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Item reference: Revised action plan (01/07/2016)

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

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Réunion : 1265 réunion (20-22 septembre 2016) (DH)

Référence du point : Plan d'action révisé

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

MINISTRY OF PUBLIC
ADMINISTRATION AND JUSTICE
AGENCY FOR THE HUNGARIAN
GOVERNMENT

Mr Ö. Derman
Human Rights and Rule of Law
Directorate of Human Rights
Department for the Execution of Judgments
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Council of Europe
F-67075 Strasbourg Cedex
France

Our Ref.: XX-NBEJFO/ /2016.

Budapest
1 July 2016

Telephone
(36-1) 795-62-45

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

Dear Mr Derman,

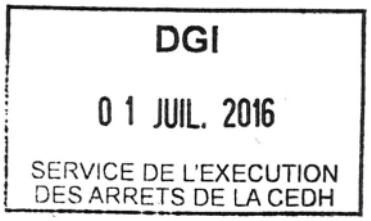
With reference to the decisions of the Committee of Ministers concerning Varga and others + István Gábor Kovács group v. Hungary (Applications No. 15707/10, 14097/12), I have the honour to send you the revised Action Plan. I also send you the draft bill amending certain Acts on criminal matters in relation to the judgment adopted by the European Court of Human Rights in the case of Varga and Others v. Hungary. It contains regulations concerning the preventive and compensatory remedy in connection with prison overcrowding. The draft bill was passed by the Government on 24 June 2016. It will be debated by the Parliament in the autumn session.
Referring our discussion on 3 February 2016, I would like to ask you to give any comments on the Action Plan and especially on the draft bill, if it is possible by 1 August 2016.
Thank you very much for your kind cooperation. If you have any questions, please do not hesitate to contact us.

I have the honour to be,
Sir,
Your obedient servant,

Zoltán Tallódi
Agent of the Government of Hungary

Revised Action Plan
of the Government of Hungary
1 July 2016

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)

Contents

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

1. 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).

2. 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 the applicants concerned in the *Varga and others v. Hungary* case and the István Gábor Kovács group of cases:

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 a single cell in the Sátoraljaújhely Strict and Medium Regime Prison. The cell measures 9,4 square metres with a net living space of 6,71 square metres.

Gábor TÓTH is currently being detained in a single cell in the Budapest Strict and Medium Regime Prison. The cell measures 7,9 square metres with a net living space of 4,87 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 a single cell in the Szeged Strict and Medium Regime Prison. The cell measures 9 square metres with a net living space of 6 square metres.

László SZÉL was released from prison on 3 September 2014 on parole.

Sándor FEHÉR was released from prison on 18 May 2013 due to the fact that he had served his sentence in full.

István Gábor KOVÁCS was released from prison on 7 July 2011 due to the fact that he had served his sentence in full.
Zoltán Péter ENGEL is currently being detained in the Sopronkőhida Strict and Medium Regime Prison in a cell designed for paralyzed prisoners.

Zsigmond CSÜLLÖG was released from prison on 10 February 2009 due to the fact that he had served his sentence in full.

Miklós HAGYÓ was released from prison on 23 February 2011 due to the fact that he had served his sentence in full.

III. General measures on account of the Varga and others v. Hungary judgment

A. Actions aimed at increasing the capacity of penal 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 Állampuszta National Prison by beginning constructions of a new Low-Security Regime with a capacity of 500 places.
- On 26 January 2015, the Hungarian National Prison Administration 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 Kemecse a facility each with a capacity of 500 places will be built. The initiative will soon commence with the drafting of the engineering specifications.

The Government delivered its decision on rescheduling the capacity building program and securing the necessary resources on its meeting held on 24 February 2016. (See Goverment Decree 1125/2016 (10 March) on securing the necessary resources for the expansion of penal institutions). In accordance with the Government's decision, more - altogether 6207 places - will be constructed than envisaged in the action plan before.

B. Legislative actions

1. Reduction of prison population

a. <u>Action aimed at increasing prison exiting flows – Reintegration custody</u>

With the beginning of 1 April 2015, persons convicted of infractions or misdemeanours 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 labour 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.

Currently, reintegration custody may be applicable only in case of those who have been sentenced to an enforceable imprisonment for the first time. Additionally, the person concerned cannot be convicted for a violent crime, the sentence imposed cannot exceed the period of five years, the regime of the penal institution where the sentence is to be served shall be a low-security prison, the convicted person shall consent to his placement in reintegration custody, an apartment suitable for the person's placement shall be available and the convicted person shall be accepted there.

In contrast, the scope of the amended law would be extended to any person having committed the offence with negligence and to habitual offenders not qualifying as re-offenders such as those previously sentenced to imprisonment for a negligent offence or should the offence had been committed intentionally maximum three years have elapsed from the date the offender had been set free.

In comparison to the regulation in force reintegration custody may be applied not only 6 months before the date of the expected release, but also before 10 months or exceptionally before 1 year.

b. Notice form to begin treatment

Since 1 January 2015, in cases regulated by law, the National Prison Administration 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.

c. Reducing the ratio of pre-trial detentions

In order to accomplish the tasks specified in the Action Plan for tackling prison overcrowding, sent to the Council of Europe on 9 December 2015, and to carry out the measures related to the supplementation of the Action Plan, it is of paramount importance that a clear and comprehensive view be obtained about the current detention situation. Therefore the Ministry of Justice has requested data from the Office of the Chief Public Prosecutor and the National Office for the Judiciary on the practice of ordering coercive measures depriving or restricting personal liberty. Based on the data received, the following developments can be established:

The house arrest rules as contained in Act No. XIX of 1998 (henceforth: Be) were amended significantly as of 1 January 2014. The amendment eliminated the former house arrest condition that the defendant's consent to the use of a technical devise capable of monitoring his movement and thus capable of checking his compliance with the house arrest rules was to be obtained from the defendant. The amendment enacted certain cases in which courts are under an obligation to order the monitoring of the house arrest by such a device. Due to the amendment it became easier to monitor and check compliance with the house arrest rules which situation has, in turn, resulted in an increasing willingness on the part of the judges to order house arrest, as a result of which the number of pre-trial detentions, which restrict personal liberty to a rather great extent, has decreased. We think that it is a move to the right direction, which also helps reduce the high number of pre-trial detainees and, thereby, the number of inmates in general.

