الأمم المتحدة

A/HRC/27/48/Add.4

الجمعية العامة

Distr.: General
3 July 2014
Arabic
Original: English

مجلس حقوق الإنسان

الدورة السابعة والعشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الفريق العامل المعني بالاحتجاز التعسفي

إضافة

البعثة إلى هنغاريا* **

موجز

بدعوة من الحكومة أجرى الفريق العامل المعني بالاحتجاز التعسفي زيارة قطرية إلى هنغاريا في الفترة من ٢٣ أيلول/سبتمبر إلى ٢ تشرين الأول/أكتوبر ٢٠١٣. وحصل الفريق العامل طوال مدة الزيارة على التعاون الكامل من الحكومة. وتمكن الوفد من زيارة جميع مرافق الاحتجاز وإجراء مقابلات سرية مع جميع المحتجزين الذين طلبوا ذلك.

وفي هذا التقرير، يلاحظ الفريق العامل أن هنغاريا تواجه صعوبات وتحديات عديدة وأنه تم إجراء سلسلة من التغييرات والإصلاحات التشريعية لمواجهة ذلك. وتتفاوت درجة تأثير بعض هذه التغييرات على موضوع سلب الحرية.

* تأخر تقديم الوثيقة.

** يُعمم موجز هذه الوثيقة بجميع اللغات الرسمية. أما التقرير نفسه الوارد في مرفق هذا الموجز، فيُعمم باللغة التي قُدِّم بها فقط.

GE.14-56692(A)

1456692

وفيما يتعلق بالمؤسسات التي تساعد في الحماية من سلب الحرية تعسفاً، لاحظ الفريق العامل كخطوة إيجابية وجود مكتب لأمين المظالم كمؤسسة وطنية لحقوق الإنسان في هنغاريا. ورأى أيضاً أن السماح لمنظمات المجتمع المدني بزيارة مرافق الاحتجاز لأغراض الرصد والتحدث مع المحتجزين الذين يحتاجون مساعدة قانونية هو من الممارسات الجيدة. وينظر التقرير أيضاً في التعديلات التي يجري مناقشتها حالياً فيما يتعلق بقانون الإجراءات الجنائية التي ربما يكون لها أثر إيجابي على حقوق الأشخاص المسلوبي الحرية في نظام القضاء الجنائي.

ومع ذلك فقد لفت الفريق العامل انتباه الحكومة إلى قضايا متعددة تتطلب النظر فيها ومعالجتها بفعالية.

ويشير التقرير مع القلق إلى ارتفاع عدد المحتجزين في الحبس الاحتياطي وزيادة عدد المحتجزين في الحبس الاحتياطي الذين يبقون فيه لمدة تتجاوز سنة واحدة، وإلى القرارات التعسفية التي تتخذها المحاكم والتي تأمر بالحبس الاحتياطي.

ويُذكر الفريق العامل بأن إيداع الأشخاص في انتظار المحاكمة في الحبس الاحتياطي هو إجراء ينبغي اتخاذه كاستثناء لا كقاعدة، وفقاً للقانون الدولي الإنساني.

ويبلغ عدد نزلاء السجون في هنغاريا ١٨ ٢٣٨ سجيناً، وتبلغ نسبة الأشخاص المحتجزين في الحبس الاحتياطي من هذا العدد ٢٨ في المائة. وتبلغ نسبة الاكتظاظ في السجون في الوقت الحاضر ١٤٠ في المائة، ومردّ القسط الأوفر من هذا العدد كثرة اللجوء إلى إيداع الأشخاص في الحبس الاحتياطي. كما أن مبدأ التناسب لا يؤبه له في أغلب الأحيان.

ويُشير التقرير أيضاً إلى التفاوت بين صلاحيات محامي الدفاع وصلاحيات الادعاء العام في الدعاوى الجنائية. حيث أن المحاكم تؤيد رأي الادعاء العام في نسبة تتجاوز ٩٠ في المائة من الدعاوى المرفوعة إليها المتعلقة بالحبس الاحتياطي.

ومن المواضيع التي تثير قلقاً بالغاً أن حق الشخص الذي يجري توقيفه في الحصول على إمكانية الاستعانة بمحامٍ قليلاً ما يحترم بل إنه لا يحترم ألبتة من الناحية العملية. إذ أكد الفريق العامل مجدداً، أثناء مناقشاته مع سلطات الحكومة، على أن الدولة ملزمة بتوفير المساعدة القانونية المجانية. ومن أهم ثغرات نظام محامي الدفاع هي الطريقة المتبعة في تعيين هؤلاء المحامين. فالسلطات (بما في ذلك سلطات التحقيق وهي الشرطة في معظم الحالات) حرة تماماً في اختيار المحامي الذي سيعين. وهي ليست ملزمة بأي شكل من الأشكال بمراعاة رغبات المتهمين. ويلاحظ التقرير أن بعض المحامين يمارسون مهنتهم القانونية أساساً بفضل تعيين المحاكم لهم للدفاع وربما يصبحون فيما بعد في وضع مالي يعتمد على قرار يتخذه فرد من أفراد الشرطة بشأن تعيينهم أو عدم تعيينهم.

ويلاحظ التقرير أيضاً أن القانون الدولي لحقوق الإنسان يقضي بتجنب احتجاز

القصّر في فترة ما قبل المحاكمة كلما كان ذلك ممكناً. ومع ذلك نما إلى علم الفريق العامل أن ٤٩٩ قاصراً هم من الأحداث الجانحين وبوجود ٣٢٠ قاصراً في مؤسسات إصلاحية.

وتمكن الفريق العامل من زيارة مرفقين من مرافق الاحتجاز مخصصين للمهاجرين وملتمسي اللجوء ممن هم في وضع غير قانوني في نيرباتور وبيكيسابا. ويبدو أن النظام المطبق بالنسبة لملتمسي اللجوء في أماكن من مثل نيرباتور، يتسم بصرامة تفوق صرامة النظام المطبق في المدن المجاورة فيما يتعلق باحتجاز الشرطة للأجانب والمهاجرين ممن ينتظرون الترحيل. وكثيراً ما يستعصي على الفهم الطريقة المتبعة في تحديد منْ من الناس هم طالبو لجوء وغيرهم ممن يودعون في مراكز الاحتجاز المخصصة للأجانب.

ويدرك الفريق العامل الصعوبات التي تواجهها الحكومة في التصدي للارتفاع السريع في أعداد الأشخاص الذي يعبرون الحدود، إلا أن حالة ملتمسي اللجوء والمهاجرين ممن هم في أوضاع غير قانونية تتطلب الدراسة وإدخال تحسينات مستدامة حتى لا تُسلب حرية الناس بشكل تعسفي.

