Action Plan

of the Government of Hungary

9 December 2015

István Gábor Kovács Group of cases and Varga and others v. Hungary

List of applications concerned:

István Gábor KOVÁCS v. Hungary (no. 15707/10, judgment of 17/01/2012)
SZÉL v. Hungary (no. 30221/06, judgment of 07/06/2011)
ENGEL v. Hungary (no. 46857/06, judgment of 20/05/2010)
CSÜLLÖG v. Hungary (no. 30042/08, judgement of 7/06/2011)
FEHÉR v. Hungary (no. 69095/10, judgment of 02/07/2013)
HAGYÓ v. Hungary (no. 52624/10, judgment of 23/04/2013)

Lajos VARGA (no. [14097/12](#), judgment of 10 March 2015)
Tamás Zsolt LAKATOS (no. [45135/12](#), judgment of 10 March 2015)
Gábor TÓTH (no. [73712/12](#), judgment of 10 March 2015)
László PESTI (no. [34001/13](#), judgment of 10 March 2015)
Attila FAKÓ (no. [44055/13](#), judgment of 10 March 2015)
Gábor KAPCZÁR (no. [64586/13](#), judgment of 10 March 2015)

I. Introductory case summary

On 10 March 2015 the European Court of Human Rights (hereinafter: “the Court”) delivered a pilot judgment in the case of Varga and Others v. Hungary resulting mainly from a detected structural problem of widespread overcrowding in Hungarian detention facilities.

The Court concluded that the limited personal space available to all six detainees in the case, aggravated by the lack of privacy when using the lavatory, inadequate sleeping arrangements, insect infestation, poor ventilation and restrictions on showers or time spent away from their cells, had amounted to degrading treatment as per Article 3 of the Convention. The Court also found that the domestic remedies available in the Hungarian legal system to complain about detention conditions, although accessible, were ineffective in practice and as a result also established the violation of Article 3 in conjunction with Article 13 of the Convention.

Therefore the Court held that the Hungarian authorities should produce a timeframe, within six months of the date of the judgment becoming final, for putting in place an effective remedy or combination of remedies, both preventive and compensatory, to guarantee genuinely effective redress for violations of the European Convention originating in prison overcrowding.

In order to present a full picture in the subject the Government note that previously, the Court had already found violations of Article 3 on account of similar conditions of and had underlined the seriousness of the problem and the need for the authorities to “react rapidly in order to secure appropriate conditions of detention for detainees” (István Gábor Kovács group of cases).

The necessity to remove the prison conditions defined by the Court’s decision as inhuman or degrading in violation of Article 3 of the Convention has been acknowledged by the Government. Accordingly, the Government hereby present both the individual and general measures already executed and those to be executed in the near future in compliance with the expectations arising from the judgment and at the same time wish to express its goal to consider further legislative actions in the near future to remedy the problems identified.

II. Payment of just satisfaction and individual measures

a. Payment of just satisfaction

István Gábor Kovács group of cases:

In the case of *István Gábor Kovács v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (EUR 10,000) as well as in respect of costs and expenses (EUR 1,500) was paid to the applicant on 11 June 2012 (amount paid: HUF 3,309,815; exchange rate: 287.81).

In the case of *Szél v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (EUR 12,000) as well as in respect of costs and expenses (EUR 3,750) was paid to the applicant on 23 November 2011 (amount paid: HUF 4,840,448; exchange rate: 307.33).

In the case of *Engel v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (EUR 12,000) as well as in respect of costs and expenses (EUR 2,680) was paid to the applicant on 28 September 2010 (amount paid: 4,385,290 HUF; exchange rate: 277.55).

In the case of *Csüllög v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (EUR 6,000) as well as in respect of costs and expenses (EUR 3,750) was paid to the applicant on 23 November 2011 (amount paid: HUF 2,667,624; exchange rate: 307.33).

In the case of *Fehér v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (12,000 EUR) as well as in respect of costs and expenses (2,000 EUR) was paid to the applicant on 29 October 2013 (amount paid: 5,100,600 HUF; exchange rate: 292.90).

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).