From the statistical data provided by the Office of the Chief Public Prosecutor and the National Office for the Judiciary it can be established that the scope of application of house arrest is growing. Though in 2014 and 2015 the investigation authorities and the public prosecutors requested house arrest in more or less the same proportion (in 2014 0,099 per cent of the defendants were requested to be placed in house arrest whereas in 2014 the

respective percentage was 0,086), the courts ordered house arrest instead of pre-trial detention in a much higher proportion: in 2014 upon 4900 requests 116 house arrests were ordered, whereas in 2015 upon 4502 requests 165 house arrests were ordered.

From the statistical data it can also be established that in 2015 the investigation authorities and the prosecutors requested pre-trial detention in fewer cases than in 2014. In 2014 the total number of defendants was 186 855, whereas pre-trial detention was requested by the prosecutors in 5223 cases. The respective figures in 2015 were 214 377 defendants and 5081 requests for pre-trial detention. The ratio of defendants placed in pre-trial detention was 2,79 percent in 2014; in 2015 the ratio dropped to 2,37 percent.

2. Compensatory remedy

a. New decree in force governing the enforcement of sentences

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 desirable. 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.

b. <u>Compensation on account of the infringement of personality rights</u>

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.

c. <u>Complaint to the prison governor</u>

As a preventive legal remedy called for by the Court, a new legal institution providing for the submission of a complaint to the prison governor is envisaged to be introduced by amending Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive

measures and confinements for regulatory offences. The complaint is to be examined and determined within 15 days.

If the complaint is well-founded, the prison governor may take actions for relocating the inmate to another cell within the prison facility or may propose, within the framework of the Occupancy Level Balancing Programme, to the designated organisational unit of the National Prison Administration, the inmate's relocation to another prison facility. The head of the designated organisational unit of the National Prison Administration shall adopt reasoned decision about the relocation within 8 days from the receipt of the proposal to that effect. The prison governor may take other actions as well to remedy a violation, namely he may:

- order more open-air stays
- permit further contacts
- increase the visit time
- take action for improving the placement conditions: e.g. by separating the toilet, by allowing more frequent shower or bath.

It must be noted that in deciding on the inmate's relocation, the inmate's contact rights must be taken into consideration and in case the inmate's relocation would violate his contact rights, the relocation decision may be challenged by a request to be filed by the inmate or his counsel to the penitentiary judge. Upon such a request the penitentiary judge shall uphold or quash the relocation decision.

As to the regulation, it is also to be noted that such a complaint can only be submitted during the detention. After the inmate's release only compensation (see below) may provide redress. With the progress of the prison capacity expansion programme there is a real prospect that penal institutions with sufficient capacity will be available, to which inmates may be relocated without violating their right to family contact. Hence, a compensation claim is envisaged to be allowed only in case the right of complaint about the Convention-infringing placement conditions has, as a preventive tool capable of barring the occurrence of injury, been exhausted.

d. Compensation procedure

The amendment of Act No. CCXL of 2013 envisages to introduce, in addition to the legal institution of complaint, a compensatory remedy too, by enacting a compensation procedure. In elaborating the rules pertaining to this remedy, special attention has been paid to the effectiveness and efficiency requirements specified by the Court:

- decision shall be taken within a short time, on an objective basis
- the decision shall be duly reasoned
- the decision shall be enforced without delay
- the compensation award shall not be "unreasonable", that is, shall not be too low – but may be lower than the compensation amount likely to be awarded by the Court.

The proceedings shall be conducted by the penitentiary judge having jurisdiction at the place of the detention or, in case the inmate has already been released, at the place where the penal institution having released the inmate is seated, thus the impartial and quick adjudication by an independent organ of the compensation claim is ensured.

Post-conviction inmates and inmates detained on other grounds may submit the compensation claim by themselves or via their legal representative.

In the course of the proceedings the penal institution shall submit an opinion on the compensation claim in which data related to the impugned placement conditions shall be given, and shall annex a summary of the inmate's records and other documents required for the adjudication of the claim.

Decision by the penitentiary judge may also be made in writing. In such cases a court clerk may also proceed in the case. In all other respects the proceedings shall be subject to the general rules applicable to other penitentiary judge proceedings.

The daily minimum and maximum tariffs of the financial compensation will be determined at Act of Parliament level. The compensation amount will be calculated by the penitentiary judge on the basis of the daily tariff which will be multiplied by the number of detention days spent in placement conditions violating the Convention. According to Eurostat data the average monthly wage in Hungary is EUR 871 therefore, in contrast to the recommended example of Italy where the average monthly wage is EUR 2,002, the daily compensation tariff

specified in the Act is 3-5 euros, that is 800-1,500 Hungarian forints. This solution allows sufficient room for judicial discretion and enables the penitentiary judge to assess overcrowding together with any other inappropriate placement conditions and to award a compensation amount proportionate to the gravity of the injury suffered.

Inmates will be able to file a compensation claim within six months from the termination of the placement conditions violating fundamental rights. After this time limit no compensation claim can be filed. We note that allowing six months for the submission of such a claim is an established practice on the part of the Court as well. It is envisaged that the right to submit a compensation claim will, in a transitional provision, be also ensured for inmates having suffered injury earlier, provided that less than one year has elapsed from the termination of the injurious placement condition to the entry into force of the right to file a compensation claim. Moreover, the right to file a compensation claim will also be ensured to inmates whose applications complaining about placement conditions allegedly violating the Convention are already registered by the Court, except where the inmate filed his application at a date later than 10 June 2015 and by the date of the submission of the application more than one year has elapsed from the termination of the injury. In respect of such applications the six-month absolute time limit will start to run from the day of the entry into force of the amendment.

IV. General measures taken on account of the István Gábor Kovács Group of cases

A. Detention under special security regimes

The principles and regulation applicable to the assessment of inmate security risk level and the consequences for the enforcement of sentences of the inmate's security classification are presented below:

1. Enforcement of a sentence of imprisonment

(See *Section 97 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences)*

The sub-regimes (general, lenient and strict) created in line with this Act or with the purposes of this Act by the heads of the penal institutions within the various prison regimes (minimum security prison, medium security prison, maximum security prison) provide an enforcement environment which complies with the principle of individualisation and which promotes the attainment of the reintegration goals specified in respect of a given inmate. It is a basic aim of the Act that, in addition to maintaining the security and order of the detention, individualisation be achieved and the range of advantages and disadvantages be widened. The differentiated enforcement regimes, which are set forth in *Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences* and which were created by having regard to the Risk Analysis and Treatment System, are designed to achieve this end. In the so-called regime-system, graduality functions as an important motivating factor. The filling with content of this principle enables inmates to make a "reintegration career" in a positive sense. It practically means that if an inmate participates in a cooperative manner in the reintegration programs offered to him (subjective side), he may, in line with the legal provisions (objective side), take steps for the improvement of his life conditions within the penal institution.