وثمة قضايا أخرى نظر فيها التقرير هي سلب الحرية بموجب قانون الجُنح، واحتجاز الروما، والاحتجاز في مؤسسات الأمراض النفسية.

وفي الختام، يدعو الفريق العامل سلطات هنغاريا إلى مراجعة حالة الجانحين المحتجزين في مرافق الشرطة وممارسة إيداع السجناء في الحبس الاحتياطي في مراكز الشرطة، ويدعوها إلى اتخاذ الخطوات، بما في ذلك التدابير التشريعية، التي تضمن وصول جميع الأشخاص المحتجزين إلى محامين منذ الوهلة الأولى من سلبهم حريتهم.

ويوصي الفريق العامل حكومة الدولة الطرف بأمور منها الحرص على معالجة قرارات الطرد أو الإعادة أو التسليم معالجةً فورية مع احترام الإجراءات الواجبة التطبيق؛ والتأكد من أن احتجاز ملتمسي اللجوء وغيرهم من غير المواطنين لا يتم إلا في ظروف استثنائية أو كملاذ أخير، وعندئذٍ لأقصر وقت ممكن؛ واتخاذ جميع التدابير اللازمة لضمان عدم سلب حرية الأشخاص ممن هم دون الثامنة عشرة إلا كملاذ أخير وضمان بقاء الأطفال، في حال احتجازهم، بمعزل عن البالغين، وحمايتهم من أي شكل من أشكال سوء المعاملة.

Annex

[English only]

Report of the Working Group on Arbitrary Detention on its visit to Hungary (23 September–2 October 2013)

Contents

I. Introduction

1. The Working Group on Arbitrary Detention, established pursuant to resolution 1991/42 of the former Commission on Human Rights, conducted a country mission to Hungary from 23 September to 2 October 2013 at the invitation of its Government. The Chair-Rapporteur of the Working Group at the time of the visit, El Hadji Malick Sow (Senegal), and Vladimir Tochilovsky (Ukraine), member of the Working Group, were part of the delegation. They were accompanied by the Secretary of the Working Group and a staff member of the Office of the United Nations High Commissioner for Human Rights as well as by local interpreters. The Working Group expresses its appreciation to the Government for the full cooperation extended to it in the conduct of its mission.

2. During the entire visit and in all respects, the Working Group enjoyed the fullest cooperation of the Government of Hungary and of all authorities it dealt with throughout the various stages of the visit. The Working Group would like to extend its gratitude and appreciation to the Government for its quick and prompt response to the Working Group's request to visit the country. This is indeed something that needs to be highlighted as it displays the willingness of this Government to cooperate with and facilitate the Working Group's mandate.

3. The Working Group also thanks the Government for the support it provided in organizing the meetings the Working Group requested and in ensuring unhindered access to the detention facilities that the Working Group wished to visit. The Working Group was able to meet and interview detainees confidentially, as required by its mandate.

4. The Working Group would also like to thank the representatives of Hungarian civil society for its support during the mission, particularly representatives of non-governmental organizations (NGOs), human rights defenders, lawyers, academics and jurists who met the delegation and provided the Working Group with important information and assistance. Additionally, the Working Group wishes to thank its colleagues at the Office of the United Nations High Commissioner for Refugees (UNHCR) for their valuable assistance.

II. Programme of the visit

5. The Working Group met with senior authorities from the executive, legislative and judicial branches of the State, including members of the Parliament Committee on Youth, Social, Family and Housing Affairs; members of the Parliament Committee on Human Rights, Minority, Civic and Religious Affairs; the State Secretary of the Ministry of Foreign Affairs; the Deputy State Secretary and Political Director of the Ministry of Foreign Affairs; the Deputy State Secretary of the Ministry of Justice and Administration; the Deputy State Secretary of the Ministry of the Interior; the Deputy State Secretary for Social and Family Affairs and the Deputy State Secretary for Healthcare at the Ministry of Human Resources; the General Director of the Office of Immigration and Nationality; the Deputy National Police Chief; and the Independent Police Complaints Board.

6. The Working Group was also able to meet with members of the judiciary, including judges from the Constitutional Court, the Curia (Supreme Court) and representatives from the Prosecutor-General's Office in Budapest. In Szeged, it was able to meet with judges and the Chief County Prosecutor. The Working Group also had the opportunity to meet representatives from the Ombudsman's Office, and the President and members of the Hungarian Bar Association.

7. The Working Group visited detention facilities, including facilities for asylum seekers and migrants in an irregular situation (see Appendix I). Confidential interviews were held with detainees in these facilities.

III. Overview of the institutional and legal framework

A. Political system

8. Hungary is a multiparty republic. In January 2012, a new Fundamental Law (Constitution) came into force. Supreme power is vested in the unicameral Parliament, composed of 199 members.

9. Article Q(2) of the 2012 Constitution establishes that "Hungary shall ensure harmony between international law and Hungarian law in order to fulfil its obligations under international law".

10. The President of the Republic is elected by Parliament for a five-year term and is eligible for a second term. The President is the Commander in Chief of the armed forces. The Prime Minister is also elected by Parliament on the recommendation of the President of the Republic.

11. The Curia or Supreme Court is the supreme judicial authority. It consists of the president of the Curia and eight judges. The president of the Curia is elected from among its members for nine years by Parliament on the recommendation of the President of the Republic. The other judges are appointed by the President upon the recommendation of the National Council of Justice, a separate 15-member administrative body. All judges serve until the normal retirement age.

12. The Constitutional Court of Hungary supervises the constitutionality of legal acts. The Constitutional Court consists of 15 members elected by Parliament, which reviews the constitutionality of legislation and may annul laws. It also provides for a Commissioner for Fundamental Rights and a Deputy-Commissioner/Ombudsperson for the Rights of National Minorities. The members of the Constitutional Court are elected by a two-thirds vote of Parliament. Members serve 12-year terms.

13. In international comparison, the Constitutional Court of Hungary has a remarkably wide and extensive jurisdiction. In the first years following the democratic transition of 1989–1990, the jurisprudence developed by the Constitutional Court had a particularly dynamic effect on the development of Parliament's legislation.

14. In January 2013, a new law on the Constitutional Court entered into force. The Working Group received complaints that the new law has introduced unreasonable obstacles – including mandatory legal representation – which would make access difficult for citizens complaining of human rights. The law also removed the provision for collective complaints.

15. Regional courts of appeal, county courts (including the Municipal Court of Budapest) and local courts are subordinate courts.

16. Under the new Constitution, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities (Minority Ombudsperson) has been replaced by the Commissioner for Fundamental Rights.