Varga and others v. Hungary:

In the case of *Lajos Varga v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (EUR 5,000) as well as in respect of costs and expenses (EUR 3,000) was paid to the applicant on 23 September 2015 (amount paid: HUF 2,481,120; exchange rate: 310.14).

In the case of *Tamás Zsolt Lakatos v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (EUR 14,000) as well as in respect of costs and expenses (EUR 3,000) was paid to the applicant on 3 September 2015 (amount paid: HUF 4,354,660; exchange rate: 314.98).

In the case of *Gábor Tóth v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (EUR 14,000) as well as in respect of costs and expenses (EUR 3,000) was paid to the applicant on 3 September 2015 (amount paid: 4,354,660 HUF; exchange rate: 314.98).

In the case of *László Pesti v. Hungary*, judicial deposit has been requested in respect of the just satisfaction awarded, including the non-pecuniary damage sustained by the applicant (EUR 3,400) as well as the costs and expenses, (EUR 2,000). Currently, the competent court is examining whether the conditions for the deposit have been met.

In the case of *Attila Fakó v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (11,500 EUR) as well as in respect of costs and expenses (1,000 EUR) was paid to the applicant on 3 September 2015 (amount paid: 3,937,250 HUF; exchange rate: 314.98).

In the case of *Gábor Kapczár v. Hungary*, just satisfaction awarded in respect of non-pecuniary damage sustained by the applicant (26,000 EUR) as well as in respect of costs and expenses (150 EUR) was paid to the applicant on 3 September 2015 (amount paid: 8,236,727 HUF; exchange rate: 314.98).

b. Individual measures

The Government further present the current situation of each applicant concerned in the *Varga and others v. Hungary* case:

Lajos VARGA was released from prison on 3 September 2011 due to the fact that he had served his sentence in full.

Tamás Zsolt LAKATOS is currently being detained in Sátoraljaújhely Prison in a cell with a living space of 44,07 square metres (gross). The net living space of the cell is 27,37 square metres and an additional toilet of 1,91 square metres. The cell is aimed to accommodate 14 people and is full now considering that 14 people are being held there at present. Accordingly, the living space per inmate is 1,95 square metres.

Gábor TÓTH is currently being detained in Budapest Prison in a cell with a living space of 25,72 square metres (gross). The net living space of the cell is 16 square metres. The cell is aimed to accommodate 8 people and 7 people are being held there at present. Accordingly, the current living space per inmate is 2,28 square metres.

László PESTI was released from prison on 6 September 2013 due to the fact that he had served his sentence in full.

Attila FAKÓ is currently being detained in Budapest Prison in a cell with a living space of 33,46 square metres (gross). The net living space of the cell is 25,47 square metres. The cell is aimed to accommodate 6 people and is full now considering that 6 people are being held there at present. Accordingly, the living space per inmate is 4,24 square metres.

Gábor KAPCZÁR is currently being detained in Szeged Prison in a cell with a living space of 23 square metres (gross). The net living space of the cell is 14,72 square metres. The cell is aimed to accommodate 8 people and is full now considering that 8 people are being held there at present. Accordingly, the living space per inmate is 1,84 square metres.

III. General measures

a. Actions aimed at increasing the capacity of penitentiary institutions (Expansion of Capacity Program)

Realized increase in capacity in 2015

The capacity-expansion project launched by the Hungarian Prison Service in 2010 with the support and supervision of the Ministry of Interior is being continued in 2015 as well.

- A new Long-Term Special Regime unit capable of housing 44 inmates was constructed in the Budapest Strict and Medium Regime Prison.
- The Martonvásár facility of the Middle-Transdanubium National Prison has been renovated, thereby increasing its capacity by 126 places. A new facility of the Szombathely National Prison with 396 new places was opened along with 280 new PPP places.
- Besides, new units providing housing for 32 and 37 detainees have been established in the Vác Strict and Medium Regime Prison and the Márianosztra Strict and Medium Regime Prison, respectively.
- The Government note that in the meantime, the capacity of the Budapest Remand Prison has decreased by 16 places due to the ongoing establishment of a new classroom for prisoners.