Sentences of imprisonment are enforced by the prison administration system. Sentences of imprisonment are enforced by the prison administration system under a prison regime (maximum, medium or minimum security) determined by the court, in a penal institution

designated by the law or by a measure of the national commander and located as close as possible to the inmate's place of residence, where it is feasible. A maximum security prison has a stricter regime than a medium security prison, and a medium security prison has a stricter regime than a minimum security prison.

The order of the enforcement of an imprisonment is determined by having regard to the inmate's individual circumstances, personality, previous life record, lifestyle, family circumstances, conduct during the detention, the offence committed, the length of the sentence and the regime under which the sentence is to be served.

During the enforcement of an imprisonment the order of enforcement may, subject to the results of the inmate's risk analysis, conduct and participation in the reintegration activities, vary within a given prison regime, and the advantages that may be provided to inmates may also differ according to the regime rules pertaining to the various regimes.

Within a given prison regime an inmate may be subjected to general, lenient or strict regime-rules.

In the interest of maintaining the security of the enforcement of imprisonments, from among the regime-rules pertaining to the various prison regimes the rules governing an inmate's guarding, supervision, control, the locking of his cell door, his in-prison movement, the reception of a visitor in an enclosed secure booth or through safety bars, work outside the prison facility, leave of absence, committal or transfer may, depending on the inmate's security classification, even be stricter than the other rules.

An inmate's security classification will, in itself, not bar the inmate from being subjected to the more lenient regime-rules that may be applied within a given prison regime.

The order of the enforcement of an imprisonment under a given prison regime shall vary if more lenient enforcement rules become applicable or the inmate is relocated to a transitory unit or to a security cell or unit. The prison administration may set up special units for special needs inmates in which the order of the enforcement is adjusted, primarily, to the inmates' special needs.

2. Admission and Detention Committee

*(*See *Sections 95-96 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences)*

Penal institutions operate an Admission and Detention Committee (ADC).
Individualised decision on an inmate's assignment to or removal from a regime and on his classification as high security risk inmate shall be taken by the ADC by having regard to Section 26(4).

An inmate's assignment to a regime must, at least every six months, be reviewed in the penal institution by involving the expert areas responsible for detention. Decision on an inmate's assignment to a regime shall be taken by the ADC.

The ADC's inmate-related tasks are the following:
b) assignment and reassignment of an inmate to a given regime
c) the review of an assignment to a given regime
d) involving, placing or removing an inmate into or from the reintegration program, and assessing the success of the inmate's participation in the program
e) classifying and reclassifying an inmate's security risk grading

Against the decisions of the prison governor and the ADC, inmates shall have the remedy provided in this Act. Recourse to the remedy shall have no suspensive effect on the enforcement of the decisions.

3. Assessing the security risk level posed by an inmate

(See Section 50 of Minister of Justice Decree No.16/2014 (XII.19.))

In order to safely carry out the tasks specified in Section 97(5) of the Act on the enforcement of punishments inmates are, in the framework of a risk analysis and risk assessment, classified according to the security risk level they pose as high-risk, medium-risk or low-risk inmates. In assessing the security risk level posed by an inmate, data contained in the inmate's records

about his security classification during any former imprisonment as well as the disciplinary breaches he committed and the sanctions he was subjected to may be taken into consideration.

Inmates who on account of the nature of the committed offence or the duration of the imprisonment served or the role played in a criminal organisation or in the inmate subculture or on account of their attitude to the order and security of the penal institution or the conduct performed during a former detention or on account of any other personal circumstances are likely to commit an act grossly violating the order of the penal institution or are likely to flee or to perform a conduct injuring or endangering their own lives or the life or bodily integrity of other persons and whose safe detention therefore can only be guaranteed by guarding them, shall be classified as high security risk inmates.

Inmates who, in light of their conduct, are likely to wilfully oppose the order of the penal institution and to breach the conduct rules and whose safe detention can only be guaranteed by guarding or surveillance shall be classified as medium security risk inmates.

Inmates who are likely to respect the order of the penal institution and are unlikely to flee or to commit another offence and whose safe detention can be guaranteed by checks shall be classified as low security risk inmates.

In addition to determining the security risk levels, if certain conditions specified in the law and posing a threat to the security of the enforcement of imprisonment exist, the law allows for an inmate's special placement in a long-term prisoners' special unit or in a security cell or unit.

4. Special placement

Where certain conditions specified in the law and posing a threat to the security of the enforcement of imprisonment exist, the law allows for an inmate's special placement. At present the following special placement forms exist: long-term prisoners' special unit and security cell or security unit.

a. <u>Long-term prisoners' special unit</u>

(Section 105 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences)

Inmates serving a life sentence or an imprisonment of at least fifteen years and found, on the basis of their detention conduct, willingness to cooperate, attitude to the order and security of the penal institution and the individual risk analysis, to be in need of special treatment and placement in order to be prepared for their integration and reintegration in the community, may be placed in a long-term prisoners' special unit.

Placement in and removal from a long-term prisoners' special unit may take place under the ADC's decision. Placement in such a unit shall be reviewed every three months and shall be terminated as soon as the underlying conditions cease to exist. In deciding about and in reviewing such a placement the inmate to be placed in such a unit shall be heard and the decision shall be communicated to him in writing.

In a long-term prisoners' special unit:
a) inmates are under constant guard and surveillance
b) inmates may only move on the area of the penal institution with permission and under supervision and the cell doors are kept locked
c) where it is appropriate, inner safety bars may be employed within the cells
d) inmates may only work within the long-term prisoners' special unit or in a place designated by the prison governor
e) inmates may educate themselves and may participate in cultural, sports and leisure time group activities within the long-term prisoners' special unit or with the prison governor's permission
f) inmates may, individually, avail of the services of a priest or pastor and may practice community pastoral care according to the prison governor's permission
g) the scope and quantity of the personal belongings inmates may keep in the unit may be limited
h) the frequency of the contact opportunities specified for inmates under Sections 175-177 may be increased

The above provisions and security measures may, upon the prison governor's written decision, be applied jointly or separately. The prison governor' right of decision-taking may be delegated. Orders and decisions on the application or review of a placement in a long-term prisoners' special unit shall be executed without delay.