17. The Commissioner for Fundamental Rights protects fundamental rights and acts at the request of any person. The Commissioner examines or causes to be examined any abuses of fundamental rights of which he or she becomes aware, and proposes general or

special measures for their remedy. The Deputy-Commissioners seek to defend the interests of future generations and the rights of national minorities living in Hungary.

18. Protection of fundamental human rights is a substantial aspect of the new Constitution, also reflected by its structure, whereby the chapter on fundamental rights and obligations now immediately follows the general provisions. The Constitution declares that Hungary respects the human rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever, and the law provides for strict punishment of discrimination.

19. According to the information received, the new Constitution leaves many areas to be governed by supplementary laws, which require a two-thirds majority. These areas include electoral rules; party financing; the Central Bank; the tax and pension regime; and the country's municipal system. The governmental party, Fidesz, currently has a two-thirds majority in Parliament, enabling it to pass measures in these areas.

20. On 1 January 2013, new laws on the organization and administration of courts and on the status and remuneration of judges entered into effect. The new law assigns court management to the president of the National Judiciary Office (OBH) while leaving oversight of the uniform administration of justice with the president of the Curia. The authority of the president of the OBH includes the budgetary and financial management of courts; staffing, appointment and distribution of caseload; and the ability to transfer cases to different courts. The new law also establishes the National Judicial Council (OBT), a consultative body of 15 judges.

21. The Government has passed several laws allegedly extending its influence and weakening independent institutions. On 2 July 2012, Parliament amended the laws on the judiciary effective 17 July 2012, stipulating judicial review of the decisions of the president of the OBH, including changes of venue; prohibiting the extension of his or her mandate beyond its expiration; and protecting judges from dismissal if they refuse transfer to another court. The amendment also transferred some of the power of the president of OBH to the OBT, providing veto rights regarding judicial recommendations and court leadership appointments under certain conditions. On 16 July 2012, the Constitutional Court annulled provisions of the Act on the Legal Status and Remuneration of Judges that lowered the mandatory retirement age of judges. However, the court decision did not reinstate the retired judges to their former positions.

22. In 2012, approximately 160 retired judges filed individual cases in the Hungarian labour courts for unlawful dismissal. On 28 December 2012, the Constitutional Court retroactively annulled the provision on the mandatory early retirement of judges stipulated by the transitional provisions. Despite this decision by the Constitutional Court, the Government did not reinstate the judges nor adopt new legislation on the retirement of judges.

23. Since 1 January 2013, citizens and human rights groups no longer have the right to petition the Constitutional Court to review the constitutionality of legal norms. Under the new Constitution, only the Government, one quarter of the members of Parliament and the Commissioner for Fundamental Rights have the right to initiate such proceedings. It seems that the new rules regarding the Constitutional Court have weakend the system of checks and balances and constitutional protection.

24. During 2013, the Prosecutor-General did not exercise his authority to instruct that charges be brought at a specific court. In March, the fourth amendment to the Fundamental Law was adopted by the Parliament of Hungary without proper public discussion on issues that may affect the population's human rights.

25. The 2013 fifth amendment to the Constitution includes tweaking of rules on election campaigning, religious freedom and the independence of the judiciary, among others. The amendment also upholds the President's right to reassign cases to a different court – a provision that was previously adopted as a transitional measure and was subsequently struck down as unconstitutional by the Constitutional Court.

26. Victims of lesser police abuses may complain to either the alleged violator's unit or the Independent Police Complaints Board, which investigates violations and omissions by police that affect fundamental rights. The five-member body, appointed by Parliament, functions independently of police authorities. The authority of the Independent Police Complaints Board is limited to making recommendations to the National Police Headquarters and reporting its findings to Parliament.

27. The Equal Treatment Authority is an independent administrative body that was established in 2005 to protect, enforce and promote equality and the right to equal treatment by monitoring the observance of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities ("Equal Treatment Act").

28. The National Police Headquarters, which operate under the direction of the Ministry of Interior, is responsible for maintaining order nationwide. City police are subordinate to the county police and have local jurisdiction.

29. Penalties for police officers found guilty of wrongdoing include reprimand, dismissal and criminal prosecution.

30. The Hungarian Defence Force is subordinate to the Ministry of Defence and is responsible for external security as well as aspects of domestic security and disaster response.

31. The law penalizes the organization of unauthorized law enforcement activity with up to two years in prison.

32. However, far-right extremists have continued to form vigilante groups and conduct patrols in smaller towns in eastern Hungary, apparently to intimidate the local Romani population.

B. Judicial guarantees

33. Hungary is a party to the international human rights instruments listed in A/HRC/WG.6/11/HUN/2, including the International Covenant on Civil and Political Rights and its First and Second Optional Protocols, as well as the Convention relating to the Status of Refugees. On 12 January 2012, Hungary acceded to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and made a declaration regarding article 24.

34. The Constitution and the laws provide for the right to a fair trial within a reasonable amount of time. An independent judiciary enforces this right. Defendants are presumed innocent until proven guilty. Suspects have the right to be informed promptly of the nature of charges against them and the applicable legal regulations at the start of questioning. Any changes to the charges shall also be communicated to the suspect as the investigation develops. Trial procedures are public as a rule; however, the judge may minimize public attendance and can order closed procedures under certain conditions.

35. According to Article IV of the Constitution:

(1) Every person shall have the right to freedom and personal safety;

(2) No person shall be deprived of his or her liberty except for statutory reasons or as a result of a statutory procedure. Life imprisonment without parole shall only be imposed in relation to the commission of wilful and violent offences;

(3) Any person suspected of and arrested for committing any offence shall either be released or brought before a court as soon as possible. The court shall be obliged to give such person a hearing and to immediately make a decision with a written justification on his or her acquittal or conviction;

(4) A person whose liberty has been restricted without a well-founded reason or in an unlawful manner shall be entitled to indemnity.

36. According to Section 92 of the new Criminal Code, the entire duration of preliminary detention shall be included in the final sentence, whether it is a term of imprisonment, community service or fine.

37. The new Criminal Code considers juvenile a person who has completed her/his twelfth year when committing the crime, but has not yet completed her/his eighteenth year. Children between 12 and 14 years can only be brought to justice for the most serious crimes and only if they have the capacity to judge the consequences of their actions.

38. The new Criminal Code, which entered into force on 1 July 2013, introduces changes in the provisions protecting persons from hate-motivated assaults due to their real or perceived identity. Whereas the old Criminal Code (Act IV of 1978) explicitly prohibited assaults only on the ground of nationality, ethnicity, race or religion, the new law also includes a non-exhaustive list (i.e. sexual orientation, gender identity and disability).