Consequently, the number of available places in the Hungarian prison facilities increased by 899 between 1 January 2015 and 5 November 2015.

Planned expansions between 2016 and 2017

- In 2016 the Solt unit of the Állampuszta National Prison will undergo an expansion, increasing the facility's capacity by 108 places.
- In addition, the Márianosztra Strict and Medium Regime Prison and the Vác Strict and Medium Regime Prison will undergo a further expansion of 38 and 88 places. These initiatives will increase the number of available places by 234 in 2016.

- Borsod-Abaúj-Zemplén County Prison's Szirmabesenyő unit will serve as a location for the construction of a new facility capable of housing 500 prisoners by 2017.

Planned capacity-building projects between 2015 and 2019

- The acquisition of the Debrecen District Court's property rights is currently in progress, after which the implementation of a concept aimed at increasing the capacity by at least 140 places would begin. The expansion will likely continue in the Állampusztá National Prison by beginning constructions of a new Low-Security Regime with a capacity of 500 places.
- On 26 January 2015, the Hungarian Prison Service Headquarters issued a tender for local governments to provide free-of-charge properties for prison constructions. Altogether, 40 local governments handed in their applications. A new prison capable of housing 1000 inmates will be constructed in Kunmadaras, while in Ózd, Csenger, Komló and Kemece a facility each with a capacity of 500 places will be built. The initiative will soon commence with the drafting of the engineering specifications.

According to the facts above, the establishment of 3640 newly available places will begin in 2017 and will be completed by 2019.

b. Legislative actions

Reduction of prison population

- Action aimed at increasing prison exiting flows – Reintegration custody

With the beginning of 1 April 2015, persons convicted of infractions or misdemeanors have been offered the option of spending the last six months of their captivity at home, using a specially designed electronic locating device. This way, the prisoners could be provided assistance in establishing the conditions required by civic life, thereby developing their family and micro-social relations, reintegration into the labor market and their competence of personally taking care of certain matters regarding their life. Essentially, the role of this legislation is to provide assistance in the reintegration of lower risk non-habitual offenders

into society, and to indirectly and slightly alleviate the capacity problems of the facilities. The new legislation was introduced by Act CCXL of 2013 (Prison Code). Since its introduction, the option for submitting a prisoner to reintegration custody has become available 524 times; out of which 479 were requests from either the prisoner or his or her attorney, while another 45 were initiated by the facilities themselves. Judicial permission was granted in 176 cases.

- Notice form to begin treatment

Since 1 January 2015, in cases regulated by law, the National Prison Service Headquarters has become responsible for sending the notice form to the convicted person in order to have them begin their incarceration. This procedure makes it possible to choose the most suitable institution for the person with regards to employment and education options, which in turn helps to achieve the goals of reintegration that promotes the reintegration goals. Furthermore, the HQ keeps taking into account the capacity reports of the individual facilities in order to reduce the burden on the overcrowded county prisons and assist them in other tasks such as admissions and transport.

Compensatory remedy

- New decree in force governing the execution of imprisonments

As the pilot judgment refers to this, on 27 October 2014 the Constitutional Court held, in decision no. 32/2014. (XI. 3.), that the prohibition of inhuman and degrading treatment, as enshrined in Article 3 of the Convention and Article III (1) of the Constitution, entailed an obligation to guarantee to detainees held in multi-occupancy cells a minimum living space and space for activities that would ensure the respect of their rights to human dignity. Thus, in the Constitutional Court's view, it was the duty of the State, in particularly that of the legislature, to regulate, in an obligatory manner, the minimum living space to be ensured to detainees. Given that Decree no. 6/1996. (VII.12.), following its amendment of 2010, did not contain any cogent requirements, it was found unconstitutional and to be contrary to international obligations.

In compliance with the Constitutional Court's decision declaring the impugned legislation null and void with effect from 31 March 2015 paragraph 121 § of Decree no. 16/2014.