Long-term prisoners' special units at present operate in:
Szeged Maximum and Medium Security Prison (suitable for housing 10 inmates)
Budapest Maximum and Medium Security Prison (suitable for housing 8 inmates)
Sátoraljaújhely Maximum and Medium Security Prison (suitable for housing 8 inmates)

b. Security cell/unit

(See *Sections 147 and 73 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences)*

An inmate in case of whom it can, on the basis of the inmate's past life, committed offence, length of imprisonment, conduct, informal social network, attitude to the order and security of the penal institution and personal circumstances, be reasonably inferred that:
a) he may be preparing, or attempted to commit, or committed an act grossly violating the order and security of the penal institution
b) he will perform or did perform a conduct violating or endangering his own life, bodily integrity or property or the life, bodily integrity or property of other persons and who shows a behaviour which is openly or latently aggressive
may be placed in a security cell or unit.

An inmate's placement in a security cell may be ordered for maximum three months by the prison governor's reasoned decision. Placement in such a cell may be prolonged for three months per occasion, but for no longer than one year.

Placement in a security cell or security unit after the elapse of one year may be prolonged in reasoned decision by the national commander, for maximum six months per occasion.

In passing a decision on an inmate's placement in a security cell or unit and in reviewing such a decision the inmate shall be heard. Such a hearing may be dispensed with in the interest of the security of the penal institution or the prevention of a crime.

An inmate may seek the judicial review of the decisions of the prison governor and the national commander.
The inmate's request for the judicial review of the prison governor's decision placing him in a security cell or prolonging his placement in such a cell or of the national commander's decision prolonging his placement in a security cell or ordering or prolonging his placement in a security unit shall be determined by the penitentiary judge within five days from the receipt of the request. Criminal costs shall be borne by the state. These provisions shall also be applicable to detainees on remand.

In case an inmate is placed in a security cell or unit:
a) the inmate is under constant control and supervision,
b) the inmate may only move in the area of the penal institution with permission and under supervision and his cell door is kept locked
c) in justified cases inner safety bars may be employed in his cell
d) the inmate may receive his visitor in an enclosed secure booth or through secure technical devices from which rule derogation may be permitted by the prison governor
e) may only work in the security cell or in the area of the security unit and in a place designated by the governor
f) may educate himself and may participate in cultural, sports and leisure time group activities only within the security unit or with the prison governor's permission
g) may, individually, avail of the services of a priest or pastor and may practice community pastoral care according to the prison governor's permission
h) the scope and quantity of the personal belongings the inmate may keep in the unit may be limited

The above provisions and security measures may, upon the prison governor's written decision, be applied jointly or separately.

The inmate may, upon his request or ex officio, be placed in a safety cell or unit in case his separation from the other inmates in the interest of protecting him is necessary and no other method is successful. In such cases the provisions set forth in subsection (7) shall be applied by taking into consideration the reasons for the inmate's placement in the security cell; where the conditions specified in subsection (1) a-b) exist, the provisions of subsection (7) may be applied where appropriate.

To date only one security unit has been set up, namely in the Sopronkőhida Maximum and Medium Security Prison. There exists one safety cell, in the Győr-Moson-Sopron County Penitentiary Institution.

B. Right to keep contact in detention (family visits)

Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences clearly regulates the forms and extents of the available contact opportunities, while allowing for positive departure from the rules pertaining to the various prison regimes and regime categories. The precise extents of the contact opportunities available under the various prison regimes are regulated in Minister of Justice Decree No. 16/2014.

1. Leave of absence and prison furlough

*(*See *Sections 179-180 Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences)*

In addition to the contact forms allowed under the former regulation, leave of absence and prison furlough shall be enacted as new forms of contact. Moreover, reward leave of absence and reward prison furlough will also be grantable. Leave of absence may be granted for inmates having served at least one third of their sentence but minimum one year in a maximum security prison, minimum six months in a medium security prison and minimum three months in a minimum security prison or in a transitory unit. The length of the leave of absence may not exceed 24 hours.

Prison furlough may be granted for inmates having served at least one third of their sentence but minimum one year in a maximum security prison, minimum six months in a medium security prison and minimum three months in a minimum security prison. The length of the prison furlough is maximum 5 days in a maximum security prison, maximum ten days in a medium security prison and maximum fifteen days in a minimum security prison or a transitory unit.

2. Receiving a visitor outside the prison facility

(*Section 178 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences*)

Receiving a visitor outside the prison facility for two hours per occasion may be granted for inmates having served at least one third of their sentence but minimum one year in a maximum security prison, minimum six months in a medium security prison and minimum three months in a minimum security prison or in a transitory unit. Receiving a visitor outside the prison facility may also be permitted out of turn, as a reward.

3. Social bonding programme

(*Section 187 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences*)

The social bonding programme is also a novelty to be enacted. The programme is designed to prepare and strengthen a welcoming environment, to help the inmate return to his former workplace or, if it is not possible, to find a new workplace or public employment for him, to detect and strengthen his social connections and to help to find housing for him.
Inmates sentenced for a misdemeanour to maximum one-year imprisonment may be admitted into such a programme. In order to strengthen social bonding the inmate is entitled to maximum 10 days prison furlough per month on days when he does not work, to work at a workplace outside the prison facility without surveillance, and to pursue studies outside the prison facility.

4. Regulation of the contact opportunities

The following contact opportunities are available under the various prison regimes (see Sections 39-41 of Minister of Justice Decree No. 16/2014):

A maximum security prison inmate assigned to strict regime

a) may receive a visitor once a month for 60 minutes
b) may talk with his contact person via telephone twice a week, each time for five minutes
c) may, following the deductions specified in law, spend 50 per cent of the amount allowed to be spent for his personal needs
d) may not be allowed a leave of absence
e) may not be allowed a prison furlough
f) the scope of personal items held may, subject to the conditions specified in Section 100(2) f) of the Act on enforcement may, in respect of points 2.2, 3.4-3.5, 5.4 and point 6, save the appliance for telephoning, of Annex no. 1, be restricted and the number of the personal items held may be reduced.

A maximum security prison inmate assigned to general regime

a) may receive a visitor once a month for 90 minutes
b) may be permitted to receive a visitor outside the prison facility once a year for two hours
c) may talk with his contact person via telephone three times a week, each time for 10 minutes
d) may, following the deductions specified in law, spend 75 per cent of the amount allowed to be spent for his personal needs
e) may be allowed a leave of absence once a year for 12 hours
f) may, exceptionally, be allowed a prison furlough once a year, for a total of two days, unless he is a life prisoner
g) may only possess the personal items specified in this Decree.

A maximum security prison inmate assigned to more lenient regime

a) may receive a visitor in the prison facility twice a month, each time for 60 minutes

b) may be permitted to receive a visitor outside the prison facility twice a year, each time for two hours
c) may talk with his contact person via telephone four times a week, each time for 10 minutes
d) may, following the deductions specified in law, spend 100 per cent of the amount allowed to be spent for his personal needs
e) may be allowed a leave of absence three times a year for 12 hours
f) may, exceptionally, be allowed a prison furlough twice a year, for a total of five days, unless he is a life prisoner
g) the scope and quantity of the personal items held may be increased.