39. However, the Working Group received allegations that despite these legislative changes, there has been a systemic problem in their implementation due to a lack of procedures and guidelines on the investigation of such crimes for police and prosecution services.

IV. Findings

A. General remarks

40. Hungary has been facing many difficulties and challenges, and a series of legislative changes and reforms have been made to respond to them. Some of these changes have various degrees of impact on the issue of deprivation of liberty.

41. The new Constitution of Hungary provides for the protection of the right to freedom where it stipulates that “every person shall have the right to freedom … and no person shall be deprived of his or her liberty” except when it is in accordance to law (article IV). It goes further to provide that a person suspected and/or arrested for committing an offence shall either be released or brought before a court as soon as possible and thereafter the court shall be obliged to give such person a hearing and immediately make a decision with a written justification on his or her acquittal or conviction (*ibid.*). Hence, the right to be free from arbitrary deprivation of liberty is enshrined in the highest law of the land.

42. Regarding institutions that assist in the protection against arbitrary deprivation of liberty, it is positive to see the existence of the Office of the Commissioner for Fundamental Rights as a national human rights institution in Hungary. It is also good practice to allow civil society organizations access to visit detention facilities for monitoring purposes and to also speak with detainees who require legal assistance, something the Working Group observed in existence in the country. Amendments were introduced in relation to the Criminal Procedure Code that could have positive impacts on

the rights of those deprived of their liberty in the criminal justice system. Act CLXXXVI of 2013 amended the rules of pretrial detention. Currently, if the defendant is in pretrial detention, then the procedure must be conducted as a priority. In addition, the maximum period of pretrial detention must be in proportion to the nature of the offence committed.

43. However, the Working Group would like to draw the attention of the Government to several issues that need to be considered and effectively addressed.

B. Excessive use of pretrial detention

44. Police may take individuals into short-term arrest if they are caught committing a crime, suspected of having committed a crime, subject to an arrest warrant or unable or unwilling to identify themselves. Individuals who cannot prove their identity with identification documents may be charged with a petty offense.

45. Short-term arrests generally last up to eight hours, but may last up to 12 hours in exceptional cases. The police may detain for 24 hours suspects whom they consider to pose a security threat. The police and the prosecutor's office may order the 72-hour detention of suspects if there is a well-founded suspicion of an offense punishable with imprisonment or if the subsequent pretrial detention of the defendant appears likely. If the investigation judge at court rejects the prosecutor's motion and does not order pretrial detention within 72 hours, the police must release the detainee. The defendant may appeal a pretrial detention order.

46. Under certain conditions (such as the risk of escape or hindrance of an investigation), a prosecutor can file a motion for pretrial detention with the local court where the accused is taken into custody. Pretrial detention ordered by the court lasts until the issuance of a trial court ruling. The defendant may appeal pretrial detention. Detention ordered by an appeals court lasts until the delivery of the final binding decision but no longer than the length of imprisonment imposed by the trial court's sentence. In Hungary, 28 per cent of the prison population is in pretrial detention.

47. The police must inform suspects of the charges against them at the beginning of their first interrogation, which must be within 24 hours of detention. Authorities generally respect this right.

48. There is a functioning bail system. However, bail is restricted in cases when there is a flight risk. Bail and other alternatives to pretrial detention were underused. In cases of prohibition of leaving domicile and house arrest, the court can order the supervision of the defendant's compliance by an electronic remote monitor tool to follow the defendant's movements. Since 1 January 2014, the agreement of the defendant is no longer required.

49. According to the law, the police must inform suspects of their right to counsel before questioning them. Representation by defence counsel is mandatory in the investigation phase when suspects are: facing a charge punishable by more than five years' imprisonment; detained; deaf, blind, unable to speak or suffering from a mental disorder; unfamiliar with the Hungarian language or the language of the procedure; unable to defend themselves in person for any reason; juveniles; or indigent and request the appointment of defence counsel. In the judicial phase, defence counsel is also mandatory at the hearing if: it takes place at the county court acting as the trial court; a supplementary private prosecutor presses charges; the hearing is expedited (fast-track simplified procedure for minor offenses); the hearing is carried out *in absentia*; the defendant so requests; or *ex officio* legal representation is necessary in the interest of the defendant.

50. When defence counsel is required, suspects have three days to hire an attorney; otherwise, the police or the prosecutor appoints one. If suspects make clear their

unwillingness to retain counsel, the police or the prosecutor are required to appoint counsel immediately by choosing a lawyer from a list kept by the competent bar association. However, neither the police nor the prosecutor is obligated to wait for counsel to arrive before interrogating the suspect. According to human rights NGOs, the police routinely proceeded with interrogation immediately after notifying suspects of their right to counsel.

51. The law permits short-term detainees to notify relatives or others of their detention within eight hours, unless the notification would jeopardize the investigation. The investigative authorities must notify relatives of a detainee who is under 72-hour detention of the detention and of the detainee's location within 24 hours. The Working Group was told that, in practice, police did not fully comply with this requirement.

52. The law on petty offenses permits the incarceration of juveniles (defined as individuals from 14 to 18 years of age) in cases when the juvenile has no income or property and thus cannot be fined as a way of punishment. Alternative sanctions, such as community service, do not apply in such cases. Human rights NGOs expressed concern that the law left no alternative to the incarceration of juveniles convicted of minor offenses.

53. The Working Group received reports regarding the high number of pretrial detainees, an increased number of pretrial detentions lasting for longer than a year and arbitrary court decisions ordering pretrial detention. Some court decisions ordering pretrial detention were not adequately substantiated by facts, and courts approved prosecution requests for pretrial detention without taking into consideration objections by the defence.

54. The law provides that persons held in pretrial detention and later acquitted may receive monetary compensation.

55. Under international human rights law, detention in custody of persons awaiting trial is to be the exception rather than the rule. However, the Working Group consistently received information that the excessive use of pretrial detention is prevalent throughout the criminal justice system in Hungary.

56. On 18 October 2013, Hungary had a prison population of 18,238 persons, 28 per cent of whom were pretrial detainees. The Working Group observes that even with legislation providing for alternative measures to detention, the recourse detention as a first resort rather than a last has been commonplace.

57. The prison population in Hungary is currently at a 140 per cent overcrowding ratio, much of which can also be attributed to the common use of detention for those in the pretrial regime. In addition to the overuse of pretrial detention, the prolongation process of the detention also raises serious questions in that it often leads to unnecessary and lengthy periods of detention. The principle of proportionality was not often respected. Since 2010, 741 new spaces have been built. 3,600 new spaces are slotted for completion before 2017, and alternative measures to confinement are to be developed more intensely.