(VII.12.) of the Minister of Justice on the Rules Governing the Enforcement of Imprisonment, Custodial Arrest, Pre-trial Detention and Fines transformed into Custodial Arrest as in force from 1 January 2015 sets forth that “The number of persons allocated to a cell should be determined in a manner that each detainee should have six cubic metres air space and, in case of male detainees, at least 3 square metres living space, in case of juvenile and female detainees, 3.5 square metres living space. The Decree prescribes that its provisions shall be applied also to motions and complaints already in progress as per Decree 6/1996. (VII. 12.) of the Minister of Justice.

It is of utmost importance that the new law abandons the wording “in so far as possible” and uses the wording “at least” meaning that securing the living space as indicated in the Decree has become a must and is no longer a desirability. Accordingly, from 1 January 2015 it may be established that the detention conditions contradict the law also when enforcing claims for non-pecuniary damages under the old Civil Code or when enforcing claims for compensation on account of the infringement of personality rights (sérelemdíj) under the new Civil Code (see below). Therefore this new approach, as opposed to what has been said in 54 § of the judgment at hand, offers prospect of success for the plaintiffs’ tort actions.

- Compensation on account of the infringement of personality rights

On 15 March 2014 the new Civil Code came into effect which, among others, introduced changes regarding the regulation of non-contractual liability. Although non-contractual liability remained to be linked to the culpability of the injuring party, it is an absolute novelty that the new law explicitly prescribes that all torts all prohibited by law (§ 6:518) and that, as a general rule, all torts shall be considered unlawful (§ 6:520). The exceptions are as follows:

The injuring party has committed the tort

- a) with the consent of the aggrieved party;
- b) against the aggressor in order to prevent an unlawful assault or a threat suggesting an unlawful direct assault, if the injuring party did not use excessive measures to avert the assault;
- c) in an emergency, to the extent deemed proportionate; or
- d) by way of a lawful conduct, and such conduct does not violate the legally protected interests of others, or if the injuring party is required by law to provide compensation.

Therefore the new Civil Code makes it unambiguous that the mere fact that the injuring party caused the damages by a conduct permitted by law cannot render the damages lawful. Such conduct may only be lawful provided that it does not violate the legally protected interests of others or provided that the injuring party is obliged by law to provide compensation.

The law-maker coupled the above mentioned novelties with the alteration of the sanction system resulting in the abolishment of the former institution of claims for non-pecuniary damages (*nem-vagyoni kártérítés*) and introduced a new type of compensation connected to the infringement of personality rights (*sérelemdíj*).

The alteration allows for a more effective protection for the person whose personality rights have been infringed as the courts are no longer required to seek and establish any disadvantages arising on the part of the injured party. Therefore apart from the fact of infringement no other harm has to be shown for the entitlement to compensation. The court shall determine the amount of compensation in one sum, taking into account the gravity of the infringement, whether it was committed on one or more occasions, the degree of liability, and the impact of the infringement upon the aggrieved party and his environment.

The Government submit that the provisions governing the institution of compensation on account of the infringement of personality rights are to be applied to legal affairs arising after the coming into force of the new Code. As a result, the development of domestic case-law relevant for determining the effectiveness of the remedy, considering the short period of time elapsed, cannot be examined at this point.

Accordingly, the Government is of the view that this new kind of compensation shall be considered to be an effective remedy considering that exclusively being able to show the sole fact of infringement in itself calls for compensation without any other harm to be proved. Besides the new Civil Code sets forth that the mere fact that the impugned conduct is permitted by law does not suffice to establish its lawfulness but the injuring party can only exempt himself provided that his conduct does not violate the legally protected interests of others or provided that he is obliged by law to provide compensation.

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- Sue generis remedy to be adopted

The Government is also considering adopting a sui generis remedy aimed at the monetary compensation of detainees whose rights have been infringed by the end of 2016. The details of the new law are to be revealed later on next year.

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IV. Conclusions of the respondent state

The Government is of the view that the measures already passed and the sui generis remedy under discussion to be adopted next year taken together with other potential arrangements under consideration properly address and will sufficiently rectify the alleged violations of Article 3 and Article 13 of the Convention on account of inhuman and degrading conditions of detention.

Budapest, 9 December 2015



Zoltán Tallódi

Agent for the Government of Hungary