A medium security prison inmate assigned to strict regime

a) may receive a visitor once a month for 75 minutes
b) may talk with his contact person via telephone twice a week, each time for ten minutes
c) may, following the deductions specified in law, spend 60 per cent of the amount allowed to be spent for his personal needs
d) may not be allowed a leave of absence
e) may not be allowed a prison furlough
f) subject to the conditions specified in Section 101 f) of the Act on enforcement the scope of personal items may, in respect of point 6 of Annex no. 1, save the inmate's phone card, be restricted and the number of personal items possessed may be reduced.

A medium security prison inmate assigned to normal regime

a) may receive a visitor inside the prison facility once a month for 90 minutes
b) may be permitted to receive a visitor outside the prison facility twice a year, each time for two hours
c) may talk with his contact person via telephone three times a week, each time for 10 minutes
d) may, following the deductions specified in law, spend 80 per cent of the amount allowed to be spent for his personal needs
e) may be allowed a leave of absence once a year for 24 hours
f) may, exceptionally, be allowed a prison furlough once a year, for a total of two days
g) may only possess the personal items specified in this Decree.

A medium security prison inmate assigned to more lenient regime

a) may receive a visitor twice a month, each time for 75 minutes
b) may be permitted to receive a visitor outside the prison facility three times a year, each time for two hours
c) may talk with his contact person via telephone five times a week, each time for 10 minutes
d) may, following the deductions specified in law, spend 100 per cent of the amount allowed to be spent for his personal needs
e) may be allowed a leave of absence three times a year, each time for 12 hours
f) may, exceptionally, be allowed a prison furlough twice a year, for a total of ten days
g) the scope and quantity of the personal items possessed may be increased.

A minimum security prison inmate assigned to strict regime

a) may receive a visitor once a month for 90 minutes
b) may talk with his contact person via telephone three times a week, each time for ten minutes
c) may, following the deductions specified in law, spend 70 per cent of the amount allowed to be spent for his personal needs
d) may not be allowed a leave of absence
e) may not be allowed a prison furlough
f) may only possess the personal items specified in this Decree and the quantity of the items may be reduced.

A minimum security prison inmate assigned to normal regime

a) may receive a visitor twice a month, each time for 90 minutes
b) may be permitted to receive a visitor outside the prison facility three times a year, each time for two hours
c) may talk with his contact person via telephone five times a week, each time for 10 minutes
d) may, following the deductions specified in law, spend 90 per cent of the amount allowed to be spent for his personal needs
e) may be allowed for leave of absence twice a year, each time for 24 hours

f) may, exceptionally, be allowed for prison furlough twice a year, for a total of eight days
g) may possess only the personal items specified in this Decree.

A minimum security prison inmate assigned to more lenient regime

a) may receive a visitor twice a month, each time for 90 minutes, and once in a quarter-year for 90 minutes
b) may be permitted to receive a visitor outside the prison facility five times a year, each time for two hours
c) may talk with his contact person via telephone five times a week, each time for 15 minutes
d) may, following the deductions specified in law, spend 100 per cent of the amount allowed to be spent for his personal needs
e) may be allowed a leave of absence four times a year, each time for 24 hours
f) may, exceptionally, be allowed a prison furlough three times a year, for a total of fifteen days
g) the scope and quantity of the personal items possessed may be increased.

It must be noted that the extents of the contact opportunities specified in Minister of Justice Decree No. 16/2014 in respect of the various inmate contact forms are applicable to the regimes inmates are assigned to. Inmates, however, may individually request the prison governor to permit extra contact opportunities for them, hence individual aspects and specific circumstances (e.g. serious illness of a child) may be taken into consideration by the prison governor. Such requests and the decisions on the requests shall be registered in the inmate's records. Against a decision rejecting a request a complaint may be submitted to a higher forum.

5. Reintegration detention

In certain respects, reintegration detention as a new legal institution also serves to strengthen inmates' family and social relations, as inmates in reintegration detention serve their sentence not in a penal institution but in a flat designated for this purpose; hence inmates may serve their sentence in family circle.

6. Family consultation and family therapy workshop

(*Section 194 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences*)

Family consultations and family therapy workshops are available to juveniles. Such consultations and workshops are held upon the request of the juvenile or his statutory representative and upon the prison governor's permission. It is to be noted that these contact forms do not constitute visit occasions but may be permitted in addition to the visits.
Family consultation is an informal contact form within the penal institution, in which the juvenile and the parent and the person entitled under the Civil Code to keep contact with the juvenile may participate. Family consultation may be held every three months. Permission for family consultation outside the penal institution may, exceptionally, also be given.
In family therapy workshops parents not entitled to keep contact with the juvenile may not participate. The number of the family therapy workshops is determined by the therapeutic needs.

7. Remedy for violation of the contact rights

a. Rights enforcement in general

(*Section 10 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences*)

A post-conviction inmate and an inmate detained on other legal grounds may submit a request concerning the enforcement of his sentence and his detention, may file a complaint against a decision rejecting his request and has other remedies specified under this Act. If the Act allows for a remedy, a post-conviction inmate or an inmate detained on other legal grounds shall be informed of thereof in the decision taken.
The request, the complaint and the request for remedy mentioned above shall be submitted in writing.

Concerning the enforcement of their imprisonment, post-conviction inmates and inmates detained on other legal grounds may

a) turn, directly, to the public prosecutor supervising the legality of punishments and measures, certain coercive measures, confinements served for unpaid fines and confinements imposed for regulatory offences, and may request to be heard in person by the prosecutor

b) turn, directly, to the Commissioner for Fundamental Rights or to the officer authorised for performing the tasks arising under the national preventive mechanism set up under Article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth: national preventive mechanism)

c) may file a request or complaint to international human rights organs with competence acknowledged in international convention promulgated in Act of Parliament.

In respect of other legal relationships post-conviction inmates and inmates detained on other legal grounds may enforce their rights according to the general rules without restrictions, save for the differences flowing from the fact of detention, or may turn to a court or a state authority, may file a complaint or may report a matter of public interest to the authorities.

b. Decision of the organ responsible for the enforcement of a sentence

(*Section 21 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences*)

A complaint may be filed to the head of the organ responsible for the enforcement of a sentence about a measure or decision of the organ responsible for the enforcement of a sentence or about a failure to act by the organ. In cases specified in this Act, post-conviction inmates and inmates detained on other legal grounds may seek the judicial review of a decision or may file a court action against a decision.