58. In its interviews with detainees, the Working Group was informed of pretrial detention periods that ranged from a few months to 18 months and, in one case, a person had been in pretrial detention for over three years. Although alternatives to detention are stipulated in the relevant legislation, a "culture of detaining" a person pending trial seemed to be evident throughout the country.

59. Even though Hungarian law provides specific grounds for when a person can be subjected to pretrial detention, the Working Group observed that many of the detainees it interviewed would have benefitted from alternatives to detention, also prescribed by law, because they did not meet the criteria that rendered pretrial detention necessary.

60. The Working Group also observed that some of those interviewed were not knowledgeable about their rights in the criminal justice system nor aware of basic legal

rights, such as the right to have a lawyer present during the initial interrogation at the police station. In fact, quite often, it is a police officer who recommends a lawyer that he or she may know from a list of lawyers in the community. Some of the detainees also stated that they were taken into police custody, and what they thought was a simple interrogation resulted in months of pretrial detention.

61. Adding further concerns to the problems faced by persons who are arrested and placed in pretrial detention, the Working Group was consistently informed of the inequality of power between defence lawyers and prosecutors in criminal proceedings. Over 90 per cent of cases brought before the courts in relation to pretrial detention were decided in favour of the prosecution.

62. Pretrial detention must be based on an individualized determination that it is reasonable and necessary. However, the Working Group observed that the lack of individual assessments of cases has often meant that those in pretrial detention find it overwhelmingly difficult to challenge the legality of their detention. Several interviewees stated that the motions of prosecutors enjoyed a system of almost automatic approval, whereas defence lawyers did not achieve the same results. This was also worsened by the fact that the defence has limited right to access the material on the basis of which the detention is ordered. A defence lawyer, even one who is working hard to effectively represent his or her client, finds it enormously difficult to successfully challenge a pretrial detention or prevent it from being prolonged, because often he or she is not privy to the relevant investigation material. However, since 1 January 2014, the investigation material on which the motion filed was based must be attached to the motion sent to the defence counsel.

63. These disparities have raised concerns for the Working Group because of the many detainees with whom it has met who have been in pretrial detention for too long or who could clearly benefit from other legal alternatives to detention.

64. The Working Group has been informed that the use of electronic devices as a means to assist with home arrest measures is currently being implemented. The Working Group would like to emphasize the importance of exploring the use of such alternative measures.

65. The excessive use of pretrial detention continues to be one of the most serious problems of the criminal justice system of Hungary. Since 2005, pretrial detainees are held in penitentiary institutions, leading to problems deriving from the critical overcrowding in prison facilities mentioned above. Reflecting the general trend of stricter criminal policy, the number of pretrial detainees is also rising.[1]

66. The average number of people held in pretrial detention increased by more than 7 per cent in only two years after 2009, and currently almost 30 per cent of the prison population consists of persons who have not been convicted by any court for any crime. Courts continue to approve prosecution motions to order or uphold pretrial detention almost automatically, failing to examine the individual circumstances of the suspect in many cases.

67. The other serious problem is the excessive length of pretrial detention in a considerable number of cases: suspects often remain in detention for several months, or even years.

68. The most problematic issue pertaining police detentions remains the short-term arrest (*előállítás*). Under article 33 of Act XXXIV of 1994 on the Police, a person may be taken into short-term arrest if, *inter alia*, he or she is caught in the act of committing a crime; is under an arrest warrant; is suspected of having committed a crime; cannot identify himself/herself or refuses to do so; is required to give a blood or urine sample in order to

[1] Data available from www.bvop.hu.

prove a criminal or a petty offence; or fails to stop a petty offence when called upon to do so.

C. Detention of minors

69. Juvenile offenders should only be confined as a last resort. In their case, the central focus of the criminal justice system should be education and reintegration. According to international legal rules, individuals under 18 are considered children. Article 37 of the Convention on the Rights of the Child requires that the arrest, detention or imprisonment of a child should only be applied as a measure of the last resort, and only for the shortest possible period of time. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) also state that in the case of juvenile offenders, the criminal justice system needs to avoid a retributive approach.

70. According to Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System ("Law on Misdemeanours"), the confinement of juveniles is carried out in a penitentiary institution; the possibility of implementing the confinement in a juvenile correctional facility is excluded.

71. According to the new Criminal Code, the minimum age of criminal responsibility has been lowered in case of certain offenses. Children over 12 and under 14 can be charged with homicide, voluntary manslaughter, bodily harm, robbery and plunder, if the child can judge the consequences of his/her actions. Children under 14 cannot be sent to penitentiaries. However, they can be sent to juvenile reformatory centres to follow special education programmes if they have committed some of the above-mentioned offenses.

72. Under international human rights law, the pretrial detention of minors should be avoided whenever possible. The Working Group was informed, however, that there were 499 juvenile offenders in penitentiary institutions and 320 minors in reformatory institutions. One minor was interned in a psychiatric institution.

73. The delegation visited the Juvenile Prison in Tököl where there were 240 minors detained. One of these minors was 15 years old. 50 minors were in pretrial detention and 24 had been detained for more than six months. The delegation also visited the Correctional Facility for Young Offenders in Budapest where there were 80 children aged between 14 and 18 submitted to a regime of re-education. Minors spent an average of 10 months in this facility. However, the Working Group found that 20 minors had been detained there for more than 20 months.

74. The Working Group recalls that the Committee on the Rights of the Child stated in 2007 in its General Comment No. 10 that the reaction to the violation of a law by a child is to be proportional to the age, maturity, necessities and circumstances of the child and has to take into account the long-term interests of society in education and reintegration and not mere punishment.

D. Lack of effective legal assistance

75. Of similar and grave concern as the overuse of pretrial detention is the lack or absence of effective legal assistance for arrested persons. During its discussions with government authorities, the Working Group reiterated that the obligation to provide free legal assistance belongs to the State. A number of detainees reported that they were interrogated without a lawyer present, as they did not realize the importance of legal advice at the time of the interrogation and the evidentiary character of the written statements,

which could later be used at trial against them. Some of those that did have lawyers did not feel that their cases were effectively defended.

76. Legal assistance may be received from the Legal Aid Services. Under Act LXXX of 2003 on Legal Aid, the mandate of the Legal Aid Services is to provide free legal aid to indigent persons with legal problems, which may also include the violation of the right of equal treatment. The entitlement to free legal support depends on whether the applicant meets the criteria based on social or financial status. The Legal Aid Services of the regional offices of the Ministry of Justice decide on the requests for legal aid. If the decision is positive, the client may choose his or her legal aid provider from the list of registered legal aid providers.

