



Hungary must take measures to improve the problem of widespread overcrowding in prisons

In today's Chamber judgment¹ in the case of Varga and Others v. Hungary (application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, and

a violation of Article 13 (right to an effective remedy) read in conjunction with Article 3 of the Convention.

The case concerned widespread overcrowding in Hungarian detention facilities.

The Court concluded that the limited personal space available to all six detainees in this case, aggravated by a 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.

The applicants' cases, other similar cases against Hungary in which the Court had also found violations of Article 3 and approximately 450 applications currently pending against Hungary concerning complaints about inadequate conditions of detention, originated in a widespread problem within the Hungarian prison system, justifying a pilot-judgment² procedure because of the recurrent and persistent nature of the problems identified.

Bearing in mind that at the end of 2013 over 5,000 inmates held in Hungarian prisons were detained on remand, the Court indicated one main avenue for improvement, namely reducing the number of prisoners by using as widely as possible non-custodial punitive measures.

The Court also found that the domestic remedies in Hungarian law suggested by the Government to complain about detention conditions, although accessible, were ineffective in practice. It therefore held that the Hungarian authorities should produce a timeframe, within six months of the date of this 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.

Pending implementation of the relevant measures by the State, the Court did not consider it appropriate at this stage to adjourn any similar pending cases, the processing of which would serve to remind Hungary of its obligations under the Convention.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

2 The [pilot judgment](#) procedure was developed as a technique of identifying structural problems underlying repetitive cases against many countries and imposing an obligation on member States to address those problems. Where the Court receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure. In a pilot judgment, the Court's task is not only to decide whether a violation of the Convention occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it.

Principal facts

The applicants, Lajos Varga, Tamás Zsolt Lakatos, Gábor Tóth, László Pesti, Attila Fakó and Gábor Kapczár, are Hungarian nationals who were born in 1975, 1987, 1961, 1968, 1973, and 1984, respectively. At the time their applications were introduced they were detained in prisons in Baracska, Szolnok, Budapest, Sopronkőhida, Pálhalma and Szeged (all in Hungary), respectively.

The six applicants have been detained in various periods between 2006 and the present day in a number of different Hungarian detention facilities with personal living space in their cells varying between 1.5 to 3.3 square metres. Mr Pesti notably complained about his detention for three years in Márianosztra Prison where living space per inmate was maximum 2.86 metres. The remaining applicants also complained about other aspects of their detention, including the fact that only a curtain separated the rest of their cell from the lavatory, that some cells were infested with insects and that there was inadequate ventilation, sleeping arrangements as well as limited possibilities for detainees to shower or to spend time away from their cells.

In December 2013 Hungarian prisons accommodated altogether 18,042 inmates, 5,053 of whom were in pre-trial detention.

The European Court of Human Rights currently has approximately 450 applications pending against Hungary concerning complaints about inadequate conditions of detention.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), the applicants complained that the conditions of their detention in different prisons were/had been inhuman and degrading and that there was no effective remedy in Hungarian law with which they could complain about their detention conditions.

The applications were lodged with the European Court of Human Rights on 1 March 2012, 10 July and 14 November 2012, and 14 May, 2 July and 1 October 2013, respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Işıl Karakaş (Turkey), *President*,
András Sajó (Hungary),
Nebojša Vučinić (Montenegro),
Helen Keller (Switzerland),
Egidijus Kūris (Lithuania),
Robert Spano (Iceland),
Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 3 \(detention conditions\)](#)

The Court reiterated its general principles on the question of prison overcrowding. Notably, whilst there was a strong presumption of degrading treatment under Article 3 of the Convention when a detainee disposes of less than three square metres of personal space, this could sometimes be compensated for by the cumulative effects of the conditions of detention, such as the brevity of incarceration, freedom of movement (in the cell and prison building) and outdoor exercise. However, even if an inmate's personal space was apparently sufficient (between three to four square metres per inmate), the Court could find a violation of Article 3 when the space factor was

coupled with lack of ventilation and lighting, lack of outdoor exercise and poor sanitary and hygiene conditions.

In the absence of any objection by the Hungarian Government or any document to prove the opposite, the Court saw no reason to doubt the applicants' allegations concerning their personal living space, which also coincided with reports on widespread overcrowding in Hungarian prisons by both the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment ("CPT") as well as the Hungarian Commissioner for Fundamental Rights.