A complaint may be filed by a post-conviction inmate, an inmate detained on other legal grounds, a counsel, the statutory representative of a juvenile, the statutory representative, the spouse or the common-law spouse of a person subjected to involuntary treatment or the contact person whose contact with the inmate is affected by the measure or decision or omission.

Unless specified otherwise in this Act, a complaint may be filed within fifteen days from the communication of the measure or decision or from the occurrence of the omission. The complaint shall be made in writing or minutes shall be taken on it.

The complaint shall be determined within 30 days, unless the nature of the case requires urgency. The time limit may, in justified cases, be prolonged for another thirty days. The post-conviction inmate, the inmate detained on other legal grounds and the maker of the complaint shall be informed in writing about the decision and the prolongation of the time limit. Against the decision on the complaint no further remedy shall lie.

c. Other provisions related to the request, the complaint and other remedies

(*Sections 140-142 of Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences*)

In the remedy proceedings the inmate may request information about his rights and obligations at any time and the information shall be provided in due time.

The penal institution shall see to it that the inmate's remedy rights are enforced. In matters related to their detention, inmates may submit written requests to the authorised officers of the prison administration.
Inmates may request to be heard in person by the prison governor or by the head of the relevant organisational unit of the prison. Inmates may also turn, in writing, directly to the prison governor. Inmate requests shall be recorded and attached to the documents handled by the penal institution. A decision granting a request may be communicated to the inmate orally as well. The essence of the decision and the time of the communication must, however, be recorded and the written decision must, at the same time, be handed over to the inmate.

Unless this Act provides otherwise, inmates may file a complaint under Section 21(3) against the decision – save a decision granting the inmate's request – or measure or omission of a prison officer entitled to proceed in the inmate's case to the governor of the penal institution in which the decision or measure has been taken or the omission has been committed.

Where

a) the decision or measure has been taken or the omission has been committed by the prison governor or the head of the designated organisational unit of the prison administration system, the complaint shall be adjudicated by the national commander

b) the decision or measure has been taken or the omission has been committed by the national commander, the complaint shall be adjudicated by the minister responsible for the enforcement of sentences.

V. Conclusions of the respondent state

The Government is of the view that the presented measures and legal actions are capable of rectifying the alleged violations of Article 3 and Article 13 of the Convention on account of inhuman and degrading conditions of detention.

Budapest, 1 July 2016

Zoltán Tallódi
Agent for the Government of Hungary

Act No. … of 2016

amending certain Acts on criminal matters in relation to the judgment adopted by the European Court of Human Rights in the case of Varga and Others v. Hungary

1. Amendments to Act No. XIX of 1998 on criminal procedure

Section 1

Section 454(2) and (3) of Act No. XIX of 1998 on criminal procedure shall be replaced by the following provisions:

"(2) The pre-trial detention of a juvenile shall be enforced

a) in a juvenile correctional facility, where the juvenile has not reached the age of fourteen at the commission of the offence,

b) in a juvenile correctional facility or, exceptionally, in a penal institution, where the juvenile has reached the age of fourteen but has not reached the age of eighteen at the time when pre-trial detention is ordered,

c) in a penal institution or, exceptionally, in a juvenile correctional facility, where the juvenile has reached the age of eighteen but has not reached the age of twenty at the time when pre-trial detention is ordered,

d) in a penal institution, where the juvenile has reached the age of twenty at the time when pre-trial detention is ordered.

(3) In cases specified under points b) and c) of subsection (2) the court will determine the institution in which the pre-trial detention is to be served in light of the juvenile's personality and the nature of the offence brought against him."

Section 2

Section 454 (5a) of the Act on criminal procedure shall lose effect.

2. Amendments to Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences)

Section 3

Act No. CCXL of 2013 on the enforcement of punishments, measures, certain coercive measures and confinements for regulatory offences (henceforth: Bv.tv.) shall be supplemented with the following Section 10/A and Section 10/B and the following preceding subtitle:

"Compensation for placement conditions violating fundamental rights

Section 10/A

(1) Post-conviction inmates and inmates detained on other grounds are entitled to compensation for not having been provided with the inmate living space specified in the law and for any other placement conditions violating the prohibition of torture or cruel, inhuman or degrading treatment, in particular for violations caused by unseparated toilets, lack of proper ventilation or lighting or heating and insects (henceforth together: placement conditions violating fundamental rights). Compensation shall be granted for the number of days spent in placement conditions violating fundamental rights. Compensation shall be paid by the state.

(2) Under the head specified in subsection (1) no further indemnification or damages for infringement of personality rights shall be sought but post-conviction inmates and inmates detained on other grounds may seek additional damages exceeding the compensation amount before a civil court.

(3) The daily compensation tariff shall be minimum HUF 800 and maximum HUF 1,500.

(4) Compensation claim may be made within six months from the day on which the placement conditions violating fundamental rights ceased to exist. This time limit is absolute.

(5) Compensation claim may be filed by a post-conviction inmate or an inmate detained on other grounds or by their counsel or, in case the inmate has already been released, by the inmate's legal representative. Compensation claim shall be filed in writing to the penal institution where the detention is effected or, in case the post-conviction inmate or the inmate detained on other grounds was released, to the penal institution which released the inmate. In the request for compensation the post-conviction inmate or the inmate detained on other grounds shall give a statement as to whether the European Court of Human Rights (henceforth: ECHR) has obliged the state to pay damages to him on account of placement conditions violating fundamental rights and whether a civil court has already awarded him indemnification or damages for infringement of personality rights. If the answer is yes, the name of the court and the case number shall also be stated by the inmate in the request.

(6) Save for inmates undergoing involuntary treatment or temporary involuntary treatment, a further condition for the filing of such request for compensation is the prior submission by the post-conviction inmate or the inmate detained on other grounds of a complaint under Section 144/B to the head of the organ responsible for the enforcement of the sentence about the placement conditions violating fundamental rights.

(7) Satisfaction of other claims from the awarded compensation shall only be possible

a) up to the amount of a civil claim or of an indemnification or damages for infringement of personality rights awarded under a final civil judgment in relation to the offence for whose enforcement the compensation is awarded, and

b) up to the amount of a child support claim enforced in enforcement proceedings for child support.

(8) Where in the cases specified in subsection (7) the compensation amount is not enough to satisfy all the claims, first the child support claim, then the civil claim and the indemnification or damages for infringement of personality rights awarded on account of the offence shall be satisfied in equal proportion.