77. One of the main problems affecting the defence counsel system is the way in which defence counsels are appointed. The authorities (including the investigative authorities, i.e. in most cases the police) are completely free to choose the lawyer to be appointed. They are not obliged in any way to consider the wishes of the defendant. The competent bar association keeps a register of those attorneys who can be appointed as defence counsel, and the authority conducting the actual phase of the procedure chooses a defence lawyer from this list. Some attorneys base their law practice principally on *ex officio* appointments, so they may become financially dependent on the member of the police force who makes decisions on appointments.

78. Under Hungarian law, defence is mandatory: if the defendant is detained, he or she must either retain a lawyer or an *ex officio* defence counsel is appointed. If the suspect's detention is ordered, it shall be guaranteed that he or she can retain a lawyer before the first interrogation.[2]

79. The counsel shall be notified in due course, at least 24 hours beforehand, of all the investigative acts where he or she may be present. The notice given to lawyers is often very short, or sent in a way that the chances of the lawyer receiving the notification are practically non-existent.

80. According to statistics obtained by the Working Group during its visit, it is not uncommon for police investigators to select a lawyer for the detainee. In some municipalities, the police investigators select the same lawyer in 50–70 per cent of cases. In some instances, the defence lawyers did not show up for the interrogation because the police would wait for the last possible minute to notify the lawyer, knowing that it was the evening or the weekend, thus making the lawyer's presence difficult or impossible.

81. As one of the experienced lawyers put it, the first 72 hours of arrest is a crucial period for the arrested person and yet lawyers are often not present. The absence of a lawyer provides opportunities for the detainees' rights to be violated.

82. The Working Group was informed that defence lawyers assigned and paid by the Government earn around 4,000 Ft. per hour (approximately 13 EUR). Defence lawyers often have to travel long distances to provide assistance to clients and to deal with the inequalities mentioned in the access to case materials compared to prosecutors. These factors create a difficult environment in which effective legal assistance cannot be guaranteed, and the Working Group notes this as a contributor to the high number of those in pretrial detention.

83. In the context of all these difficulties and without the proper safeguards, an arrested person is under serious risk of being arbitrarily detained.

[2] Joint Decree 23/2003. (VI. 24.) of the Minister of Interior and the Minister of Justice on the Detailed Rules of Investigation Conducted by Organizations under the Minister of Interior, article 6.

84. The Working Group is pleased, however, that there is legal assistance being offered by certain civil society organizations and that their legal advisors can be present.

E. Detention of asylum seekers and migrants in an irregular situation

85. Hungary has become a key transit country for migrants attempting to reach Western Europe. According to article XIV of the Constitution, paragraph 3,

> Hungary shall grant asylum to all non-Hungarian citizens as requested if they are being persecuted or have a well-founded fear of persecution in their native countries or in the countries of their usual residence due to their racial or national identities, affiliation to a particular social group, or to their religious or political persuasions, unless they receive protection from their countries of origin or any other country.

86. On 1 July 2013, following the adoption of Act XCIII of 2013, new amendments to the Asylum Act entered into force. The transposition of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), which had not even been formally adopted at the time the amendments were drafted, provided a legal background for the adopted changes. The amendments to the Asylum Act offer extensive grounds for the detention of asylum seekers under a separate legal regime (separate from immigration detention), so-called "asylum detention".

87. The relevant immigration and asylum norms of Hungary, which have been amended several times since the 1990s, are contained in the following: Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals

88. ; Government Decree 114/2007 (V.24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals; and Act LXXX of 2007 on Asylum.

89. Act II of 2007 provides for two types of migration-related detention: "detention in preparation for expulsion," which is aimed at detaining non-citizens whose identities or legal grounds of residence cannot be conclusively established (section 55, Act II of 2007); and "alien policing detention", which can be ordered to ensure the implementation of an expulsion order. Both detention in preparation for expulsion and alien policing detention can be ordered by the National Police and by the Office of Immigration and Nationality of Hungary (OIN).

90. Foreigners have the right to file a complaint challenging their detention. However, complaints can only be lodged after an initial court review of the detention. Complaints cannot be filed after a non-citizen has entered alien policing proceedings. In addition, complaints must be filed within 72 hours of a detention order being issued (section 57, Act II of 2007).

91. The Border Guard, which was integrated into the National Police in January 2008, is authorized to apprehend and detain non-citizens for both types of detention.[3] The OIN is responsible for housing asylum seekers at the secure and open reception centres. It must be notified by the police when an asylum claim is made.[4] Both the police and the OIN fall under the Ministry of the Interior.

---

[3] Júlia Mink, *Detention of Asylum-Seekers in Hungary: Legal Framework and Practice* (Hungarian Helsinki Committee, Budapest, 2007), p. 27. Available from pdc.ceu.hu/archive/00003240/.

[4] Hungarian Helsinki Committee, "Asylum in Hungary: a guide for foreigners who need protection", leaflet, Hungarian Helsinki Committee and UNHCR, 2008.

92. Authorities can detain non-citizens for an initial period of up to 72 hours without judicial review. For detention in preparation for expulsion, this period can be extended by court order to a maximum of 30 days (section 55, Act II of 2007). In the case of alien policing detention, the court can extend detention of a non-citizen for 30 days at a time, provided a request is made eight days before the due date for each extension, up to a maximum of six months (sections 54 and 58, Act II of 2007). If it is clear that an expulsion order cannot be executed within six months, detention must be terminated (section 54 (6)(c), Act II of 2007).

93. If there are still grounds for detention after six months have passed, the individual must be transferred to one of the country's three community shelters, or to another appropriate place of accommodation (section 62 (3), Act II of 2007).[5] However, individuals who violate the rules of the community shelter or attempt to cross the border illegally can be subject to additional six months in alien policing detention.[6]

94. Asylum applicants can be subjected to asylum detention. When an asylum request is made at the border, the police transfers the applicant to the OIN where the applicant will have his or her first asylum interview. The OIN will decide if the applicant should be accommodated in one of the open reception centres in Debrecen, Bicske or Vámosszabadi (in 75 per cent of cases) or in a closed asylum reception centre in Nyírbátor, Békéscsaba or Debrecen. The OIN can order asylum detention for a maximum of 72 hours. The prolongation of the detention is subjected to a judicial decision. Judicial authorities are entitled to prolong the asylum detention each time by a maximum of 60 days for up to six months.

95. In 2013, detention was ordered in less than 25 per cent of all asylum cases. The duration of the preliminary assessment is of 30 days. If an asylum seeker's request is considered to have merit, "the alien policing authority shall, at the initiative of the refugee authority, terminate his/her detention" (section 54, Act II of 2007). In practice, however, asylum seekers in alien policing detention often find themselves in situations of prolonged detention.

