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Date: 27/02/2017

DH-DD(2017)222

Meeting: 1280 meeting (7-9 March 2017) (DH)

Communication from the applicant's representative (30/01/2017) in the case of Süveges against Hungary (Application No. 50255/12)

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1280 réunion (7-9 mars 2017) (DH)

Communication du représentant du requérant (30/01/2017) dans l'affaire Süveges contre Hongrie (Requête n° 50255/12) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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30 January 2017
Budapest

Communication from the applicant's representative (András Kádár)
in the case of Süveges v. Hungary (Application No. 50255/12)

1. This submission is made pursuant to Rule 9(1) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, and concerns the execution of the judgment delivered by the European Court of Human Rights (ECtHR) in the case of **Süveges v. Hungary (Application No. 50255/12).**

2. In the context of the criminal proceedings conducted against Mr Süveges, the Hungarian courts ordered his pre-trial detention which essentially covered three periods, starting on June 2005 when he was arrested and remanded in custody. The periods of the pre-trial detention were punctuated by periods when he served a prison sentence in another, unrelated, criminal proceeding or was placed under house arrest (between January 2012 and November 2013). He was convicted at first instance on 28 February 2014, but that judgment was quashed by the court of appeal on 2 July 2015, when Mr Süveges's pre-trial detention (in the sense of the Convention) recommenced. His detention had still been in progress at the time of the delivery of the ECtHR judgment (5 January 2016). The ECtHR established that the period of the detention to be taken into consideration in the instant case had amounted in total to approximately three years and two months to the date of the judgment, preceded by another three years in detention on remand (which could not be taken into account directly due to the 6-month rule).

3. The ECtHR concluded that the decisions extending the applicant's deprivation of liberty had been worded in a rather stereotypical and summary form, not evolving to reflect the developing situation. Furthermore, the domestic authorities failed to thoroughly assess whether after the very long time Mr Süveges had spent in pre-trial detention and house arrest, the grounds of detention had still retained their sufficiency, outweighing the applicant's right to be tried within a reasonable time or release pending trial. Taking into account periods of inactivity by the authorities during the applicant's detention, the ECtHR was of the view that the domestic courts had failed to properly examine whether Mr Süveges could be released provisionally pending trial, as required under Article 5 § 3 of the Convention, and concluded as follows: "**Having regard to these delays in the proceedings and the fact that the applicant had been held for a very long period in custody, the Court finds that the trial court did not proceed with the special diligence in conducting the applicant's trial. […] Therefore, the Court concludes that the length of the applicant's detention cannot be regarded as reasonable. There has accordingly been a violation of Article 5 § 3 of the Convention**."

4. **Whereas the just satisfaction granted by the ECHR was duly paid, Mr Süveges is still in pre-trial detention.** For some time his pre-trial detention was based – besides the risk of absconding and reoffending – on the suspicion of two offences that he had allegedly committed while in house arrest, however, he was acquitted in one case (in June 2016), and the other was terminated (on 26 August 2016). Thus, since the end of August, Mr Süveges has been detained again on the basis of the risk of absconding and reoffending, although during his house arrest between January 2012 and November 2013 (see above), he did never fail to turn up for court hearings and committed no criminal offence. **The numerous decisions the Hungarian courts have delivered into the matter of pre-trial detention since January 2016** (either as responses to the applicant's requests for release or in the framework of the regular review prescribed by the law), **do not even mention the ECtHR judgment and the ECtHR's assessment that the detention was unreasonably long**. Hardly ever do the Hungarian courts dwell on the issue of length either. One exception is a decision of the Metropolitan Appeals Court (16 September 2016), which summarily states that "Due to the outstanding severity of the criminal offences in relation to which charges have been pressed, and also to the previous criminal record of the defendants, the Appeals Court saw no possibility for ordering a coercive measure that would be less restrictive by one degree, i.e. house arrest, despite the fact that the procedure must be regarded as unreasonably long, since the Central Investigative Prosecutor's Office and the Metropolitan Chief Prosecutor's Office pressed charges in 2007, and the Komárom and Esztergom County Chief Prosecutor's Office pressed charges in 2010."

5. The ECtHR pointed out on many occasions the following: "As regards the **requirements of Article 46**, it should first be noted that a respondent State found to have breached the Convention or its Protocols is under an obligation to abide by the Court's decisions in any case to which it is a party. In other words, a total or partial failure to execute a judgment of the Court can engage the State Party's international responsibility. **The State Party in question will be under an obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to take individual and/or, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress the effects, the aim being to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded**."