Section 10/B

(1) The minister responsible for justice shall make arrangements for the payment of the awarded compensation.

(2) In making the arrangements for the payment of the compensation, the minister responsible for justice shall, from the register run by the office of the Body of Hungarian Court Bailiffs, request data on any child support enforcement proceedings staying or pending against the post-conviction inmate or the inmate detained on other grounds as well as on the case number and the name of the bailiff having jurisdiction in the case.

(3) Where the data received indicate that enforcement proceedings for the collection of child support or for the satisfaction of a civil claim or for the payment of indemnification or damages for infringement of personality rights awarded against the inmate on account of the commission of the offence have been instituted, the minister responsible for justice shall inform the bailiff about the compensation amount granted to the debtor by informing the bailiff of the claims that may be satisfied from the compensation amount by way of debt collection. In such cases the compensation amount may, in line with Section 10/A(8), only be paid after the bailiff has made the necessary enforcement measures for the attachment of the debt amounts.

(4) Where in his decision the penitentiary judge orders that a partly or fully unpaid civil claim or indemnification or damages for infringement of personality rights awarded on account of the committed offence are to be deducted and paid to the obligees of such claims, the remaining compensation amount is to be paid to the post-conviction inmate or the inmate detained on other grounds. Where the available data indicate that enforcement proceedings for the collection of child support have been instituted, the compensation amount may only be paid after the bailiff has, in line with Section 10/A(8), made the necessary enforcement measures for the attachment of the child support amount. Child support amounts shall be collected primarily from the compensation amount payable to the post-conviction inmate or the inmate detained on other grounds.

(5) Payment may be effected via bank transfer to the bank account number given by the post-conviction inmate or the inmate detained on other grounds or via bank account or in cash to the obligee of the indemnification or damages for infringement of personality rights awarded on account of the committed offence, according to the obligee's request. Where the post-conviction inmate or the inmate detained on other grounds is still detained, he may request the transfer of the compensation amount to a deposit account.

(6) The minister responsible for justice may process personal data obtained under subsections (2)-(4) and being related to the enforcement of the child support claim or the civil claim or the indemnification or damages for violation for personality rights awarded on account of the committed offence for thirty days from the payment of the compensation amount."

Section 4

Section 50 of Bv.tv. shall be supplemented with the following subsection (7):

"(7) In compensation proceedings instituted before the penitentiary judge on account of placement conditions violating fundamental rights, under the term *counsel* a legal representative shall also be meant."

Section 5

Bv. tv. shall be supplemented with the following Section 70A and Section 70/B and with the following preceding subtitle:

"Compensation proceedings to redress injuries having resulted from placement conditions violating fundamental rights

Section 70/A

(1) Decision on compensation payable to an inmate for injuries having resulted from placement conditions violating fundamental rights shall be taken by the penitentiary judge upon the request of the inmate or the inmate's counsel. Decision by the penitentiary judge may be taken on the basis of documents as well.

(2) The penal institution shall transmit the request together with its opinion on the request to the penal institution affected by the request within fifteen days or, where several penal institutions are affected, within thirty days with the specification that in case the inmate has filed a complaint about placement conditions violating fundamental rights, the penal institution's opinion may only be transmitted after the complaint, including a request for judicial review filed against a decision on relocation, has been determined. A summary of the inmate's records containing the inmate's placement conditions data in the period complained of shall be annexed to the opinion.

(3) The penitentiary judge shall, ex officio, examine whether the ECHR has obliged the state to pay damages to the inmate on account of his placement conditions violating fundamental rights or whether a civil court has awarded indemnification or damages for infringement of personality rights , and if the answer is yes, the penitentiary judge shall obtain the relevant decisions before taking a decision.

(4) Where the data obtained indicate that proceedings on account of placement conditions violating fundamental rights have been instituted before the ECHR or a civil court, the penitentiary judge shall stay the proceedings until the completion of those proceedings.

(5) The penitentiary judge shall evaluate the inmate's placement conditions in their entirety and shall determine the amount of the daily compensation tariff on the basis of the size of the injury caused. Thereafter the compensation amount shall be calculated by multiplying the daily compensation tariff with the detention time spent in placement conditions violating fundamental rights.

(6) The penitentiary judge shall dismiss the request on the basis of the documents, without an examination on the merits where

a) the request is belated

b) the request is submitted by a person not entitled to submit such a request

c) the inmate has failed to submit the complaint specified in Section 144/D, or

d) in respect of the period indicated in the request the ECHR obliged the state to pay compensation, or a civil court has awarded indemnification or damages for infringement of personality rights on account of the inmate's placement conditions violating fundamental rights.

(8) Criminal costs shall be borne by the state.

(9) Subsections (1)-(8) shall be applicable mutatis mutandis for the determination of compensation claims filed by inmates detained on other grounds.

Section 70/B

(1) Where the trial court of the criminal case granted a civil claim filed by the injured party or his heir or referred the enforcement of the civil claim to another legal avenue, the penitentiary judge shall invite the injured party to submit a statement within a time limit of fifteen days as to whether the inmate has paid the awarded civil claim to the injured party or has paid, in case the injured party filed an action for indemnification or damages for infringement of personality rights caused by the offence, the indemnification or damages awarded by the civil court on account of infringement of personality rights and to state, in case no full payment has been made by the inmate, whether he requests the deduction of the outstanding claim amount from the compensation amount granted to the inmate.

(2) In the case specified in subsection (1) the penitentiary judge shall also invite the injured party to state the precise amount he claimed and to annex the documents he possessed in relation to the civil claim or the indemnification or damages for infringement of personality rights awarded to him on account of the committed offence. Where the penitentiary judge determines the case on the basis of documents, he shall obtain the inmate's statement in connection with the indemnification or damages for infringement of personality rights awarded on account of the committed offence.

(3) If the injured party requests the payment of the outstanding part of the indemnification or damages for infringement of personality rights awarded on account of the committed offence, the penitentiary judge shall request data from the register run by the office of the Body of

Hungarian Court Bailiffs on any staying or pending proceedings instituted for the collection of such claims, as well as on the case number and the name of the bailiff having jurisdiction in the case.

(4) In the case specified in subsection (1) the time limit specified in Section 50 subsection (1) d) shall be extended with sixty days. Where the invitation to the injured party has, within sixty says, not produced any result, the penitentiary judge shall determine the case by ignoring any outstanding amount of indemnification or damages for infringement of personality rights awarded on account of the committed offence.