96. There have also been cases in which asylum seekers remain in prolonged detention as authorities determine whether, under the Dublin II Regulation (European Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national), Hungary is the correct country for a person to file an asylum claim. This procedure can result in people being detained in a reception centre for up to six months.

97. The Working Group was able to visit two detention facilities for irregular migrants and asylum seekers in Nyírbátor and Békéscsaba.

98. The Working Group understands the pressure and challenges faced by Hungary as a transit country having seen a radical increase in the numbers of asylum seekers in 2012 alone. In that year, a total of 2,157 applications for asylum were registered, and from January to August 2013, an estimated 15,000 were registered. The huge wave of border crossings has created a sense of urgency within the Government.

99. The Working Group was able to meet with immigrants of different nationalities to assess the situation in relation to its mandate.

---

[5] Hungarian Helsinki Committee, "Hungary", in *Administrative Detention of Asylum Seekers and Illegally Staying Third Country Nationals in the 10 New Member States of the EU*, Jesuit Refugee Services Europe, ed. (Malta, 2007), p. 47. Available from www.jrseurope.org/Publications_List?ID=4&L=EN.

[6] *Ibid*.

100. From the outset, the Working Group notes that the Government of Hungary has responded during the last few years with different approaches to the influx of people crossing its borders. Legislative changes and policies have been initiated to manage the situation. The legislative changes to the Asylum Act that came into effect in July 2013 have some positive changes, such as asylum detention having to be based on individual assessment; the introduction of alternatives to detention such as bail; and benefits such as the availability of social workers to assist those in detention.

101. Unaccompanied minors remain exempt from detention.

102. In practical terms, there are many issues raising concern of various violations despite the current legislation providing for certain positive measures. The issue of prolonging the detention of an asylum seeker and the lack of proper judicial review were consistently raised during interviews.

103. Three information sheets on general information on the asylum procedure and asylum detention in the 13 most commonly-used languages are given to the applicants before the interview. Although the law provides that a complaint or an objection can be submitted against a detention order – an important tool against challenging a potentially arbitrary detention – this right is not often explicitly communicated to those who are being detained. This is further complicated by the language difficulties faced by detainees, who are of different nationalities. Furthermore, when the lawyer representing the detainee filed a complaint against the detention, there was a system of extending the detention without proper regard for the lawyer's submission and the individual circumstances of the detainee.

104. Concerning alien policing detention (and not asylum detention), 6,174 persons were in detention in 2012. Only three requests for release were successful. Hence, the lack of effective legal remedy against detention orders and their prolongation is worrying, as it has resulted in detentions for periods of up to 12 months.

105. The regime for asylum seekers in places such as Nyírbátor seemed to be tougher than the regime in neighbouring cities for alien policing detention and migrants awaiting deportation. It was often unclear how persons were selected as asylum seekers and who would be placed in the alien policing jail. In some instances, an asylum seeker was placed in the alien policing jail without proper reasoning or justification. According to the authorities, first-time asylum applicants could not be placed in alien policing detention, but persons who submitted their second asylum application after a final and binding negative decision did not have the right to stay in the country.

106. The Working Group would like to point out that in situations where a delay in a case is not attributable to the detainee, the person should not be unduly detained for a prolonged period. This is the case where certain persons were held in detention and clarifications were necessary with regard to issues such as identity, the difficulties were due to the authorities involved in the case, and the person was not given any other option but to remain in detention.

107. The Working Group notes with concern that for acts that are not considered a crime, persons who have entered the country without authorization find themselves in situations similar to a penitentiary system and equally without proper guarantees of their rights.

108. Although the Working Group understands the difficulties faced by the Government in dealing with the rapid rise of border crossings, the situation of asylum seekers and migrants in irregular situations needs robust improvements and attention to ensure against arbitrary deprivation of liberty. The positive measures introduced by the recent law should be implemented in a clear and defined manner.

109. Detention should not be the common and first resort and should be for the shortest possible duration, especially when genuine asylum seekers may be overlooked or detained

unnecessarily without proper justification. The presence of a legal representative appointed by the court is mandatory in asylum detention cases. In practice, however, the problem relating to effective legal remedy is worsened by the severe lack of effective legal assistance to these vulnerable persons. Most of those that the Working Group interviewed stated that they did not have legal assistance, and those that did have a lawyer stated that it was someone from a civil society organization rather than one provided by the Government.

F. Deprivation of liberty under the Law on Misdemeanours

110. The range of misdemeanours (petty offences) punishable with confinement was broadened already in 2010 by Act LXXXVI of 2010 on Amendments Necessary in Order to Improve Public Security, extending the possibility of confinement to misdemeanours against property. The Law on Misdemeanours upheld the extended list of offences punishable with confinement and made it possible to apply confinement for the third misdemeanour within a six-month period to any petty offence, even if none of the misdemeanours committed would be otherwise punishable by confinement. Each case of conversion must be decided by a judge, but a trial is held at the defendant's request. The Law on Misdemeanours allows for changing a fine or community service to confinement without hearing the offender if he or she fails to pay the fine or carry out the work, which is a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

111. It may be added that the Law on Misdemeanours also criminalizes homelessness: it provides that living on public premises and storing related personal property on public premises constitutes a petty offence, and those living in public premises may be punished with a fine or with confinement.

112. The Working Group interviewed a number of detainees who were serving time in confinement for offences such as not wearing a seatbelt, having a broken bicycle light, jaywalking and walking across the street under the influence of alcohol. (Since 1 July 2011, the omission of wearing a seatbelt is only subject to an administrative procedure). The Working Group noted that most of these offenders were also unemployed or without regular work. A common reason for not being able to pay a fine was financial limitations. The time being served in confinement ranged from 10 to 38 days and, when questioned about having a lawyer, the Working Group received similar information that it was not easy to obtain one or that the detainees were sentenced to confinement without having been able to challenge this decision in court.

113. It seemed that an automatic conversion of a fine to confinement took place without the offender being in court to challenge the confinement. This automatic system of conversion concerns the Working Group, as a person should be able to challenge any deprivation of liberty in light of one's own and unique circumstance, for instance where family or financial situations can be explained to a judicial authority to shed light on the inability to pay a fine. This situation is aggravated by the fact that only a particular section of the population is unfairly disadvantaged: those who are poor or who may not have the means to provide financial assurance against confinement.

114. The Working Group notes that in 2012, there was a drastic increase in the conversion of non-payment of fines to confinement. The principle of proportionality should be applied in these situations and, importantly, alternative measures to confinement such as community work should be utilized.

115. With regard to juvenile offenders, the Working Group notes that this is a grave issue that needs to be assessed, as confinement of this group is also provided for, and the possibility of converting a fine into confinement exists.