In particular, as concerned Mr Pesti, the Court considered that his lack of personal space – maximum of 2.86 metres – had been severe enough to constitute degrading treatment under the Convention, especially in view of the fact that that situation had lasted three years. As regards the remaining applicants, the Court took into account other relevant factors – the lavatory arrangements, insect infestation, inadequate ventilation, sleeping arrangements and limited possibilities for detainees to shower or to spend time away from their cells – in addition to the focal complaint of overcrowding.

The Court therefore concluded that the limited personal space available to all six detainees, aggravated by the cumulative effects of their other conditions of detention, had not satisfied European standards as established by the CPT and the Court's case-law. The distress and hardship the applicants had endured had therefore exceeded the unavoidable level of suffering inherent in detention and had met the threshold of severity required to characterise their detention as degrading, in breach of Article 3.

Article 13 (effective remedy)

The Court found that the domestic remedies in Hungarian law suggested by the Government to complain about detention conditions, although accessible, were ineffective in practice.

The first remedy, a civil claim for damages for a breach of personality rights under the general rules of tort liability, did not offer either a reasonable prospect of success or adequate redress. Indeed, in such claims brought before the domestic courts the plaintiffs' actions had been dismissed not because the complaints of overcrowding had not been substantiated but because of the provisions of the applicable law, as interpreted and applied by the courts.

The Government's second suggestion, namely making a complaint to the governor or public prosecutor about inadequate conditions of detention, did not produce a preventive effect in practice. The Court was of the view that, even if inmates could obtain an injunction from the prosecutor's office requiring the prison authorities to remedy a violation of their right to adequate living space and sanitary conditions, any improvement in their personal situation could only be at the expense of other detainees. Nor would the authorities be in a position to enforce a large number of simultaneous requests, given the structural nature of the overcrowding problem.

The Court therefore held that there had been a violation of Article 13, read in conjunction with Article 3, on account of the absence of an effective remedy for detainees to complain about their conditions of detention.

Article 46 (implementation)

Whilst the applicants' case, as well as previous similar cases against Hungary in which the Court had found violations of Article 3, related to various different detention facilities in Hungary, they all concerned recurring issues of a lack of personal space, restrictions on access to shower facilities and outdoor activities, and lack of privacy when using sanitary facilities. The breaches were therefore not the consequence of isolated incidents; they originated in a widespread problem resulting from a malfunctioning of the Hungarian penitentiary system and insufficient safeguards against inhuman and degrading treatment. Approximately 450 similar cases currently pending against Hungary concerning complaints about inadequate conditions of detention also highlighted the existence of a

recurrent structural problem. The Court therefore considered that the recurrent and persistent nature of the problems identified justified a pilot-judgment procedure.

Bearing in mind that at the end of 2013 over 5,000 inmates held in Hungarian prisons were detained on remand, the Court indicated one main avenue for improvement: namely, reducing the number of prisoners by encouraging prosecutors and judges to use as widely as possible alternatives to detention and redirect their criminal policy towards reduced use of imprisonment, thus minimising the recourse to pre-trial detention.

The Court also concluded that the Hungarian authorities should promptly put 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. The Government should therefore produce, under the supervision of the Council of Europe's Committee of Ministers, within six months from the date on which this judgment becomes final, a time frame in which to make appropriate arrangements and to put in practice preventive and compensatory remedies for alleged inhuman and degrading conditions of detention.

As concerned the procedure to be followed in similar cases, the Court did not consider it appropriate at this stage to adjourn them pending implementation of the relevant measures by the State. It would be unfair on the applicants of such cases to make them resubmit their grievances to the domestic authorities, when they had already suffered periods of allegedly inhuman or degrading detention conditions. Furthermore, continuing to process all such cases would serve to remind the State of its obligations under the Convention.

[Article 41 \(just satisfaction\)](#)

The Court held that Hungary was to pay Mr Varga 5,000 euros (EUR), Mr Lakatos and Mr Tóth EUR 14,000 each, Mr Pesti EUR 3,400, Mr Fakó EUR 11,500 and Mr Kapczár EUR 26,000 in respect of non-pecuniary damage. A total of EUR 12,150 was awarded for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.