(5) The penitentiary judge shall make arrangements for the payment from the compensation amount to the obligee of any outstanding civil claim amount or indemnification or damages for infringement of personality rights awarded on account of the committed offence, where

a) the civil claim or the indemnification or damages for infringement of personality rights awarded to the injured party on account of the committed offence has not yet or not fully been paid by the inmate,

b) no enforcement proceedings have been instituted for the collection of the claims specified in point a)

c) , in examining a defence to that effect filed by the inmate or his counsel, the penitentiary judge has established that the limitation period specified in the Civil Code has not elapsed yet.

(6) The decision of the penitentiary judge shall oblige the state to pay the compensation amount and shall invite the state to effect the payment within a time limit of sixty days from the service of the decision."

Section 6

Bv.tv. shall be supplemented with the following Section 76/A and the following preceding subtitle:

"Review of a relocation decision given in the course of adjudicating a complaint about placement conditions violating fundamental rights

Section 75/A

(1) A request by the inmate or his counsel for the review of a relocation decision given in the course of adjudicating a complaint about placement conditions violating fundamental rights shall be determined by the penitentiary judge within five working days from the receipt of the request.

(2) Criminal costs shall be borne by the state.

(3) Subsections (1) and (2) shall also be applicable to requests filed by inmates detained on other grounds or by their counsels, save inmates undergoing involuntary treatment or temporary involuntary treatment."

Section 7

Bv.tv. shall be supplemented with the following Section 144/B and the following preceding subtitle:

"Complaint about placement conditions violating fundamental rights

Section 144/B

(1) The inmate or his counsel may submit a written complaint about placement conditions violating fundamental rights directly to the head of the penal institution.

(2) The complaint shall be determined within fifteen days. Where the head of the penal institution grants the complaint, he shall take the necessary actions for improving or counterbalancing those conditions.

(3) Where the placement conditions violating fundamental rights on account of the lack of the inmate living space specified in the law cannot be terminated, the head of the penal institution shall contact the National Prison Administration's department responsible for placement matters with urgency, and shall request the inmate's relocation to another penal institution capable of guaranteeing the inmate living space specified in the law.

(4) The head of the National Prison Administration's department responsible for placement matters shall decide on the request within eight days, in reasoned decision. In case the inmate living space specified in the law can be guaranteed in another penal institution, the head of the National Prison Administration's department responsible for placement matters will designate such a penal institution for serving the imprisonment, otherwise it shall not pass a decision and shall inform the head of the penal institution thereof. In deciding on the inmate's relocation regard shall be had to the inmate's contact rights.

(5) Where the relocation violates the inmate's contact rights, the inmate or his counsel may file a request for review to the penitentiary judge. The request for review shall have a suspensive effect on the relocation."

Section 8

(1) Section 187/A(1) of Bv. tv. shall be replaced by the following provision:

"(1) Where the purposes of the incarceration may be achieved in this way as well, if conditional release is imminent or, if conditional release has been or was excluded, before the probable date of the inmate's release, the inmate may be placed in reintegration custody if he gives consent to being placed in such custody and if he has been sentenced to imprisonment for an offence committed with criminal negligence or, in case the imprisonment was imposed for an intentional offence, the inmate

a) was convicted not for a violent crime committed against the person specified in Section 459(1) point 26 of the Criminal Code,

b) was sentenced to an enforceable imprisonment for the first time or is a repeat offender without being a recidivist, and

c) is serving an imprisonment not exceeding five years."

(2) Section 187/A of Bv. tv. shall be supplemented with the following subsection (1a)

" Subsection (1a) Reintegration custody shall last

a) for maximum one year if the inmate was sentenced to an imprisonment for an offence committed with criminal negligence,

b) in cases other than the one specified in point a), for maximum ten months."

Section 9

Section 390 of Bv.tv. shall be supplemented with the following subsection (8)

"(8) Where a pretrial detainee or his counsel has filed a complaint about placement conditions violating fundamental rights the head of the penal institution shall also annex a consent statement by the person authorised to make decisions in respect of the pretrial detainee to the request made under Section 144/B(3) for the relocation of the pretrial detainee to another penal institution. In such cases the complaint shall be determined and decision shall be made within thirty days."

Section 10

Section 415 of Bv.tv. shall be supplemented with the following subsection (3):

"(3) Where a juvenile in pretrial detention has attained the age of twenty-one, the juvenile correctional facility shall contact the police department having jurisdiction at the place where the juvenile correctional facility is seated with a view to transferring the juvenile to a penal institution, and shall inform the person authorised to make decisions in respect of the juvenile in pretrial detention about the transfer."

Section 11

Section 436 of Bv.tv. shall be supplemented with the following subsections (10)-(11):

"(10) The compensation claim under Section 10/A, enacted by Section 1(1) of Act No. … of 2016, may also be submitted by a post-conviction inmate or an inmate detained on other grounds

a) in respect of whom the injury having resulted from placement conditions violating fundamental rights ceased to exist within one year preceding the entry into force of the amendment,

b) who submitted an application to the ECHR about his placement conditions violating fundamental rights and the application was registered by the ECHR before the entry into force of the amendment, except where the inmate submitted his application to the ECHR after 10 June 2015 and by the date of the submission of the application more than six months have elapsed from the termination of the violation.

(11) For the purposes of subsection (10) the absolute time limit specified in Section 10/A(4) shall start to run on the day of the entry into force of this provision. In determining requests submitted under subsection (10), Section 10/A(6) shall not be applicable and the time limit specified for the penitentiary judge's proceedings under Section 50(1)d) shall be extended with thirty days."

Section 12

This Act shall enter into force on 1 January 2017.

Government Decree No. 1125/2016 (III. 10.) on the appropriation of funds required for the expansion of space in prison facilities

The Government

1. agree with the scheduled timing of the prison facilities development aimed at expanding prison space with a view to ensuring inmate placement conditions meeting the European norms and to be implemented during the space expansion process for the termination of prison overcrowding in order to ensure Hungary's compliance with the requirements of Article 3 of the European Convention on Human Rights;

2. invite the minister of national economy to see to it that for Title 5: Prison Administration in Chapter XIV: Home Affairs in the year of 2016 HUF 1243,1 million, in the year of 2017 HUF 30 390,6 million, in the year of 2018 HUF 51 348,9 million and in the year of 2019 HUF 19 921,4 million be appropriated for the realisation of the goals specified in point 1.
Person in charge: minister of national economy
Time limit: from 2016 on, as scheduled

3. invite the minister of home affairs to see to it that payment commitments covering the framework amounts specified for the years of 2016-2019 in point 2, required for the implementation of the prison facilities development related to the expansion of prison space be made.
Person in charge: minister of home affairs
Time limit: from 2016 on, as scheduled