G. Detention in psychiatric institutions

116. According to a recent government resolution, the Judicial and Observational Psychiatric Institution is to be placed in another building, in a former hospital. Compulsory psychiatric treatment is the involuntary psychiatric treatment of mentally ill offenders, ordered and supervised by the criminal system. According to the new Criminal Code, as of 1 July 2013 the length of the treatment will be indefinite, possibly lifelong. The time of the eventual release is not prescribed by law; it is subject to periodical judicial review. Detainees in psychiatric institutions may remain institutionalized for a period of time longer than the prison term they would have served.

117. Detainees in psychiatric institutions are forced to take psychiatric medication. Detainees interviewed were often asleep during discussions and could not communicate.

H. Detention of Roma people

118. No official data disaggregated by ethnicity exists concerning the representation of various groups within the criminal justice system, and the authorities have pointed out that there is no obligation at any stage for any individuals involved in the criminal justice system to identify themselves as belonging to a particular ethnic group. However, empirical studies indicate that Roma are overrepresented in the criminal justice system in Hungary.

119. Three major Roma groups exist in Hungary; the “Magyar Cigany” or Hungarian Roma, the Vlachs and the Beash. The Magyar Cigany constitute probably around 80 per cent or more of the total Roma population of Hungary. The Vlachs, originally from Romania, number around 100,000 and are considered culturally very different. The Beash are the smallest Roma community, estimated to number around 40,000 to 50,000.

120. Roma are more often subjected to police stop and search operations, which increases the likelihood that they will end up in the criminal justice system. It has also been pointed out that, because Roma are often amongst the poorest members of society, they are more likely to need to rely on officially appointed defence counsel, who are poorly paid and tend to be less active in defending their clients.

121. Due to the lack of available data disaggregated by ethnicity, information as to trends in convictions and sentencing patterns of Roma is not available.

V. Conclusions

122. **The Working Group expresses its appreciation to the Government for its willingness to engage in open and frank discussions regarding its mandate and its concerns. It notes the positive efforts the Government has made, particularly through legislative reforms, to improve the situation of deprivation of liberty in Hungary.**

123. **The Working Group notes that Hungary has achieved some improvements in political effectiveness over the past decade through reform of the judiciary and the civil service, and its efforts to increase the transparency of public spending and to limit corruption.**

124. **The Working Group considers that the concerns expressed about the prolonged periods of administrative detention of asylum seekers and immigrants in an irregular situation deserved to be addressed as a matter of priority.**

125. **The Working Group invites the Hungarian authorities to review the situation of misdemeanour offenders in police holding facilities and the practice of holding remand prisoners in police establishments.**

126. **The Working Group notes that detainees are provided with an information leaflet on their rights and obligations. It calls upon the Hungarian authorities to take steps, including at the legislative level, to ensure that all detained persons have access to a lawyer as from the very outset of their deprivation of liberty. Further steps should be taken to ensure that all persons detained by the police are fully informed of their rights. Clear information about access to legal aid should be made available to detained foreign nationals. The regular presence of a legal advisor should be arranged at holding facilities for aliens.**

127. **Short-terms arrests of up to 12 hours without charge remain possible; the legal basis remains unclear and the length of police detention (up to 72 hours) has not been revised. There are still lapses in the system to guarantee access to legal counsel.**

128. **The Working Group expresses its concern at the length of the initial pretrial detention phase (up to 72 hours), ongoing pretrial detention on police premises and the high risk of ill-treatment.**

VI. Recommendations

129. **The Working Group encourages the Government to continue in its efforts to ensure that its institutional and legal framework regarding deprivation of liberty fully conforms to the human rights standards enshrined in international human rights standards and in its legislation.**

130. **On the basis of its findings, the Working Group makes the following recommendations to the Government:**

(a) The authorities should review the practice on short-term arrests and legislation on pretrial detention to ensure that these are in line with article 9 of the International Covenant on Civil and Political Rights and that the domestic regulations on short-term arrests are sufficiently clear and have a clear legal basis;

(b) Access to legal counsel to all persons deprived of their liberty should be assured;

(c) Asylum seekers and refugees should never be held in penal conditions. The State party should fully comply with the principle of *non-refoulement* and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages;

(d) Authorities should assure that decisions on expulsion, return or extradition are dealt with expeditiously and follow the due process of the law;

(e) Authorities should adopt specific measures to raise awareness in order to promote tolerance and diversity in society and ensure that judges, magistrates, prosecutors and all law enforcement officials are trained to be able to detect hate and racially motivated crimes;

(f) Authorities should take appropriate measures to ensure that pretrial detention policy meets international standards, including by reducing pretrial

detention on police premises, further reducing the period of pretrial detention and using alternative measures;

(g) Authorities should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police or Border Guard staff are respected, including access to a lawyer as well as to an independent medical examination or a doctor of their own choice, the right to receive information about their rights and their right to inform their relatives about their detention;

(h) Detention of asylum seekers and other non-citizens should only be used in exceptional circumstances or as a last resort, and then only for the shortest possible time;

(i) Authorities should also ensure that courts carry out a more effective judicial review of the detention of these groups. They should have an effective, independent and impartial review of decisions on expulsion, return or extradition;

(j) The Government should continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the wider application and use of alternative sentencing;

(k) The Government should intensify its efforts to combat discrimination against and ill-treatment of the Roma, persons belonging to national minorities and non-citizens by law enforcement officials, especially the police, including through the strict application of relevant legislation and regulations providing for sanctions, adequate training and instructions to be given to law enforcement bodies, and the sensitization of the judiciary;

(l) All necessary measures should be taken to ensure that persons below 18 are only deprived of liberty as a last resort and that children, if detained, remain separated from adults and protected from any form of ill-treatment; and to implement alternative measures to deprivation of liberty, such as probation, community service and suspended sentences;

(m) The Government should continue to revise the criminal law to bring it fully in line with relevant international and regional obligations and in particular to ensure the protection of national, ethnic, religious or linguistic minorities;

(n) The Government should continue to be committed, via its Equal Treatment Authority, to implement and provide training on its policies of non-discrimination.

Appendix

Detention facilities visited

In Budapest

The Judicial and Observation Psychiatric Institution

The Correctional Facility for Young Offenders

In Tököl

The Juvenile Prison Facility

In the county of Hajdú-Bihar

The Hajdú-Bihar Remand Centre

In the county of Békés

The prison facility in Gyula

The detention facility for asylum seekers in Békéscsaba

In Szeged

The Maximum Security Prison

In the county of Szabolcs-Szatmár-Bereg

The alien policing facility and detention facility for asylum seekers in Nyírbátor