6. Despite these clear standards and requirements, **there is nothing in the Hungarian criminal procedure that would oblige the authorities to take into consideration, let alone comply with the ECtHR's decision deeming an ongoing pre-trial detention unreasonably long**.

7. Quite on the contrary, during the proceeding against the applicant, an amendment to the criminal procedure code introducing the so-called "unlimited" pre-trial detention was adopted.[1] The amendment in force since 18 November 2013 abolished the previously applicable maximum time limit for pre-trial detention (four years), and stipulated that if the criminal procedure is conducted against the defendant for a criminal offence punishable with up to 15 years of imprisonment or life-long imprisonment, there shall be no upper limit for the term of the detention. **Thus, in such cases** (including that of the applicant) **the first instance criminal procedure may be practically conducted for as long as the authorities wish, while the defendant remains in pre-trial detention**.

8. As shown by the reasons attached to the draft bill (expressly referring to "recent unfortunate events"),[2] the amendment was a reaction to an individual case, namely the escape of the members of a gang accused of criminal offences against life. The gang members spent four years in pre-trial detention, and during this time no first instance judgment was reached, so their pre-trial detention had to be lifted. They were put under house arrest, from which they escaped on 4 October 2013, but were captured a few days later. The amendment was adopted in an accelerated procedure, so that it could be passed before a third member of the same gang had to be released into house arrest.

[1] Act XIX of 1998 on the Code of Criminal Procedure (CCP, Article 132 (3a)
[2] See: http://www.parlament.hu/irom39/12617/12617-0019.pdf, p. 3.

9. Experts criticised the amendment for not focusing on the causes of the unreasonable length of criminal proceedings (e.g. the failure of forensic expert institutions to provide expert opinions in due course), but placing the burden of the authorities' delays on the remanded defendants. In January 2014 the Hungarian Helsinki Committee and the Eötvös Károly Institute turned to the Commissioner for Fundamental Rights (the Ombudsperson of Hungary), requesting the Commissioner to initiate that the Constitutional Court abolish the amendment on the basis that it violates the right to personal liberty.[3] Upon the above request**, in March 2015 the Commissioner for Fundamental Rights motioned[4] the Constitutional Court to abolish the respective provisions of the CCP,** taking up the standpoint in his motion that it flows from the principle of the rule of law and the fundamental right to personal liberty that it is necessary for pre-trial detention to have a statutory maximum length.[5] **To date, the Constitutional Court has not delivered a decision on the Ombudsman's motion**.

10. Thus, the Hungarian state authorities have failed to take the necessary steps to comply with the ECtHR's judgment. This is the case not only in relation to the individual situation of the **applicant**, who **is still in remand custody over a year after the ECtHR's decision stating that his detention had been unreasonably long**, but also at the general level, since:

- **the legal framework fails to oblige the judicial authorities to reflect on the ECtHR's decisions in similar cases**;
- **the previously existing upper limit or pre-trial detention has been abolished, allowing the authorities to conduct cases without the necessary diligence for as long as they wish, thus imposing the burdens stemming from such delays solely on the defendants**; and
- **the Constitutional Court has failed to decide on the issue in the past almost two years in spite of the fact that the matter concerns a very severe limitation of one of the most important fundamental rights: liberty**.

11. **Based on the above, we respectfully request the Committee of Ministers to call on the Hungarian Government to take the necessary individual and general measures to resolve the above listed problems, thus putting an end to the violation found by the Court** (the unreasonable length of the detention) and **redressing the systemic deficiencies posing the risk of repeated violations of similar nature vis a vis both the applicant and other suspects concerned by the lack of an upper limit for pre-trial detentions in certain cases**.

András Kádár
Counsel for the applicant

[3] The request is available here in Hungarian: http://helsinki.hu/wp-content/uploads/elo%CC%8Bzetes-letart_beadvany.pdf
[4] The motion is available here in Hungarian: http://www.ajbh.hu/documents/10180/1957691/Alkotm%C3%A1nyb%C3%ADr%C3%B3s%C3%A1gi+ind%C3%ADtv%C3%A1ny+az+el%C5%91zezes+letart%C3%B3ztat%C3%A1s+id%C5%91tartam%C3%A1r%C3%B3l+441_2014/ceab43cc-28b7-45de-bcd8-560451487af3;jsessionid=14B19DE356AB392F37F53AE1DFDF5ADB?version=1.1.
[5] For an English summary of the request and the motion, see: http://www.fairtrials.org/press/guest-post-hungarys-perpetual-pre-trial-detention/.